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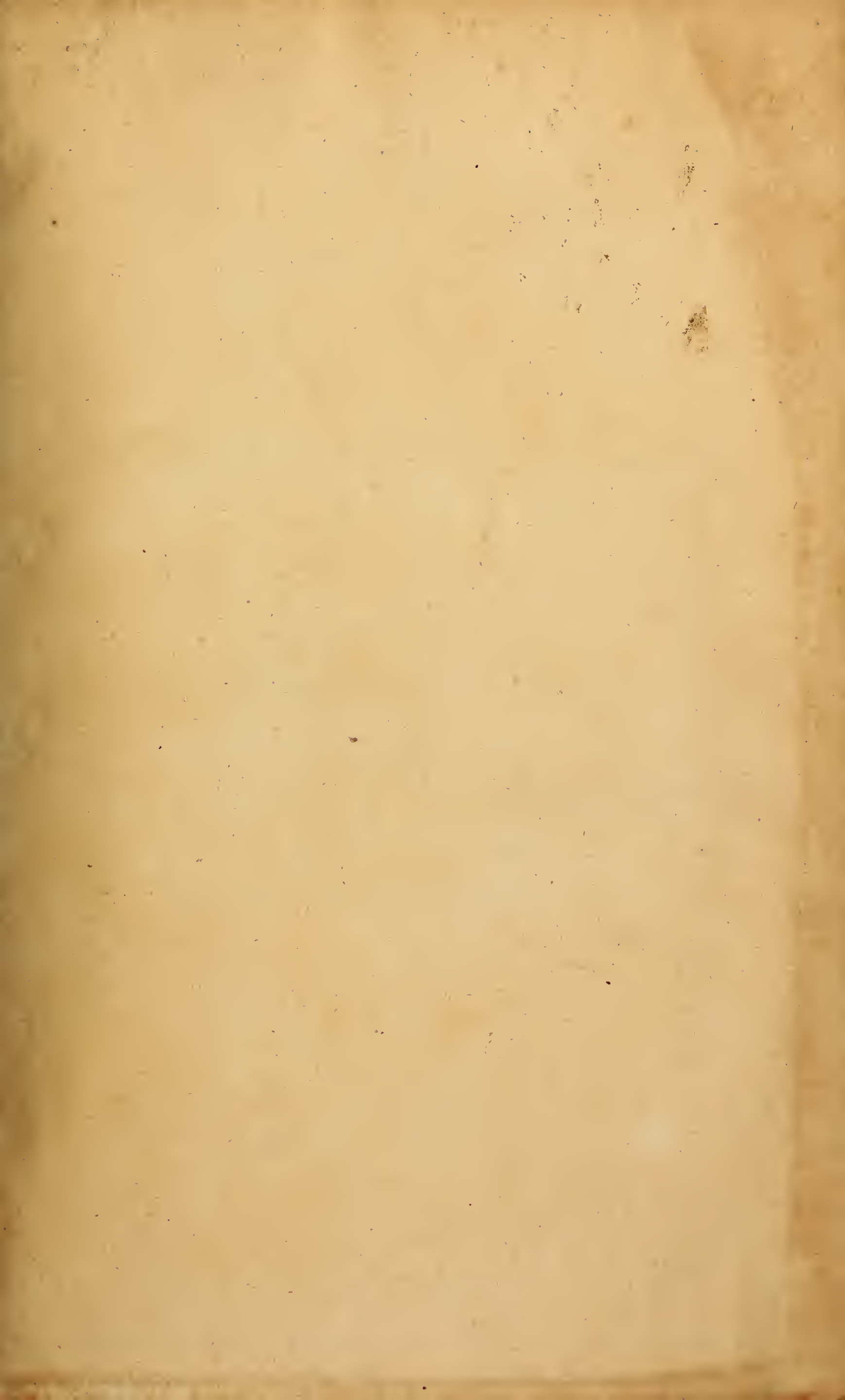


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A
Complete Collection
OF
STATE-TRIALS,
AND
PROCEEDINGS
UPON
HIGH-TREASON,
AND OTHER
CRIMES and MISDEMEANOURS;
FROM
The Reign of King *RICHARD II.*
TO
The Reign of King *GEORGE II.*

The SIXTH VOLUME.

With Two Alphabetical Tables to the Whole.

The THIRD EDITION, with ADDITIONS.

LONDON:
Printed in the Year M.DCC.XLII.

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This Day is published,

The SEVENTH and EIGHTH VOLUMES in Folio (to complete the STATE-TRIALS in Six Volumes,) of

A COLLECTION OF STATE-TRIALS, And PROCEEDINGS upon High-Treason, and other Crimes and Misdemeanours, from the Reign of King Edward VI.

Containing among many others (chiefly printed from Manuscripts) the following ones ;

1. **P**roceedings in Parliament against Sir *Thomas Seymour*, Knt. Lord *Sudley*, for High-Treason, 2 & 3 *Ed. 6.*
2. Proceedings in Parliament against *Edward Duke of Somerset*, for Misdemeanours and High-Treason, 3 & 4 *Ed. 6.*
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7. The Case between Sir *Francis Goodwin* and Sir *John Fortescue*, in the Reign of King *James I.* as it stands upon the Journal of the House of Commons. First Printed, 1704, by Order of the House of Commons.
8. The Arraignment and Confession of the Lord *Santquire*, at the King's-Bench-Bar, for the Murder of *John Turner*, a Fencing-Master; with his Lordship's remarkable Speech; the Speeches of Sir *Francis Bacon*, and Mr. Justice *Yelverton*; with Lord-Chief-Justice *Coke's* Opinion upon it. From a MS. in the *Temple Library.*
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11. Proceedings against *William Stroud*, *Walter Long*, and *John Selden*, Esqrs; and others, on an *Habeas Corpus*; being committed for stirring up Sedition, and Contempt of the Government, 5 *Car. 1.* with the Arguments of Council at large.
12. Proceedings against Sir *John Elliot*, *Denzill Holles*, and *Benjamin Valentine*, for Speeches in Parliament, 5 *Car. 1.* with the Judgment of the Court of King's-Bench, and the Reversal of that Judgment in Parliament, *Temp. Car. 2.*
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16. The Trial of *Richard Faulconer*, for Perjury, at the King's-Bench, 5 *Car. 2.*
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26. The Trial between *Henry Duke of Norfolk*, Plaintiff, and *John Germaine* Esq; Defendant, at the King's-Bench, *Westm.* 4 *Will. & Mar.* relating to the Divorce.
27. The Proceedings against the Bishop of *Rocheſter*, in relation to a Plot to restore K. *James*, 4 *Will. & Mar.*
28. Proceedings against *Charles Knowles*, Esq; commonly called Earl of *Banbury*, for the Murder of *Philip Lawson*, Gent. 4 & 5 *Will. & Mar.*
29. The Trial of *William Anderton*, Printer, at the *Old-Bailey*, for High-Treason, 5 *Will. & Mar.*
30. The Proceedings in the House of Commons upon the Complaint of Sir *John Packington*, against the Bishop of *Worceſter*, 2 *Ann.*
31. The Proceedings in the House of Commons, House of Peers, and Court of Queen's-Bench, in the great Case of *Ashby* and *White*; containing all the Arguments and Speeches at large.

N.B. These Proceedings were never before collected together; the *Octavo Volume* formerly printed, not containing Half of the Proceedings relating to the *Aylesbury Men*.

32. The Trial of *Daniel Denew*, *John Merriam*, and *Richard Britton*, Gentleman, for an Assault and Conspiracy with an Intent to wound, beat, &c. *William Colepeper*, Esq; before Judge *Holt*, 2 & 3 *Ann. R.*

33. The Trial of *Daniel Dammaree*, a Waterman, for High-Treason, in levying War against the Queen, under Pretence of pulling down Meeting-Houses, 9 *Ann.*

34. The Trial of *Francis Willis*, a Footman, for High-Treason, in levying War, &c. 9 *Ann.*

35. The Trial of *George Purchase*, for High-Treason, in levying War, 9 *Ann.*

These three Trials were before the Lord-Chief-Justice *Parker*, and are the only Trials printed during the Time his Lordship was Chief-Justice. To which is added the Special Verdict on *Purchase*, as drawn up for the Consideration of the Judges, and the Arguments upon it.

36. The Trial of *Edward Arnold*, for Felony, in maliciously and wilfully shooting at and wounding the Lord *Onslow*, on the Black-Act; before Judge *Tracy*.

With An APPENDIX, containing Records, Arguments in Law, Speeches, &c. relating to the Trials and Proceedings in Six Volumes in Folio,
Printed for THOMAS WOTTON, at the Queen's-Head and Three Daggers against St. Dunstan's Church in Fleet-street.



A Complete
C O L L E C T I O N
O F
T R I A L S, &c.

CLXXXV.

Proceedings in PARLIAMENT against James Earl of Derwentwater, William Lord Widdrington, William Earl of Nithisdale, Robert Earl of Carnwath, William Viscount Kenmure, and William Lord Nairn, upon an Impeachment for High-Treason, Febr. 9. 1715. 2 GEO. I.



THE above-named Lords having excited a Rebellion, and levied War against his Majesty, and being taken Prisoners, whilst in actual Hostilities, the Parliament at that time sitting, it was moved in the House of Commons, *January 9.* that they should not be left to the ordinary method of Prosecutions, but be proceeded against by way of Impeachment: Upon which Occasion Mr. *Lechmere* spake as follows,

After the general Assurances this House has given to his Majesty, one Moment ought not to be lost without taking some effectual Step towards making them good. The first and great Concern is to put an End to this *Rebellion*, not only to quiet the present Commotions, but to extinguish the very possibility of their being renewed: For these Ends every Gentleman will agree to strengthen the Hands of the King, in such manner as will enable him speedily and effectually to complete this Work: You will do this with absolute Cheerfulness, from the certain Knowledge and Expe-

rience we have had of the Wisdom and Justice of his Majesty, who will make no other Use of any Confidence his Parliament shall repose in him, than to promote the common Welfare of his People; and whatever extraordinary Assistance the present Juncture of Affairs shall require, will be continu'd no longer than the public Necessity calls for. The next useful and necessary Step is the *National Justice*, which is incumbent on this House, in Duty to the King, as well as in Justice to the People; and as ungrateful and disagreeable a Part as this must be, yet when the Design of the Enemy is become so desperate and so avowed, as to strike at the Crown upon the King's Head, and to involve the Nation in the Calamities of a *Civil War*, the House cannot exert themselves too early, nor with too much Vigour; and as the House shall acquit themselves on this Occasion, I dare promise myself the Effect will be answerable. The Spirit which shall be shewn in this Instance, will animate the Friends of the Government both at Home and Abroad; and the Terror it must strike on our Enemies, will be equal at least, and contribute as much to the Common Safety, as any other Preparation that has or can be made. I wish I could say or think that this

Rebellion is the Project of those only, who appear'd to head it; or that it is the Result of the weak or rash Counsels of those who publicly avow it; I wish I could say, that it is the Work of *Papists* only, or of those few *Protestants*, who are wicked or weak enough openly to join in it. I wish I could say, that it was a *Plot* but of Yesterday, and that it has taken no deeper Root, than ordinary Appearance will lead to suspect: But I think it plain, that it is the Effect of many Years Labour, of the joint and united Labour of great Numbers both *Protestants* and *Papists*, the plain and necessary Consequence of the Measures which have been carrying on for some Years last: To frame a right Judgment of the Nature of this Rebellion, I think it necessary for us to look back and consider, the natural Tendency of the Public Proceedings of late Years, and the Connection they bear with the present unfortunate State of Things; when Men in sacred Functions suffer'd themselves to become *State Instruments*, and the great Merit of such Men was under the Pretence of Asserting the Doctrines of the Church of *England*, to condemn the Revolution, I could never understand any other Design or Tendency from those Practices, than to undermine the Foundation of the Protestant Succession. I remember 'twas said upon a very solemn Occasion, by a very honourable Gentleman, *That the condemning the late happy Revolution, could have no other Meaning than to make way for another.* However wicked and dangerous these Practices were, they made too great an Impression, and contributed a great deal to the present Calamity; for as the Designs of the Enemy grew more avow'd, State Principles of another Kind were advanc'd, which still conduced to the same End. 'Twas well known what Industry was used to inculcate the Notions of *Hereditary Right* to the Crown, in Opposition to the Settlement which had been made of it in the House of *Hanover* by the Authority of Parliament, and with no other View than to weaken that Settlement; Every one remembers what extraordinary Pains were taken to poison the People with this dangerous Notion; and that those who made the best Court to Men in Power, were such who espoused this Opinion in the most notorious manner. I cannot forget with what Tenderness a certain Divine* of the Church of *England* was treated below Stairs, whilst under Prosecution, for the most impudent^a Libel that ever was published against any Government, that had either Will or Power to maintain it self. I think the Punishment that was inflicted on that Gentleman light enough, but I cannot avoid taking Notice of a remarkable Passage, which then alarm'd every thinking Man, and will, one time or other, deserve the Consideration of this House, *viz.* The Order from the Government, counter-sign'd by a Secretary of State, to the Judges of the *Queen's-Bench*, after the Judgment pass'd, to supersede the ignominious Part of the Punishment, by Reason of the *Sacred Function* of the Criminal: By which the most *unexampled and dangerous Distinction* was introduced; and which Proceeding could bear no other Construction, than as a License and Protection, even from the Government, to Men in Holy Orders, to propogate that *destructive Position* with *Impunity*; and the Character of the Person, which ought in Justice to have ag-

gravated his Guilt and heighten'd the Punishment, became his Indemnity against the Reproach of it, even by the Authority of the Government it self. I remember very well in what Manner every Thing of that Nature was treated in *Westminster-Hall*; what Severities were exercised against those Persons who had Courage enough to assert the Interest of their Country, and of the Protestant Succession, at the same Time that the *Patrons* of *Hereditary Right* enjoy'd all *Indulgences*. I mention these Things on no Uncertainties, having been an Eye-witness of them my self, and it having fallen to my Share to bear some Part in them: This was one of the most successful Parts of the Scheme of those who had fix'd their Eyes on the Pretender: The House need not be told how far it has operated, to the Prejudice of the Protestant Succession. I could give many other Instances of this Kind, all which promoted the same End: The gross Distinctions that were coin'd to elude the Oaths that had been made for the Security of the Government: The Endeavours that were used to possess the People with *false Fears of the Danger of the Church*; and the little Care that was taken, to say no worse of it, to instill into the Youth of the Kingdom, such Principles as were consistent with the true Interest either of *Church* or *State*. I look upon these Things to be the *Foundation of the Scheme* that is now, by this *Rebellion*, carrying on into Execution; and I own that In this Respect the Authors of it were *wise in their Generation*, for by these Arts the very *Principle* on which the Protestant Succession is founded, was *spoken*; and tho' the Methods of doing it were base and vile, yet the Dissatisfaction and Uneasiness that was created by them in the Minds of the People, made *Way for the Change* that was *desired*. I must crave leave to put you in Mind of other Parts of this *Scheme* that were carrying on at the same Time. The Enemies to the present Government judging aright for their own Purpose, by all Methods to attack the Consciences of the People, as to the *Legality* and *Justice* of the Settlement of the Crown in the House of *Hanover*, thought it necessary at the same Time to disable as far as they could, those Persons who had been most remarkable for their Services in the Support of it: The great Effort was made at that great^b Man, who is not only the Honour and Ornament of his Country, but the Glory of the Age he lives in. I think I shall not be suspected of Flattery at this Time, nor, I believe, at any Time, with Respect to that Great Man. Many who now hear me, remember the Part I took in Vindication of that Great Man, whilst his Character was under Debate in this House. I cannot forget the Rage and Inveteracy with which he was pursued; nor how much Stress was laid upon obtaining the Censures of Parliament upon him: The Aspersions then thrown upon him, did not hurt that Great Man; and whatever Endeavours may at any Time be used to lessen him, will hurt none but those that shall promote them: But yet those vain Endeavours were a very useful Part of the *Scheme* then carrying on. 'Twas a necessary Step for those Men to put him out of the Way, whose very *Name* and *Appearance*, at that Time, would have been sufficient to raise Armies in Favour of the Protestant Succession and the Liberties of his

* Mr. Bedford.

^a The *Hereditary Right* asserted, &c.^b The Duke of Marlborough.

Country: But I cannot but observe, That as serviceable as it was for the Measures of those Men to wound his Character, it is now a Reproach to the Kingdom, that those *groundless Aspersions*, which have been cast upon him, should remain upon the Journals of Parliament. Another great Lord fell under the Violence of those Times, (I mean the Lord who was Minister in the *Low-Countries*, and was chiefly instrumental in procuring the *Treaty of Barrier and Succession*) whose Prosecution was attended with uncommon Fury. My self had some Share in justifying that Great Man in this House, when he was voted *an Enemy to his Country*. I observed at that Time, and the Event has made it evident, that the *Barrier* was but the *Pretence*, and that the great Services he had done to the *Protestant Succession* was the *true Provocation*, which drew that Rage upon him. Two other honourable Gentlemen, now sitting near me, felt the Severity of those Times: They had distinguished themselves by their Zeal and Firmness to the true Interest of their Country, and were too considerable to escape the Malice of those who had other Views. Those Proceedings, how uncertain soever the Design of them might appear while they were transacting, have been sufficiently explain'd by what has follow'd. The Name of that General, ^e for whose immediate Service the Great Man first mentioned was blemished, and for whom there was Vanity enough to make him his Rival, is now become the *Reproach* of his Family and Country; he avows the Service of the *Pretender*, and e'er long we may hear of him at the Head of an Expedition for establishing *Popery* and *Arbitrary Power*. The Secretary of State ^f who distinguished himself in the Pursuit of the other great Lord, has sufficiently explain'd his Designs to the whole World; and the next Tidings that we may expect from abroad is, that he has taken upon him the Character of a Minister to the *Pretender*. I look upon this (namely the disabling the great Assertors of the Protestant Interest) to be a second, and no small Part of the Scheme; and while these Things were carrying on, their little Engines and Tools were carrying on their Work ^g below-stairs. Every Man who favour'd the *Hanoverian* Succession was to be worried, and all open and scandalous Assertors of contrary Principles were treated with all the Care and Tenderness of Friends. Charters of Corporations were attack'd in a more unprecedented and dangerous manner than in any former Times, when Practices of that kind were most justly complain'd of; and no Stone was left unturn'd, to strengthen themselves in that Respect. I will not now trouble you any more upon that Head, having some Thoughts e'er long to present you with a small Collection of Things of that kind for your serious Consideration. The *Master Strokes* of this grand Scheme are yet behind: The surest Way to destroy the Government has been always thought to be by its own Hands; that is, by the Authority and Power of Parliament. For this Purpose, a *Confederacy*, by which the Liberties of *Europe* had been so long sustained against the Power of *France*, was broke to Pieces, by Votes that were obtained *in this House, in the most extraordinary Manner*. The Honour of the Nation, the Ballance of Power, and the Protestant Interest in *Europe*, were effectually given up in

the Negotiations and Conclusion of the Peace, by which *France* was restored to its ancient and formidable State: And every Body remembers how near we were by the same Influences, to have given up the whole Trade of the Nation to the Interest of the *French King*, who after that had no suitable Return left for him to make for such Services, but to bestow upon us a *Pretender* bred up in his own *Faith*, and in his own *Politics*. Nothing could have obstructed this, but the many miraculous Providences that immediately followed, when his Power throughout *Europe* was uncontestable; and, by the Measures that had been taken, the Protestant Succession had scarce a Friend left in the World. The *King's Accession* to the Throne, accompanied by so many providential Circumstances, as it *disappointed* the immediate Execution of the *Scheme*, so it quieted the Spirit, of those Men for some Time. If we could make a right Judgment of the present Rebellion, we must compare the Steps that immediately preceded, with those which were taken in the last Reign, when the Hope was to have brought about the same End without a Stroke. The same Endeavours soon appear'd to propogate the same Principles both in Church and State: And those Endeavours, tho' at first not so open, were yet as restless to create Dissatisfaction against his Majesty's Government, as they had been before to prevent its taking Place. As the Encouragement grew stronger, *Tumults* and *Riots* were universally fomented; and 'tis well known from what Quarter they rose, and against whom they were levelled: But yet no one Instance has been assign'd throughout his Administration, that could offend or provoke any but a *Jacobite* Spirit. His Majesty has done more for the Honour of the *Church*, and the true Interest of his Kingdom, than any of his Predecessors in three times the Number of Years. His *Personal Virtues*, and the *Wisdom* and *Steddyness* of his Government, have retrieved the Honour and Reputation of his Kingdoms, which had been so shamefully lost: His *Weight* and *Influence* abroad, and the *Credit* he has obtained in all the known Parts of the World, has already procured the Settlement of the Matters in Difference between the two chief Powers of *Europe*, from whom alone we can expect Assistance in Times of Danger. No single Instance can be assign'd of Hardship or Oppression to any one of his Subjects, or that can give a just Reason of Dissatisfaction; but on the contrary, those who have shewn the *greatest Aversion* to his Government, have received the kindest Invitations, and enjoy'd the highest Indulgencies from him. If any *Errors* may have been committed in any Parts of the Administration, during the present Disorders, every honest Man ought to judge of them by this one Rule, that is, *the plain Design for which all Measures are calculated*, which every Body must admit to be, the *Preservation of the Protestant Succession*: All Incidents of such an Administration, ought to be covered or justified by the Interest that shall appear to be carrying on throughout the whole; by the same Rule of Justice, when the *Destruction of the Common Interest* was the plain Intention of the late Administration, the greatest Weight ought to be laid on every little Circumstance that attended, in order to obtain a *public Satisfaction*: By taking in all these

^e The Lord Viscount Townshend^d Mr. Stanhope and Mr. Walpole.^e The late Duke of Ormond.^f The late Lord Viscount Bolingbroke.^g Westminster-Hall.

Considerations, I think we shall make a full and right Judgment of the Nature of this Rebellion ; from whence it took its *Rise* ; how deep it has taken *Root* ; to what *Influences* it is owing, and how far it extends. The Part the Lord *Derwentwater*, and others, have taken in it, are to be considered as the first Symptoms of that general Disorder, for which so much Foundation was laid ; for which Reason I think, that we cannot consider this otherwise than as the *Cause of the Nation*, in the strongest manner. In *Justice to the King*, as well as to the *People*, we ought to take this into our own *Hands*, and not to entrust the Prosecution of it with any Body but our selves. Every Body knows to what *Hazards Prosecutions in the ordinary Course of Justice* are liable, though they are never so well concerted by those, whose Business it is to carry them on ; but how sure soever the Success may be, in a Case so notorious as this, yet it is obvious to every Body, of what different Weight and Influence the Prosecutions of Parliament are from those in the *ordinary Forms*. I own I am surprized, that any Measures have been taken of that kind, against the Peers who have been taken in *open Rebellion*, during the sitting of a Parliament which has shewn so much Zeal, and has contributed so much to the Preservation of the Government, especially at a time when *the Crown on the King's Head is fighting for*. I very well know, that tho' the *House of Commons Right of Impeaching Criminals is unlimited*, yet they will exercise that Power by the Rules of *Wisdom and Discretion*, and not engage in trivial Matters, but in such only where the Offenders are not within the reach of the Ordinary Justice ; or the Nature of their Crimes such, as are not fit to be meddled with by the *Ordinary Jurisdictions* : The Case of the Lords taken in Rebellion is indeed notorious, and of which the Proof will be easy, but tho' not from the Difficulty of the *Prosecution*, yet from the *Weight and Consequence* of it, I think I need say little more to convince you, and make it our *Prosecution*, by which we engage every Commoner in *Great-Britain*, as an immediate Party, against those who have carried a War into the Bowels of the Kingdom. No Instance ever has risen in the *English History*, where our Ancestors have permitted a Prosecution against the chief Actors, to be carried any where but in full Parliament. The five *Popish* Lords were pursued by the loud Voice and Weight of the Commons of *England* : And tho' at that time the Nation was in Peace, they would not permit the Fate of those Prosecutions to depend on the Care or Skill of those who are versed in the *ordinary Forms of Justice*, and their Success was answerable. I own my *Desire* upon all Occasions to raise the *Honour and Authority of Parliaments*, which I think the greatest Support of the *Honour and the Prerogatives of the Crown*. For which Reason, I take this Occasion to speak more fully to the Nature of Impeachments, and the rather, because I apprehend some Gentlemen have mistaken Notions concerning them. The Power of *Impeachments is the most valuable and useful Privilege that belongs to the Body of the Commons*, at least, equal to that of giving *Money*, which belongs solely to them. Gentlemen need not be apprehensive of any *Intricacies* in those Proceedings, especially at a Time and upon an Occasion, when there is no Doubt of the Concurrence of both Houses. *Impeachments* are in themselves more plain, regular, and dis-

tangled, than any other Forms of Justice : They are particularly *excepted out of the late Statute of Treasons*, which has very much fetter'd the *ordinary Course of Proceedings*. *Impeachments* were never made *difficult*, but when they were carried on against the *Inclination of the Crown*, or at a Time when there was no good *Understanding between the two Houses* ; when little Occasions might be sought to raise Disputes, and interrupt them ; or else when they are undertaken before they are well considered, which cannot be the present Case. There is another Reason, which upon this Occasion should determine Gentlemen into this Method ; I mean the Consequences of the Judgment that shall be obtained against these Lords : 'Tis my clear Opinion, and what I think I can maintain, That *no Pardon under the Great Seal can discharge a Judgment obtain'd upon the Impeachment of the Commons* : This Opinion has been strenuously asserted in this House in former Reigns ; and I think it not weakened by the *Declaration in the Act of Settlement of the Crown upon the House of Hanover*. I have heard of a very *low Distinction* that has been coin'd *without Doors*, to avoid this Opinion, *viz.* That the *Pardon is not pleadable in bar of the Impeachment, to prevent the Commons from examining into the Offence ; but that it is pleadable after Judgment, and in bar of Execution*. Whenever that Question shall come properly before you, I will undertake to shew the Idleness and Absurdity of that Distinction : If that Distinction be framed to make Court to the Prerogative, I think it the most *false and destructive* Piece of *Flattery* of the kind that ever has been raised. It is the *greatest Ease, Security, and Support of the Crown*, in my Opinion, *instead of any Diminution of it, that no such Power shall be lodg'd there*, to be exercised on any Occasion, to prevent the Possibility of the Crown's being wrought upon by any Influences to defeat the Judgment given in full Parliament, with the Concurrence of both Houses, against the highest Offenders, *which must inevitably create the greatest Jealousy, and cause the highest Dissatisfactions between the Crown and the People* : For this Reason, I take it to be the greatest Advantage to the Crown, that the Constitution of the Kingdom has not, as I think, invested it with any such Power : And on t'other side, it will clearly appear, that *such a Power is utterly inconsistent with the fundamental Rights of Parliament*. I own I am surprized to hear, that any such Distinction should be started at this time : But if the Law be, as I apprehend it is, it is the strongest Reason for the Commons to interpose in this *Prosecution to defend the Crown from the many Importunities* to which it will be subject, in the ordinary Course of Justice : The Weight of this *Prosecution*, and the *Consequences of it, will be borne by the Commons*, as it ought to be in a *Case so National* as this. If Gentlemen want any other Motives, to induce them to make this Prosecution their own, I have a *Paper* in my Hand which will fire the Thoughts of every Gentleman here, it is the *Pretender's Declaration*, which no Body can read without the utmost Indignation ; considering the *personal Indignities* which are therein cast upon the best of Princes, whose Title to the Crown we are bound by all the Ties of Duty, Affection, and Interest to maintain. We can do no less than resent this so far, as to make our selves the Prosecutors of those who avow this Cause of the *Pretender*, and set themselves at the Head of Armies, in

in the Heart of the King's Dominions. In this Paper we shall see how we are treated ourselves: *We are represented as the most illegal and infamous Assembly of Men that ever met together.* These Considerations ought, in Justice, to animate and invigorate our Proceedings in every Respect, till the *Inveteracy and Insolence of the Enemy are entirely subdued*: I do not think that the Proceedings of this House ought in any Case to be governed by *Vindictive Considerations*, but by such Circumstances only as from their real Weight and Consequence call for the Interposition of the Commons. I am sensible that the Commons have a great Work upon their Hands, from other *Impeachments*, which they have thought fit to enter upon, and which are still depending; I know also what Situation these *Impeachments* are in; and hope they will be resumed and carried on, in due Season, with the same Vigour with which they were undertaken. I likewise believe, that the Nation *expects*, that our Enquiries upon this Head shall be extended and appear to be *impartial*, it not being possible, that a greater Dishonour can be brought, or an heavier Imputation cast upon our Proceedings, than that of Partiality, which cannot fail to sink our Credit, and to prevent all the good Effects that are hoped and expected from them: However, every Gentleman will agree with me, that the present Situation and Conjunction of Affairs make it necessary to give the Preference to those Lords who have been taken in open Rebellion. And therefore I now *Impeach James Earl of Derwentwater of High-Treason*; which *Impeachment* I undertake to make good.

The Consequence of this Speech was, that the House came to a Resolution to impeach *James Earl of Derwentwater of High-Treason*. Upon the like Motions they resolved the same with regard to *William Lord Widdrington, William Earl of Nitbisdale, George Earl of Winton, Robert Earl of Carnwath, William Viscount Kenmure, William Lord Nairn*; accordingly they were impeached at the Bar of the House of Lords, and the same Night the Articles of Impeachment were carried up to the Lords; and the next Day the impeached Lords were brought to the Bar of the House, and charged with the said Articles, and ordered to put in their Answer by the 16th, and that not only Counsel, but any other Persons, whom they should name, should have Liberty to assist them. They had afterwards Leave till the 19th to put in their Answers, when they severally pleaded *Guilty* (except the Earl of *Winton*, who had further Time allowed him) and the 9th of *Feb.* was appointed to pass Sentence on them.

On *Thursday Feb.* the 9th, about one of the Clock, the Lords came from their own House into the Court erected in *Westminster-hall*, to pass Sentence upon *James Earl of Derwentwater, William Lord Widdrington, William Earl of Nitbisdale, Robert Earl of Carnwath, William Viscount Kenmure, and William Lord Nairn*, in the Manner following.

The Lord High-Steward's Gentlemen Attendants, two and two.

The Clerk's Assistant to the House of Lords, and the Clerk of the Parliament, with the Clerk of the Crown in the Court of Chancery; the Clerk of the Parliament bearing the King's Commission to the Lord High-Steward.

The Masters in Chancery, two and two.

Then the Judges.

The Peers Eldest Sons, and Peers Minors, two and two.

Four Serjeants at Arms with their Maces, two and two.

The Yeomen Ushers of the House.

Then the Peers, two and two, beginning with the youngest Barons.

Then four Serjeants at Arms with their Maces.

The Serjeant at Arms attending the Great-Seal, and Purse-Bearer.

Then Garter King at Arms; and the Gentleman-Usher of the Black Rod, carrying the White Staff before the Lord High-Steward.

The Lord High-Steward *William Lord Cowper* alone, his Train borne.

When the Lords were placed in their proper Seats, and the Lord High-Steward upon the Wool-Pack.

The Clerk of the Crown, in the Court of Chancery, standing before the Clerk's Table, with his Face towards the State, having his Majesty's Commission to the Lord High-Steward in his Hand, made three Reverences towards the Lord High-Steward; and, on his Knee, presented the Commission to the Lord High-Steward; after which, and usual Reverences, the same was carried down to the Table: And then Proclamation for Silence was made in this manner.

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

Then the Lord High-Steward stood up, and spoke to the Peers.

Lord High-Steward. His Majesty's Commission is going to be read; your Lordships are desired to attend.

All the Peers uncovered themselves, and they and all others stood up uncovered while the Commission was reading.

GEORGIUS R.

GEORGIUS, Dei Gratia, Magnæ Britannicæ, Franciæ & Hiberniæ Rex, Fidei Defensor, &c. Prædilecto & Fideli Consiliario nostro Willielmo Domino Cowper, Cancellario nostro Magnæ Britannicæ, Salutem. Cum Jacobus Comes de Derwentwater, Willielmus Dominus Widdrington, Willielmus Comes de Nitbisdale, Georgius Comes de Winton, Robertus Comes de Carnwath, Willielmus Vicecomes Kenmure, & Willielmus Dominus Nairn, coram Nobis in præsentî Parlamento, per Milites, Cives & Burgenses in Parlamento nostro Assemblat' de alta Proditione per ipsos Jacobum Comitem de Derwentwater, Willielmum Dominum Widdrington, Willielmum Comitem de Nitbisdale, Georgium Comitem de Winton, Robertum Comitem de Carnwath, Willielmum Vicecomitem Kenmure, & Willielmum Dominum Nairn, commiss' & perpetrat' in nomine ipsorum Militum, Civium & Burgensium, & nomine omnium Communium Regni nostri Magnæ Britannicæ impetiti & accusati existunt; & ipsi prædict' Jacobus Comes de Derwentwater, Willielmus Dominus Widdrington, Willielmus Comes de Nitbisdale, Robertus Comes de Carnwath, Willielmus Vicecomes Kenmure, & Willielmus Dominus Nairn, coram Nobis in præsentî Parlamento de Proditione prædict' se esse culpabiles separatim cognoverunt: Nos

Nos considerantes quod Justitia est Virtus excellens & altissimo complacens, Volentesque quod prædictus Jacobus Comes de Derwentwater, Willielmus Dominus Widdrington, Willielmus Comes de Nithisdale, Robertus Comes de Carnwath, Willielmus Vicecomes Kenmure, & Willielmus Dominus Nairn, de & pro Proditione unde ipsi ut præfertur impetitur accusati & convicti existant coram Nobis in præfenti Parlamento nostro, secundum Legem & Consuetudinem hujus Regni nostri Magnæ Britannicæ, & secundum Consuetudinem Parlamenti audiantur, sententientur & adjudicentur, cæteraque omnia quæ in hac parte pertinent debito modo exercentur & exequantur, ac pro eo quod Proceres & Magnates in præfenti Parlamento nostro assembleti Nobis humilime supplicaverunt ut Senescallum Magnæ Britannicæ pro hac vice constituere dignemur. Nos de fidelitate, prudentia, provida circumspeditione, & industria vestris plurimum confidentes, Ordinavimus & Constituimus vox ex hac Causa Senescallum Magnæ Britannicæ ad Officium illud, cum omnibus eidem Officio in hac parte debitis & pertinentibus (hac vice) gerendis occupandis & exercendis. Et ideo vobis Mandamus quod circa præmissa diligenter intendatis, & omnia quæ in hac parte ad Officium Senescalli Magnæ Britannicæ pertinent & requiruntur hac vice faciatis, exercentis, & exequantur cum effectu. In cujus rei Testimonium has Literas nostras fieri fecimus Patentes, Teste me ipso apud Westm' Nono Die Februarii, Anno Regni nostri Secundo.

Per ipsum Regem propria Manu Signatus

Wrighte.

Serjeant at Arms. God save the King.

Then the Herald and Gentleman Usher of the Black Rod, after three Reverences, kneeling, presented the White Staff to his Grace; and then his Grace, attended by the Herald, Black Rod and Seal-Bearer (making his proper Reverences towards the Throne) removed from the Wool-Pack to an armed Chair, which was placed on the uppermost Step but one of the Throne, as it was prepared for that Purpose, and then seated himself in the Chair, and delivered the Staff to the Gentleman Usher of the Black Rod on his Right Hand, the Seal-Bearer holding the Purse on the Left.

Clerk of the Crown. Serjeant at Arms make Proclamation.

Serjeant at Arms. O Yes, O Yes, O Yes! Our Sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made, as follows.

O Yes, O Yes, O Yes! Lieutenant of the Tower of London bring forth your Prisoners to the Bar, according to the Order of the House of Lords to you directed.

Then James Earl of Derwentwater, William Lord Widdrington, William Earl of Nithisdale, Robert Earl of Carnwath, William Viscount Kenmure, and William Lord Nairn, were all brought to the Bar by the Deputy Governour of the Tower, having the Ax carried before them by the Gentleman Jaylor, who stood with it on the Left Hand of the Prisoners, with the Edge turned from him. The Prisoners when they approached the Bar (after kneeling) bowed to his Grace the Lord High-Steward, and to the House of Peers; which Compliment was returned them by his Grace, and the House of Peers.

Lord High-Steward. Read the Articles of Impeachment.

ARTICLES of Impeachment of High-Treason exhibited against James Earl of Derwentwater, William Lord Widdrington, William Earl of Nithisdale, George Earl of Wintoun, Robert Earl of Carnwath, William Viscount Kenmure, and William Lord Nairn.

WHEREAS for many Years last a most wicked Design and Contrivance has been formed and carried on, to subvert the ancient and established Government, and the good Laws of these Kingdoms, to extirpate the true Protestant Religion therein established, and to destroy its Professors; and instead thereof, to introduce and settle Popery and Arbitrary Power; in which unnatural and horrid Conspiracy great Numbers of Persons of different Degrees and Qualities, have concerned themselves and acted; and many Protestants, pretending an uncommon Zeal for the Church of England, have joined themselves with professed Papists, uniting their Endeavours to accomplish and execute the aforesaid wicked and traitorous Designs:

And whereas it pleased Almighty God in his good Providence, and in his great Mercy and Goodness to these Nations, to crown the unwearied Endeavours of his late Majesty King William the Third of ever-glorious Memory, by making him the Instrument to procure the Settlement of the Crown of these Realms in the illustrious House of Hanover, as the only Means under God to preserve our Religion, Laws and Liberties, and to secure the Protestant Interest of Europe; since which happy Establishment the said Conspirators have been indefatigable in their Endeavours to destroy the same, and to make Way for the vain and groundless Hopes of a spurious Impostor and Popish Pretender to the Imperial Crown of these Realms.

And to accomplish these Ends, the most immoral, irreligious and unchristian-like Methods have been taken, but more particularly in the last Years of the Reign of the late Queen Anne, during which Time all imaginable Endeavours were used by the said Conspirators, to prejudice the Minds of the Subjects of this Realm against the Legality and Justice of the said Settlement of the Crown: And for that purpose the Holy Scriptures were wrested, and the most wholesome Doctrines of the Church of England perverted and abused by Men in Holy Orders, in the most public and scandalous Manner, in order to condemn the Justice of the late happy Revolution; and thereby to sap and undermine the Foundation of the said happy Establishment; and the most notorious Instruments of these wicked Purposes were countenanced by particular Marks of public Favour and Distinction; false and dangerous Notions of a sole Hereditary Right to the Imperial Crown of these Realms were propagated and encouraged by Persons in the highest Trust and Employments, contrary to the ancient, undoubted and established Laws of these Kingdoms; jesuitical and scandalous Distinctions were invented and publickly inculcated, to enervate the Force and Obligation of those Oaths which had been

contrived in the plainest and strongest Terms by the Wisdom of Parliament for the Security of the said Establishment; and to conceal their Designs, and thereby the better to enable them to carry on the same, great Numbers of the said Conspirators of all Ranks and Conditions, pretending a Zeal for the Protestant Succession, openly and voluntarily took the said Oaths; groundless Fears of the Danger of the Church of *England* were fomented throughout these Kingdoms, to disorder the Minds of well-disposed Protestants.

By all which and many other such ungodly Practices of the said Conspirators, the most causeless and dangerous Jealousies and Dissatisfactions were created in the Minds of the good People of this Kingdom, and great Numbers of well-meaning, but deluded Protestants were much disquieted.

But nevertheless these dishonest Methods were pursued by the said Conspirators with indefatigable Industry, as the only Means to weaken the Foundations of the said happy Establishment.

And whereas the Dissolution of the late glorious Confederacy against *France*, and the Loss of the Ballance of Power in *Europe*, were further Steps necessary to complete the Designs of the said Conspirators; and the same being effected by the late ignominious Peace with *France*, the *French* King was render'd formidable, and the Protestant Succession was thereby brought into the most imminent Danger; and by these and other pernicious Measures, the Destruction so long intended by the said Conspirators, for these poor Nations, seem'd near at Hand.

At which Time, and under which most deplorable Circumstances, it pleas'd Almighty God in his infinite Wisdom to call to himself the late Queen *Anne*, and by a Concurrence of many most wonderful Providences to give a quiet and peaceable Accession to his present most Gracious Majesty to the Throne of his Ancestors, to which he was received with one full Voice and Consent of Tongue and Heart, and the united Joy of every good Subject and good Protestant, as their only lawful and rightful Liege Lord; and altho' from the Moment his Majesty ascended the Throne to this Day, his Reign has been one Series of Wisdom, Justice and Clemency; his Labours constant, unwearied and successful to retrieve the Honour and Reputation of these Nations; to re-establish the Trade and recover the Wealth of his Kingdoms; and although all imaginable Encouragement has been given to the Church of *England*, and all Tenderness shewn even to his Popish Subjects, and his constant Care has been to procure the universal Good of his People; nevertheless the said Conspirators have, by the most vile and impious Methods, renewed their Endeavours to throw these Kingdoms into the utmost Confusion, and to entail endless Miseries on us and our Posterities: For these Ends many of the above-mentioned most wicked and dangerous Practices have been repeated with the utmost Industry and Inveteracy, to delude, disorder and corrupt the Minds of his Majesty's good Subjects; the most groundless Jealousies have been fomented against his wise and happy Administration, and in many Parts of his Kingdoms the most unnatural, unexampled Riots and Tumults, by the secret and malicious Endeavours of the said Conspirators, have been procured, stirred

up, and encouraged against his peaceable Protestant Subjects, under false Pretences of Zeal for the Church of *England*, and thereby more effectually to delude his good Subjects, and seduce them from their Allegiance, and prepare them for an open Rebellion.

And the said Conspirators having at length resolved to deprive these Nations of the invaluable Blessings which they now enjoy under the wise and gentle Reign of his present most gracious Majesty King *George*, and of the certain Prospect of Happiness which they have for their Posterity, in a Succession of Princes derived from himself; did contrive, confederate, and resolve to put their most malicious, wicked, and traitorous Designs into immediate Execution; for which purpose, *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viscount *Kenmure*, and *William* Lord *Nairn*, together with *Thomas* Forster, Jun. the Lord *Charles* Murray, *Edward* Howard, *Thomas* Errington, *John* Clavering, *William* Sbaftoe, Sir *Francis* Anderton, *Ralph* Standish, *Richard* Townly, *Thomas* Butler, *Thomas* Walton, *Gabriel* Hasket, *Richard* Gascoigne, and divers other Persons, as false Traitors to his present most sacred Majesty King *George*, the only lawful and undoubted Sovereign of these Kingdoms, having withdrawn their Allegiance, and cordial Love, and true and due Obedience, which they as good and faithful Subjects owed to his said Majesty, did, in or about the Months of *September*, *October*, or *November*, 1715. most wickedly, maliciously, falsely and traitorously imagine and compass the Death of his said most sacred Majesty.

And for the accomplishing and executing their said traitorous Purpose, they the said *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viscount *Kenmure*, and *William* Lord *Nairn*, did, in or about the said Months, or some of them, and at divers other Times, and in divers Places within this Kingdom, wickedly and traitorously agree, confederate, conspire, and resolve, together with many other evil-disposed Persons, to raise, excite, and levy within the Counties of *Teviotdale*, *Northumberland*, *Cumberland*, and the County *Palatine* of *Lancaster*, and elsewhere within this Kingdom, a most cruel, bloody, and destructive War, against his Majesty, in order to depose and murder his sacred Majesty, and to deprive him of his Royal State, Crown and Dignity.

And the said *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viscount *Kenmure*, *William* Lord *Nairn*, their Accomplices and Confederates, in or about the Months aforesaid, in the Counties aforesaid, or some of them, did gather together great Numbers of his Majesty's Subjects, and with them did assemble in a warlike and traitorous Manner, in order to raise Tumults and Rebellion within this Kingdom, and having procured great Quantities of Arms, Ammunition and warlike Instruments, at the Times and Places aforesaid, or some of them, did form and compose, or did assist in the forming and composing an Army of Men, consisting of his Majesty's Liege Subjects, in order to wage War against his said Majesty, for and in behalf and in favour of the said Pre-
tender

tender to the Crown of these Realms; and the said last mentioned Conspirators, their Accomplices and Confederates, at the Time and Times and Places aforesaid, and at divers other Times and Places within this Kingdom, did maliciously and traiterously make, levy, and raise War and Rebellion against his most sacred Majesty, and in a warlike and hostile Manner did march thro' and invade several Parts of this Kingdom, and did unlawfully take and seize the Horses and other the Goods and Chattels of many of the peaceable and good Subjects of his Majesty, and in other Places did take and seize, from his Majesty's faithful Subjects, Guns, and other warlike Instruments, for the carrying on their traitorous Purposes.

And the said last mentioned Conspirators, their Complices and Confederates, during their March and Invasion aforesaid, in open Defiance of his most sacred Majesty's just and undoubted Title to the Imperial Crown of these Realms, did wickedly and traiterously cause and procure the said Pretender to be proclaimed, in the most public and solemn Manner, as King of these Realms; and in several Places in the Counties aforesaid, or some of them, did unlawfully take and seize from his Majesty's Officers of the Revenue the public Money, for the Use and Service of the said Pretender; and tho' many of the Conspirators are avowed Professors of the Popish Religion, yet the more effectually to cover and disguise their most wicked and traitorous Designs, and to delude his Majesty's Subjects, they did prevail on and procure several Men in Holy Orders, Ministers of the Church of *England*, and who had before that Time abjured the said Pretender, to accompany, countenance and abet the said most traitorous Enterprize, and in several Places in the Counties aforesaid, where the said Conspirators, their Complices and Confederates then were, to pray for the said Pretender in the public Churches, as King of these Realms.

That the said last mentioned Conspirators, their Accomplices and Confederates, did, on or about the Ninth, Tenth, Eleventh, Twelfth or Thirteenth of *November* aforesaid, traiterously seize and possess themselves of the Town of *Preston* in the County *Palatine* of *Lancaster* against his Majesty, and did then and there in a warlike and hostile Manner levy War, oppose, engage, and fight against his Majesty's Forces; and did then and there cause and procure a miserable and horrid Slaughter and Murder of many of his Majesty's faithful Subjects.

All which Treasons and Crimes above-mentioned were contrived, committed, perpetrated, acted and done, by the said *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viscount *Kenmure*, *William* Lord *Nairn*, and other the Conspirators aforesaid, against our Sovereign Lord the King, his Crown and Dignity; and contrary to the Duty of their Allegiance, and against the Laws and Statutes of this Kingdom.

Of all which Treasons and Crimes, the Knights, Citizens and Burgesses in Parliament assembled, do, in the Name of themselves and of all the Commons of *Great Britain*, impeach the said *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl

of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viscount *Kenmure*, *William* Lord *Nairn*, and every of them.

And the said Commons by Protestation saving to themselves the Liberty of exhibiting at any time hereafter any other Accusations or Impeachments against the said *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viscount *Kenmure*, and *William* Lord *Nairn*, or any of them; and also of replying to the Answers which the said *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viscount *Kenmure*, and *William* Lord *Nairn*, or any of them, shall make to the Premises, or any of them, or to any Impeachment or Accusation that shall be by them exhibited according to the Course and Proceedings of Parliament; do pray, that the said *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viscount *Kenmure*, and *William* Lord *Nairn*, be put to answer all and every the Premises: And that such Proceedings, Examinations, Trials and Judgments may be upon them and every of them had and used as shall be agreeable to Law and Justice.

Lord High-Steward. Clerk of the Parliament, read the Record of the Answers and Pleas of the Lords the Prisoners at the Bar to the Impeachments.

Die Jovis 19 Januarii, 1715.

THE Order of the Day being read, for bringing *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viscount *Kenmure*, and *William* Lord *Nairn*, to this House, in order to their putting in their several Answers to the Articles of Impeachment of High-Treason exhibited against them by the House of Commons.

The said Earl of *Derwentwater* was brought to the Bar by the Gentlemen-Usher of the Black-Rod, where he kneeled until the Lord Chancellor directed him to rise; and his Lordship acquainted him with the above-mentioned Order, and demanded of him if he was ready to put in his Answer, which he said he was, and deliver'd the same at the Bar.

Which Answer of the said Earl of *Derwentwater*, was read, and is as follows.

The Answer of James Earl of Derwentwater, to the Articles of Impeachment of High-Treason exhibited against him by the Hon. the Knights, Citizens, and Burgesses of Great Britain in Parliament Assembled.

TO a Charge of so high and heinous a Nature the said Earl cannot Answer without the deepest Concern and Affliction, which becomes more weighty from the Share the Honourable House of Commons have been pleased to take in the Accusation: He assures himself however, that Great Assembly doth not engage in the Prosecution of an Offence, so open to Conviction in the ordinary

ordinary Course of Law, with design to intercept that Mercy which the Earl, from the Report of his Majesty's natural Goodness, had reason to expect. It would be a Thought unworthy any Member of that August Body, to imagine he could have the least desire of spilling the Blood of any of his Fellow-Subjects, whom his Majesty's great Wisdom should think a fit Object of his Mercy; the said Earl therefore hopes that his Prosecution is taken out of the common Course of Justice, with Intention, that if in his particular Case there shall appear any Circumstances inducing Favour or Compassion, both your Lordships and the Commons may be Intercessors with his Majesty for Grace towards him; whereby the Exercise of the Royal Mercy, upon which the Earl depended (which amongst all the Virtues of the Crown most endears a Monarch to the Love and Affection of his People) may be extended in such Manner as may demonstrate that Clemency for which his Majesty is so greatly renowned, and not encourage any to offend upon the Presumption of it for the future. The said Earl acknowledges, with a real Sorrow, that at the time in the Articles mentioned he was in Arms, and with others did march through and invade several Parts of this Kingdom; and confesses *he is thereby guilty of the Offence wherewith he is charged in the said Articles.* But if any Offence of that kind was ever attended with Circumstances which might move Compassion, the said Earl hopes he may be intitled to it: He begs Leave to inform your Lordships, That his Temper and Inclination disposed him to live peaceably under his Majesty's Government, and he never had the least Prejudice or Malice against his Person, nor was he ever heretofore concerned in or privy to any Design or Contrivance to subvert or disturb the established Government, the Laws or Religion of this Kingdom; and if any Methods were taken by others to accomplish any of those Ends, he was absolutely a Stranger to them; nor did he now engage in this unhappy Undertaking upon any previous Concert or Contrivance for any such purpose; but being young and unexperienc'd, he rashly, and without any Deliberation, engaged himself to meet at *Plainfield in Northumberland*, on Assurance that many of his Relations and Acquaintance would appear there; that his Undertaking was sudden, appears in that he engaged in it without any previous Preparation of Men, Horses, Arms, or other warlike Accoutrements; and as the said Earl cannot be justly reproached with any cruel, severe, or harsh Action during the Continuance in Arms, so he took the first Opportunity that offered of submitting to the King's Mercy. After the sudden Skirmishes at *Preston*, the said Earl, with others, was solicitous to prevent any farther Destruction of the Lives of his Majesty's Subjects, and instrumental to induce all in Arms to submit themselves to the King, provided they might be secured of their Lives. One of his Majesty's Officers, sent from the General, gave them Encouragement to believe, that the Surrender of themselves would be the ready way to obtain the King's Mercy: In Confidence whereof, when a Cessation was agreed on, the said Earl offer'd himself to become one of the Hostages for them till the next Morning, in which time he received further Assurances from the Officers, that the King was a Prince of known Clemency; that this was a distinguishing part of

his Character, and that the free Surrender to Mercy would be the most proper means to obtain it. The said Earl believes his Majesty's Officers were very sensible, and will be so just as to acknowledge, that it had not been impracticable for many of those at *Preston* to make their way through his Majesty's Forces; but this Attempt must have occasioned the loss of many Lives, and might have been productive of ill Consequences to the Government, which the said Earl was desirous to prevent; and when the time agreed on for the Cessation was near expired, and General *Wills* seem'd uneasy in not having received any Message from those in the Town, the said Earl writ a Letter to exhort them to surrender to the King's Mercy; and at the same time declared to the said General, and other Officers, that whatever happened, he was determin'd to continue with them, and rely entirely on his Majesty's Clemency and Goodness, which he had Encouragement to expect; and in such Circumstances the said Earl cannot distrust your Lordships or the Commons readiness, to use their Mediation for Mercy on his Behalf, which will lay him under the highest Obligations of Duty and Affection to his Majesty, and perpetual Gratitude to both Houses of Parliament.

Derwentwater.

The material Words of which Answer appearing not to be sufficiently express and clear, the Lord Chancellor asked the said Earl if he meant by the said Answer to plead guilty to the High-Treason in the said Articles of Impeachment contain'd.

He said he did, and submitted to the King's Mercy, and humbly desir'd their Lordship's Intercession to his Majesty; and his said Answer and Plea was recorded accordingly.

And he withdrew.

Then the Lord *Widdrington* was brought to the Bar, and having there also kneeled, was acquainted by the Lord Chancellor with the aforementioned Order, and ask'd the same Question as the Earl of *Derwentwater*; and he likewise delivered in his Answer, which was read as follows:

The Answer of William Lord Widdrington to the Articles of Impeachment of High-Treason exhibited against him by the Hon. the Knights, Citizens, and Burgesses of Great-Britain in Parliament assembled.

IT is with inexpressible Concern and Affliction the said Lord appears before this August Assembly charged with Crimes of the most heinous Nature; and though it is natural to Mankind to endeavour to conceal their Guilt, and make use of all manner of Defence, especially in the case of Life, yet as he surrendred himself at *Preston*, intirely relying on his Majesty's Mercy, so he is now resolv'd not to take any Measures which may argue the least Diffidence of that Mercy, or of your Lordship's Goodness; and therefore the said Lord confesses he is guilty of the Treason wherewith he is charged in the said Articles; and after having thus freely acknowledged his Offence, he begs leave to lay his Case before your Lordships, and humbly hopes, when the particular Circumstances are considered, it will not be thought

to merit the most rigorous Punishment, but that both your Lordships, and the Honourable House of Commons, which look upon him as a proper Object of his Majesty's Clemency; and he humbly hopes he may not be thought the less unworthy of Favour, in that he never before offended, nor was at any time privy to, or acquainted with any Design or Contrivance to destroy or disturb the established Government, the Laws or Religion of this Kingdom, but came unawares into this sudden and unpremeditated Action; for although he had met with public Rumours and Reports of intended Invasions from Abroad, and Insurrections at Home, yet he never knew, or any other way heard of any formed Design against the Government, till he was told the Night before of a Meeting intended at *Plainfield* in *Northumberland* on the sixth of *October* last; and being soon after informed, that almost all his Neighbours and Acquaintance had there met in Arms, he took a hasty and inconsiderate Resolution of joining them; nor was he in any sort prepared for such an Undertaking, having only some of his own Family with him, no Arms but his common Fowling-Pieces and wearing Swords, and fewer Horses than he had constantly kept for several Years before; and nothing but the Report of so many of his Friends being engaged could have hurried him on to an Enterprize so unaccountably rash and unjustifiable; and he is willing to hope your Lordships will esteem it some Alleviation of his Crime, that in a Commotion of that Nature there was so little Violation of the Rights and Properties of those who opposed them; for he believes few Instances can be found, where such a Multitude continued so long in Arms without doing greater Acts of Violence and Injustice. The said Lord cannot charge himself with any injurious Acts to the Property of his Fellow-Subjects, and endeavoured to prevent them in others; and hopes it was thence owing in some Measure, that there was shewn all along greater Marks of Moderation and Humanity, than is common in such a warlike and hostile Proceeding. The Suddenness of the Attack at *Preston*, without any previous Summons, admitted no time for mediating a Submission before the loss of that Blood which was there unfortunately spilt; but after the Heat and Surprize of the first Action was over, a Cessation of Arms was desired, and upon the mutual Messages which then passed, the Officers sent from the General encouraged them to believe the surrendering themselves would be the ready way to obtain the King's Mercy, and gave them repeated Assurances, that they submitted to a Prince of the greatest Clemency in the World: Upon these Hopes and Assurances they made a general Surrender of themselves to the King; and the said Lord may justly take notice to your Lordships, that as he was the last who took up Arms, so he was the first who procured a Meeting of the chief Persons among them, in order to lay them down; and cannot doubt but your Lordships, and the Honourable House of Commons, will think it equitable to make some Distinction between an obstinate Resistance and an early and humble Submission, whereby the Peace and Tranquillity of this part of his Majesty's Dominions was intirely restored. Nature must have started at yielding themselves up to a certain and ignominious Death, when it must be acknowledged that it was not impracti-

cable for many of them to have escaped; and it was possible so great a Number grown desperate might have obtained further Success, and thereby prevented the so speedy suppressing that Insurrection; but the said Lord, and the rest, having with the utmost Confidence relied on the Assurances of his Majesty's great Clemency, and the hopes of Mercy, which had been given them from the Officers who commanded the Royal Forces, he is encouraged with great Earnestness to implore the Intercession of your Lordships, and the Honourable House of Commons, with his Majesty, for that Mercy on which they wholly depended; and as he doth not know where Mercy was refused to those who so early and with so much Resignation submitted to it, so he humbly hopes your Lordships may be induced to think, that the Exercise of this Divine Virtue by his Majesty towards those who cast themselves at his Royal Feet upon the sole Prospect and Expectation of it, will appear no less glorious to his Majesty, and prove no less advantagious to the future Quiet and Tranquillity of his Government, than any Examples of Justice in such a Case can be likely to do: And whatever Marks of Goodness and Favour his Majesty shall vouchsafe to the said Lord, will not fail to engage him by the strongest Tyes of Gratitude, to demonstrate in the future Course of his Life the most constant inviolable Duty to his Majesty, and the most real Esteem and Veneration for your Lordships and the Honourable House of Commons.

Widdrington.

And the said Lord *Widdrington* being asked if he had any thing farther to say, he begg'd to be excused all Imperfections in his said Answer, said he had been indisposed with the Gout in his Stomach, and was not able to employ himself in preparing his Answer till last Night, and finished it but this Morning, and humbly implored their Lordships Intercession to his Majesty for Favour and Mercy; and his Answer and Plea was recorded accordingly.

And he withdrew.

Then the Earl of *Nithisdale* was brought to the Bar, and having there likewise kneeled, was acquainted with the forementioned Order, and asked the same Question as the Earl of *Derwentwater*, and he also delivered in his Answer, which was read as follows.

The Answer of William Earl of Nithisdale, to the Articles of Impeachment of High-Treason Exhibited against him by the Honourable the Knights, Citizens, and Burgeses of Great-Britain in Parliament Assembled.

IT is with the utmost Confusion the said Earl appears at your Lordship's Bar, under the Weight of an Impeachment by the Commons of *Great Britain* for High-Treason; he humbly begs Leave, in Extenuation of his Crime, to assure your Lordships, that he was always a zealous Asserter of the Liberties of his Country, and never engaged in forming or carrying on any Design to subvert the antient established Government, and the good Laws of this Kingdom; but being Summoned by those entrusted with the Administration of the Government in *Scotland*

land to appear at *Edinburgh*, and being assured if he went thither he should be made close Prisoner, he did not obey the Summons; but in all humble Manner applied for their Indulgence in dispensing with his being committed to Goal, offering to give any Bail for his peaceable and quiet Behaviour; which being refused, and being at that time in so ill a State of Health, that a Confinement in *Edinburgh* Castle would have endangered his Life, he was forced to abscond and kept private till several of the Persons mentioned in the said Impeachment, with many other of his Neighbours, appeared in Arms very near the Place where the said Earl lay concealed; and then he inconsiderately and unfortunately (with four of his Domestics, and no other Person whatsoever) joined them, and proceeded in their Company to the Places in the said Articles of Impeachment mentioned; but he knew nothing of the intended Insurrection till they were actually in Arms. The said Earl is deeply sensible of his great Offence, and not affecting Delay, nor being willing to give your Lordships, or the Honourable House of Commons, any unnecessary Trouble; he does with a Sorrow, equal to his Crime, confess that he is guilty of the Treason in the said Articles of Impeachment contained, and throws himself at his Majesty's Feet, imploring his Royal Mercy; and to incline his Majesty thereto, and induce your Lordships to recommend him as an Object thereof, he begs Leave to inform your Lordships, that when he, and the rest that were with him at *Preston*, had engaged in a Battle, a Cessation of Arms being agreed to, they had Intimations from his Majesty's Officers; that if they submitted, they might expect the King's Mercy; and History abounding with Instances of Conditions stipulated with Generals, even with Rebels, and afterwards agreed to, and confirmed by their Sovereigns, they were prevailed on by such Encouragement, together with the Consideration of his Majesty's known Clemency, to surrender themselves Prisoners, whereby the Lives of great Numbers of his Majesty's good Subjects were saved, which by an obstinate Resistance would inevitably have been destroyed; and therefore he most humbly begs your Lordships would be pleased to represent his Case to his Majesty in the most favourable Manner; not doubting but by your Lordships powerful Intercession, he shall find, that as he performed the Duty of a good Christian, in concurring to prevent the Effusion of Blood; so he acted the Part of a wise Man in relying upon a Mercy so extensive as that of his Majesty: And he presumes, when the Honourable House of Commons are apprized of the Nature of his Case, they will not interpose to prevent him from having a Share in the Benefit of that Mercy.

Nithisdale.

And the said Earl of *Nithisdale* being asked if he had any thing further to say, he said he had nothing but to implore the King's Mercy; and his Answer and Plea was recorded accordingly.

And he withdrew.

Then the Earl of *Carnwath* was brought to the Bar, and having there likewise kneeled, was acquainted by the Lord Chancellor with the forementioned Order, and asked the same Question as the Earl of *Derwentwater*.

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He said he had no Answer in Writing, but desired to throw himself on the King's Mercy; and humbly implored their Lordship's Intercession to his Majesty on his behalf; and assured the House, if the same were granted, he should think himself obliged to live under the strictest Tyes of Loyalty to his Majesty; and as to the said Articles; he said he was guilty of the High-Treason contained in the said Articles of Impeachment against him; and the said Plea was recorded accordingly.

And he withdrew.

Then the Viscount *Kenmure* was brought to the Bar, and having there kneeled also, was acquainted by the Lord Chancellor with the forementioned Order, and asked the same Question as the Earl of *Derwentwater*.

He said he had no Answer in Writing, but was guilty of the Charge of High-Treason contained in the Articles of Impeachment against him, and begged the House would intercede with his Majesty for Mercy; and his Plea was recorded accordingly.

And he withdrew.

Then the Lord *Nairn* was brought to the Bar, and having there also kneeled, was acquainted by the Lord Chancellor with the forementioned Order, and asked the same Question as the Earl of *Derwentwater*.

He said he threw himself upon the King's Mercy, and begged the Intercession of this House to his Majesty; and as to the Articles of Impeachment exhibited against him, he said he was guilty of the High-Treason contained in the said Articles; and his Plea was recorded accordingly.

Then he delivered in a Petition at the Bar, and the same was read as follows.

*To the Right Honourable the Lords
Spiritual and Temporal in Parlia-
ment Assembled.*

The humble Petition of William Lord Nairn,

SHEWETH,

THAT your Petitioner was educated, and hath always continued a Protestant, according to the Discipline of the Church of *England*; and though, by reason of some mistaken Principles he unwarily imbib'd in his tender Years, he did not in all respects conform to the late Revolution, lying under the less Necessity, for that he had married an Heiress, in whom all the Right of your Petitioner's Estate is invested; and tho' he never took the Oaths, yet he always peaceably submitted to, and lived quietly under the Government as by Law Established, until the breaking out of this Rebellion, in which your Petitioner was inadvertently involv'd, but not before the Lord *Mar*, and his Adherents, had for a considerable time made themselves Masters of *Pertb* and *Dunkeld*, and thereby surrounded your Petitioner's whole Estate, and came to your Petitioner's House, lying in the middle between those places.

Your Petitioner heartily repents of this rash Undertaking, and solemnly declares he knew nothing

nothing of any previous Consultations, or Conspiracies in Favour of the Pretender, before he actually appeared in Arms; nor knew any thing about crossing the *Forth*, untill the Morning he was sent over under *Macintock's* Command; and then was so far from approving of that Expedition, that tho' to avoid the Imputation of Cowardice he would hazard his own Person therein, your Petitioner ordered back all his Dependants, and was only attended by his Son, and four Servants, who would not leave him in a Time of Danger, tho' often desired; nor was your Petitioner privy to any Designs of marching into *England*, for having been bred a Seaman, he had no Pretensions to Knowledge in the Land Service.

Your Petitioner being now sensible of his Errors, hath pleaded guilty to the Articles of Impeachment of High-Treason exhibited against him, by the Honourable House of Commons, and thrown himself at his Majesty's Feet; humbly beseeching your Lordships, in Commiseration of the deplorable Circumstances of your Petitioner, and his twelve Children, to recommend him to his Majesty for that Mercy, which at the Time of his Surrender he was made to believe he might reasonably expect.

This will lay your Petitioner and his Posterity under the greatest Obligations of Duty and Gratitude to his Majesty, and bind them for ever to bless your Lordships as the merciful Instruments of procuring such a gracious Deliverance.

And your Petitioner shall ever pray, &c.

N A I R N.

And being asked if he had any thing further to say, he said he had not, and withdrew.

Lord High-Steward. My Lords that are the Prisoners at the Bar, I am to acquaint your Lordships, that upon any Occasion which shall be offered you to speak for yourselves, you are to direct your Speech to the Lords in general; and so is any other Person that shall have Occasion to speak to this Court.

Lord High Steward. *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *Robert* Earl of *Carmath*, *William* Viscount *Kennure*, and *William* Lord *Nairn*, You stand impeached of High-Treason by the Commons of *Great Britain* in Parliament assembled; which Treason is contained in the Articles that have been lately read; to this you have severally pleaded guilty, and are thereby convicted. What say you, *James* Earl of *Derwentwater*, why Judgment should not pass upon you according to Law?

Earl of Derwentwater. I Only humbly beg leave of my Noble Peers to repeat a few Circumstances mentioned in my Answer to the Articles of Impeachment exhibited against me by the Honourable House of Commons.

But the Terrors of your Lordships just Sentence, which at once deprive me of my Life and Estate, and compleat the Misfortunes of my Wife and innocent Children, are so heavy upon my Mind, together with my Unexperience, that I am scarce able to alledge what may extenuate my Offence, if any thing can do it. I have confessed myself guilty; but, my Lords, that Guilt was rashly incurred without any Premeditation,

as I hope your Lordships will be convinced by one Particular: I beg leave to observe, I was wholly unprovided with Men, Horses, Arms, and other Necessaries, which in my Situation I could not have wanted, had I been privy to any formed Design: As my Offence was sudden, so my Submission was early; when his Majesty's Generals thought fit to demand Hostages for securing the Terms of the Cessation, I voluntarily offered myself, without which the Cessation might possibly have proved ineffectual: And whilst I continued Hostage, the great Character of his Majesty's Clemency, and the repeated Encouragement I had to hope for Mercy, by surrendering to it, soon determined me; and I accordingly declared my Resolution to remain with his Majesty's Forces, and from that Time submitted myself to his Goodness, on which I still entirely depend. I humbly hope to obtain the Mediation of your Lordships, and of the Honourable House of Commons, in my behalf; solemnly protesting my future Conduct shall shew me not altogether unworthy your generous Compassion for my Life, which is all I can beg of his Majesty.

Lord High-Steward. My Lord *Derwentwater*, your Lordship's Voice hath not been perfectly heard to this End of the Court, therefore I ask you whether you have pleaded any thing in Arrest of Judgment?

Lord Derwentwater. No, my Lords.

Lord High-Steward. Lord *Widdrington*, what have you to say for yourself why Judgment should not pass upon you according to Law?

Lord Widdrington. MY Lords I have abandoned all manner of Defence ever since I first surrender'd myself to his Majesty's Royal Clemency, and only now beg leave to repeat to your Lordships some Circumstances of my unhappy Case, which I have already set forth in my Answer.

Your Lordships see before you an unfortunate Man, who after leading a private and retired Life for many Years, has by one rash and inconsiderate Action, exposed himself and his Family to the greatest Calamities and Misery, and is now upon the Point of receiving the severest Sentence directed by any of our *English* Laws.

I do protest to your Lordships, that I was never privy to any concerted Measures against his Majesty's Royal Person, or the established Government: As to the Insurrection in *Northumberland*, I only heard of it accidentally the Night before it happen'd, and being soon after informed that all my Neighbours and Acquaintance had met in Arms, a crowd of confused and mistaken Notions hurried me at once into a precipitate Resolution of joining them; a Resolution, which, I must own, I could never since calmly reflect upon without part of that Confusion I find myself under in the public Acknowledgment of so much Rashness and Folly. After thus plunging out of my Depth, as unprepared for such an Enterprize as the Action was unpremeditated, I cannot, for my own Particular, upon the strictest Recollection charge myself with any Violation of the Properties of my Fellow-Subjects: But on the contrary, I always endeavoured to encourage: Humanity and Moderation during the whole course

course of our miserable Expedition; and in order to make the best Atonement in my Power for the great Fault I had been guilty of, I can justly say, that I was in no small Degree instrumental in procuring a general Submission to his Majesty. But, my Lords, however willing or desirous, either I or any others might be to put a speedy End to those unfortunate Troubles; Self-preservation, the first and most powerful Law of Nature, would have render'd the Proposal vain and fruitless, had not the Officers who commanded the Royal Forces given us Hopes of Mercy, and assured us we submitted to a Prince of the greatest Clemency in the World. These Hopes, and this Assurance, answered the strongest Objections, overcame all remaining Difficulties, and gave the finishing Stroke to a general Surrender, whereby the further Effusion of *British* Blood was prevented, and a perfect Tranquillity restored to these Parts of his Majesty's Dominions.

My Lords, as this my first Attempt was rash and unpremeditated, as I always used and promoted Moderation and Humanity towards my Fellow-Subjects, and as I did not obstinately persist in my Fault, but was the first who proposed an early Submission to his Majesty, I humbly hope my unhappy Case, and the deplorable Condition of my unfortunate Children, already deprived of their tender Mother, will raise a generous Compassion in your Lordships, and the Honourable House of Commons; and I most earnestly entreat both your Lordships, and that Honourable House, to become Intercessors with his Majesty in my behalf, for that Mercy which I was encouraged to hope for when I first surrendered, and which I have ever since with the utmost Confidence relied on.

I have only to add my most solemn Assurance before this August Assembly, that no future Time shall ever find me wanting in the most inviolable Duty and Gratitude to that merciful Prince who gives me my Life, and restores a Father to five miserable and distressed Orphans; and I shall always retain the highest Esteem and Veneration for your Lordships and the Honourable House of Commons.

Lord High-Steward. Lord *Widdrington*, for greater certainty I ask your Lordship whether you have pleaded any thing in Arrest of Judgment.

Lord Widdrington. No, my Lords, I have not.

Lord High-Steward. *William Earl of Nitbisdale*, what hath your Lordship to say for yourself why Judgment should not pass upon you according to Law?

Lord Nitbisdale. MY Lords, I have confessed myself guilty, relying on his Majesty's Mercy; and I beg leave to assure your Lordships I was never privy to any Plot or Design against his Majesty's Person or Government, and was unprovided with any Necessaries for such a Purpose; but rashly and inconsiderately, with only four of my Servants, joined those who appeared in Arms in my Neighbourhood, and was one of the last who went unto them.

At *Preston*, my Lords, his Majesty's Generals gave great Hopes and Encouragement to believe

that surrendering to his Majesty's Mercy, was the ready Way to obtain it, with repeated Assurances that his Majesty was a Prince of the greatest Clemency.

Upon those Hopes and Assurances I submitted myself, and still entirely depend on his Majesty's Goodness, earnestly beseeching your Lordships and the Honourable House of Commons, to intercede with his Majesty on my behalf.

And I solemnly promise your Lordships I shall, during the Remainder of my Life, pay the utmost Duty and Gratitude to his most gracious Majesty, and the highest Veneration and Respect to your Lordships and the Honourable House of Commons.

Lord High-Steward. I must also ask your Lordship (your Lordship's Voice not reaching thus far) whether you have pleaded any thing in Arrest of Judgment.

Lord Nitbisdale. No, my Lords, I have not.

Lord High-Steward. Lord *Carnwath*, what have you to say for yourself why Judgment should not pass upon you according to Law?

Lord Carnwath. MY Lords, I shall not trouble this Great Assembly with a Repetition of what I said, when formerly before your Lordships and his Majesty's Council.

I hope these Noble Lords entertain that favourable Opinion of my sincere Dealing then, as to believe that want of Experience and Knowledge of the Laws was the great Inducement of engaging me in this fatal and unhappy Undertaking.

The only thing which I can hope or wish for is his Majesty's Mercy; he has the Character of a merciful Prince: Should it please him to think me a proper Object for it (tho' I must confess myself a very unworthy one) all I can say, my Lords, is, that the Remainder of my Life shall convince his Majesty, and all the World, of my true Penitence and Gratitude.

My Lords, I am yet an unworthy Member of this great Body, the Peerage, now expecting your Lordships Judgment as to Life or Death: Should it be for Life, my Demeanour and Carriage for the future will be such, as none of your Lordships shall be ashamed of having shew'd me Compassion; but should it be for Death, God's Will be done; to my last Hour I shall pray for the Nation's and your Lordships Prosperity; having this Comfort in my present Distress, that your Lordships are my Judges at this Tribunal: And yet a greater Comfort have I, that I am soon to appear before a greater, where I can't despair of finding Mercy and Forgiveness for all my Sins.

I beg God Almighty's Pardon for them: I have already ask'd his Majesty's, and I do it now; and I do humbly beg leave, once more, and perhaps the last Occasion that ever I shall have, to desire that your Grace, this noble House, and the Honourable House of Commons of *Great Britain*, who are now here, would intercede with his Majesty for me.

I take my Leave of your Lordships, and wish you all Happiness.

Lord High-Steward. Does your Lordship offer any thing in Arrest of Judgment.

Lord Carnwath. No, my Lords.

Lord High-Steward. Lord *Kenmure*, what have you to say for yourself why Judgment should not pass upon you according to Law ?

Lord Kenmure. MY Lords, I am truly sensible of my Crime, and want Words to express my Repentance. God knows I never had any personal Prejudice against his Majesty, nor was I ever accessary to any previous Design against him. I humbly beg my noble Peers and the Honourable House of Commons to intercede with the King for Mercy to me, that I may live to shew myself the dutifullest of his Subjects, and to be the Means to keep my Wife and four small Children from starving; the Thoughts of which, with my Crime, makes me the most unfortunate of all Gentlemen.

Lord High-Steward. My Lord, your Voice not being heard to this End of the Court, I would know whether in what you have said you have offered any thing in Arrest of Judgment.

Lord Kenmure. No, my Lords.

Lord High-Steward. Lord *Nairn*, what have you to say for yourself why Judgment should not pass upon you according to Law ?

Lord Nairn. I Am very sensible how unfit I am to plead my own Cause before your Grace (my Lord High-Steward) and this august Assembly ; and therefore, though I could say much to extenuate the Crime for which I stand impeached, yet I chuse rather to lay my whole Strefs upon the King's Mercy, for which he is so renowned, and which I was put in hopes of at the Time of my Surrender. In Consideration whereof, and in Compassion to an afflicted Wife and twelve Children, I still hope, by the Mediation of your Grace, my noble Lords, and the Honourable House of Commons, I may obtain it ; solemnly protesting, that in Gratitude for so signal a Deliverance, I will, to the End of my Life, remain a dutiful and obedient Subject to his most gracious and sacred Majesty King *George*.

Lord High-Steward. My Lord, for greater certainty, I ask your Lordship whether you have offered any thing in Arrest of Judgment ?

Lord Nairn. No, my Lords.

Serjeant at Arms. O Yes, O Yes, O Yes ! Our sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence upon Pain of Imprisonment.

Lord High-Steward. James Earl of *Derwentwater*, William Lord *Widdrington*, William Earl of *Nithisdale*, Robert Earl of *Carnwath*, William Viscount *Kenmure*, William Lord *Nairn* ;

You stand impeached, by the Commons of *Great Britain* in Parliament assembled, of High Treason, in traiterously imagining, and compassing the Death of his most sacred Majesty, and in conspiring for that end to levy a bloody and destructive War against his Majesty, in order to depose and murder him ; and in levying War ac-

cordingly, and proclaiming a Pretender to his Crown to be King of these Realms.

Which Impeachment, tho' one of your Lordships, in the Introduction to his Plea, supposes to be out of the ordinary and common Course of the Law and Justice, is yet as much a Course of Proceeding according to the Common Law, as any other whatsoever.

If you had been indicted, the Indictment must have been removed and brought before the House of Lords (the Parliament sitting.) In that case you had ('tis true) been accused only by the Grand Jury of one County ; in the present, the whole Body of the Commons of *Great Britain*, by their Representatives, are your Accusers.

And this Circumstance is very observable, (to exclude all possible Supposition of Hardship as to the Method of proceeding against you) That however all great Assemblies amongst us are apt to differ on other Points, You were impeached by the unanimous Opinion of the House of Commons (not one contradicting.)

The found themselves, it seems, so much concerned in the Preservation of his most truly sacred Majesty, and the Protestant Succession (the very Life and Soul of these Kingdoms) that they could not omit the first Opportunity of taking their proper Part, in order to so signal and necessary an Act of his Majesty's Justice.

And thus the whole Body Politic of this free Kingdom has in a manner rose up in its own Defence, for the Punishment of those Crimes, which, 'twas rightly apprehended, had a direct Tendency to the everlasting Dissolution of it.

To this Impeachment you have severally pleaded, and acknowledged yourselves guilty of the High-Treason therein contained.

Your Pleas are accompanied with some Variety of Matter, to mitigate your Offences, and to obtain Mercy.

Part of which, as some of the Circumstances said to have attended your Surrender (seeming to be offered rather as Arguments only for Mercy, than any thing in Mitigation of your preceding Guilt) is not proper for me to take Notice of.

But as to the other Part, which is meant to extenuate the Crimes of which you are convicted, it is fit I should take this Occasion to make some Observations to your Lordships upon it ; to the end that the Judgment to be given against you may clearly appear to be Just and Righteous, as well as Legal ; and that you may not remain under any fatal Error in respect of a greater Judicature, by reflecting with less Horror and Remorse on the Guilt you have contracted than it really deserves.

It is alledged by some of your Lordships, that you engaged in this Rebellion without previous Concert or Deliberation, and without suitable Preparations of Men, Horses and Arms.

If this should be supposed true, on some of your Lordships averring it, I desire you to consider, that as it exempts you from the Circumstance of contriving this Treason, so it very much aggravates your Guilt in that Part you have undoubtedly born in the Execution of it.

For it shews, That your Inclinations to rebel were so well known (which could only be from a continued Series of your Words and Actions) that the Contrivers of that horrid Design depended upon you, and therein judg'd rightly : That your Zeal to engage in this Treason was so strong, as

to carry you into it on the least Warning, and the very first Invitation : That you would not excuse yourselves by Want of Preparation, as you might have done ; and that rather than not have a Share in the Rebellion, you would plunge yourselves into it, almost naked and unprovided for such an Enterprize : In short, that your Men, Horses, and Arms were not so well prepared, as they might, and would have been on longer Warning ; but your Minds were.

It is alledged also as an Extenuation of your Crime, that no cruel or harsh Action (I suppose is meant no Rapine or Plunder, or worse) has been committed by you.

This may, in Part only be true. But then your Lordships will at the same time consider, that the laying waste a Tract of Land bears but a little Proportion in point of Guilt, compared with that Crime of which you stand convicted ; an open Attempt to destroy the best of Kings, to ruin the whole Fabric, and raze the very Foundations of a Government, the best suited of any in the World, to perfect the Happiness, and support the Dignity of human Nature : The former Offence causes but a Mischief that is soon recovered, and is usually pretty much confined ; the latter, had it succeeded, must have brought a lasting and universal Destruction on the whole Kingdom.

Besides, much of this was owing to Accident ; your March was so hasty, partly to avoid the King's Troops, and partly from a vain Hope to stir up Insurrections in all the Counties you passed through, that you had not time to spread Devastation, without deviating from your main, and, as I have observed, much worse Design.

Farther, 'tis very surprizing, that any concerned in this Rebellion should lay their ingaging in it on the Government's doing a necessary and usual Act in like cases for its Preservation ; the giving Orders to confine such as were most likely to join in that Treason : 'Tis hard to believe that any one should rebel, merely to avoid being restrain'd from rebelling ; or that a gentle Confinement would not much better have suited a crazy State of Health, than the Fatigues and Inconveniencies of such long and hasty Marches in the Depth of Winter.

You Lordships rising in Arms therefore, has much more justified the Prudence and Fitness of those Orders, than those Orders will in any wise serve to mitigate your Treason. Alas ! happy had it been for all your Lordships had you fallen under so indulgent a Restraint !

When your Lordships shall in good earnest apply yourselves to think impartially on your Case, surely you will not yourselves believe, that it is possible, in the nature of the thing, to be engaged, and continue so long engaged, in such a difficult and laborious Enterprize, through Rashness, Surprize, or Inadvertency : Or that, had the Attack at *Prison* been less sudden, (and consequently the Rebels better prepared to receive it) your Lordships had been reduced the sooner, and with less, if not without any Bloodshed.

No, my Lords ; these, and such like, are artful Colourings proceeding from Minds filled with Expectation of continuing in this World ; and not from such as are preparing for their Defence before a Tribunal, where the Thoughts of the Heart, and the true Springs and Causes of Actions, must be laid open.

And now, my Lords, having thus removed some false Colours you have used ; to assist you yet farther in that necessary Work of thinking on your great Offence as you ought, I proceed to touch upon several Circumstances that seem greatly to aggravate your Crime, and which will deserve your most serious Consideration.

The Divine Virtues ('tis one of your Lordships own Epithets) which all the World as well as your Lordships acknowledge to be in his Majesty, and which you now lay claim to, ought certainly to have withheld your Hands from endeavouring to depose, to destroy, to murder that most Excellent Prince ; so the Impeachment speaks, and so the Law construes your Actions ; and this is not only true in the Notion of Law, but almost always so in Deed and Reality : 'Tis a trite, but very true Remark, that there are but few Hours between Kings being reduced under the Power of Pretenders to their Crown, and their Graves. Had you succeeded, his Majesty's Case would, I fear, have hardly been an Exception to that general Rule, since 'tis highly improbable, that Flight should have saved any of that Illustrious and Valiant Family.

'Tis a farther Aggravation of your Crime, that his Majesty, whom your Lordships would have dethroned ; affected not the Crown by Force, or by the Arts of Ambition, but succeeded peaceably and legally to it ; and on the Decease of her late Majesty without Issue, became undoubtedly the next in course of Descent capable of succeeding to the Crown, by the Law and Constitution of this Kingdom ; as it stood declared some Years before the Crown was expressly limited to the House of *Hanover*. This Right was acknowledged, and the Descent of the Crown limited or confirmed accordingly, by the whole Legislature in two successive Reigns ; and more than once in the later, which your Lordships Accomplices are very far from allowing, would bias the Nation to that Side.

How could it then enter into the Heart of Men, to think that private Persons might with a good Conscience endeavour to subvert such a Settlement, by running to tumultuary Arms ; and by intoxicating the dreggs of the People with contradictory Opinions, and groundless Slanders ; or that God's Providence would ever prosper such wicked, such ruinous Attempts ?

Especially if in the next place it be considered, that the most fertile Inventions on the side of the Rebellion, have not been able to assign the least shadow of a Grievance as the Cause of it : To such poor Shifts have they been reduced on this Head, that for want of better Colours, it has been objected, in a solemn manner, by your Lordships Associates, to his Majesty's Government ; that his People do not enjoy the Fruits of Peace as our Neighbours have done since the last War : Thus they first robbed us of our Peace, and then upbraid us that we have it not. 'Tis a monstrous Rebellion that can find no fault with the Government it invades, but what is the Effect of the Rebellion it self.

Your Lordships will likewise do well to consider what an additional Burthen your Treason has made necessary on the People of this Kingdom ; who wanted, and were about to enjoy some Respite : To this end, 'tis well known, that all new, or increase of Taxes, were the last Year carefully avoided

avoided, and his Majesty was contented to have no more Forces than were just sufficient to attend his Person, and shut the Gates of a few Garriſons.

But what his Majesty thus did for the Eaſe and Quiet of his People, you moſt ungratefully turn'd to his Diſadvantage, by taking Encouragement from thence, to endanger his and his Kingdom's Safety, and to bring Oppreſſion on your Fellow-Subjects.

Your Lordſhips obſerve I avoid expatiating on the Miſeries of a Civil War, a very large and copious Subject; I ſhall but barely ſuggeſt to you on that Head, that whatever thoſe Calamities may happen to be in the preſent Caſe, all who are at any Time or in any Place Partakers in the Rebellion (eſpecially Perſons of Figure and Diſtinction) are in ſome degree reſponſible for 'em: And therefore your Lordſhips muſt not hold your ſelves quite clear from the Guilt of thoſe Barbarities which have been lately committed, by ſuch as are engaged in the ſame Treason with you, and not yet perfectly reduced, in burning the Habitations of their Countrymen, and thereby expoſing many Thouſands to Cold and Hunger in this rigorous Season.

I muſt be ſo juſt to ſuch of your Lordſhips, as profeſs the Religion of the Church of *Rome*, that you had one Temptation, and that a great one, to engage you in this Treason, which the others had not; in that 'twas evident, Succeſs on your Part muſt for ever have eſta bliſhed Popery in this Kingdom, and that probably you could never have again ſo fair an Opportunity.

But then, good God! how muſt thoſe Proteſtants be covered with Confuſion, who entered into the ſame Meaſures, without ſo much as capitulating for their Religion (that ever I could find from any Examination I have ſeen or heard) or ſo much as requiring, much leſs obtaining a frail Promiſe, that it ſhould be preſerved, or even tolerated.

It is my Duty to exhort your Lordſhips thus, to think of the Aggravations as well as the Mitigations (if there be any) of your Offences; and if I could have the leaſt Hopes, that the Prejudices of Habit and Education would not be too ſtrong for the moſt earneſt and charitable Entreaties; I would beg you not to rely any longer on thoſe Directors of your Conſciences, by whoſe Conduct you have, very probably, been led into this miſerable Condition; but that your Lordſhips would be aſſiſted by ſome of thoſe pious and learned Divines of the Church of *England*, who have conſtantly bore that infallible Mark of ſincere Chriſtians, univerſal Charity.

And now, my Lords, nothing remains, but that I pronounce upon you, (and ſorry I am that it falls to my Lot to do it) that terrible Sentence of the Law, which muſt be the ſame that is uſually given againſt the meaneſt Offender in the like Kind.

The moſt ignominious and painful Parts of it are uſually remitted by the Grace of the Crown to Perſons of your Quality; but the Law in this Caſe being deaf to all Diſtinctions of Perſons, requires I ſhould pronounce, and accordingly it is adjudged by this Court,

“ That you, *James Earl of Derwentwater*,
 “ *William Lord Widdrington*, *William Earl*
 “ of *Nithiſdale*, *Robert Earl of Carnwath*,

“ *William Viſcount Kennure*, and *William*
 “ *Lord Nairn*, and every of you, return to
 “ the Priſon of the *Tower* from whence you
 “ came; from thence you muſt be drawn
 “ to the Place of Execution; when you
 “ come there, you muſt be hang'd by the
 “ Neck, but not till you be Dead; for you
 “ muſt be cut down alive, then your Bowels
 “ muſt be taken out, and burnt before your
 “ Faces; then your Heads muſt be ſever'd
 “ from your Bodies, and your Bodies di-
 “ vided each into four Quarters; and theſe
 “ muſt be at the King's diſpoſal.

And God Almighty be merciful to your Souls!

Serjeants at Arms. O Yes! Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Im- priſonment.

Then the Lord High Steward ſtood up uncovered, and declaring there was nothing more to be done by Vertue of the preſent Commiſſion, broke the Staff, and pronounced it diſſolv'd: And then leaving the Chair, came down to the Wool- pack, and ſaid, Is it your Lordſhips Pleaſure to adjourn to the Houſe of Lords?

Lords. Ay, ay.

And then the Houſe adjourned to the Houſe above, and the Lords and others returned in the ſame Order they came down.

After Sentence paſt great Intereſt was made on their Behalf for Mercy; inſomuch, that the Houſe of Lords preſented an Addreſs to the King, *To Reprieve ſuch of them as ſhould deſerve his Mercy*; to which the King only answered, *That on this and all other Occaſions, he would do what he thought moſt conſiſtent with the Dignity of his Crown, and the Safety of his People.* However, Lord *Widdrington*, Lord *Carnwath*, and Lord *Nairn* were reprieved, and afterwards pardoned; but the other three, Lord *Derwentwater*, Lord *Nithiſdale*, and Lord *Kennure*, were ordered for Execution on *Febr. 24.*

The Earl of *Nithiſdale* eſcap'd the Blow, having found means of getting out of the *Tower* in Diſ- guiſe, the very Night before the Execution*.

Early the next Morning the Scaffold on *Tower- Hill* was ſurrounded with the Guards, and a little before ten o'th' Clock the Earl of *Derwentwater* and the Lord Viſcount *Kennure*, were carried in an Hackney Coach from the *Tower*, to the *Transport-Office* on *Tower-Hill*, where there was a Room hung with Black for their Reception, and there was a Paſſage or Gallery rail'd in, which led from thence to the Scaffold, which was alſo covered with Black.

The Earl of *Derwentwater* was firſt led to the Scaffold, where having ſpent ſome time in praying with a Book, he then addreſs'd himſelf to the Sheriff, and deſired the Liberty to read a Paper, which he had drawn up: This Requeſt being readily granted, he went to the Rails of the Scat- fold and read as follows:

BEING in a few Minutes to appear before the Tribunal of God, where, though moſt unworthy, I hope to find Mercy, which I have not found from Men now in Power, I have endeavoured to make my Peace with his Divine Maſteſty, by moſt humbly begging Pardon for all the Sins of my Life; and I

* The King being told of this the next Morning, merrily ſaid, *It was the beſt thing a Man in his Condition could have done.*

doubt not of a merciful Forgiveness, thro' the Merits of the Passion and Death of my Saviour Jesus Christ ; for which End, I earnestly desire the Prayers of all good Christians.

After this, I am to ask Pardon of those whom I might have scandalized by pleading guilty at my Trial. Such as were permitted to come to me, told me, that having been undeniably in Arms, pleading guilty was but the Consequence of having submitted to Mercy ; and many Arguments were us'd to prove there was nothing of moment in so doing ; among others the universal Practice of signing Leases, whereof the Preambles run in the Name of the Person in Possession.

But I am sensible that in this I have made bold with my Loyalty, having never owned any other but King James the Third for my rightful and lawful Sovereign ; him I had an Inclination to serve from my Infancy, and was mov'd thereto by a natural Love I had to his Person, knowing him to be capable of making his People happy ; and though he had been of a different Religion from mine, I should have done for him all that lay in my Power, as my Ancestors have done for his Predecessors, being thereto bound by the Laws of God and Man.

Wherefore, if in this Affair I have acted rashly, it ought not to affect the Innocent ; I intended to wrong no Body, but to serve my King and Country, and that without Self-interest ; hoping by the Example I gave, to have induc'd others to their Duty ; and God, who sees the Secrets of my Heart, knows I speak Truth. Some Means have been proposed to me for saving my Life, which I look'd upon as inconsistent with Honour and Conscience, and therefore I rejected them ; for, with God's Assistance, I shall prefer any Death, to the doing a base unworthy Action. I only wish now, that the laying down my Life, might contribute to the Service of my King and Country, and the Re-establishment of the ancient and fundamental Constitution of these Kingdoms ; without which, no lasting Peace, or true Happiness, can attend them ; then I should, indeed, part with Life even with Pleasure : As it is, I can only pray, that these Blessings may be bestow'd upon my dear Country ; and since I can do no more, I beseech God to accept of my Life, as a small Sacrifice towards it.

I die a Roman Catholick ; I am in perfect Charity with all the World, I thank God for it, even with those of the present Government, who are most

instrumental in my Death. I freely forgive such as ungenerously reported false Things of me ; and I hope to be forgiven the Trespasses of my Youth, by the Father of infinite Mercy ; into whose Hand I commend my Soul.

J. A. DERWENTWATER.

P. S. If that Prince who now governs, had given me my Life, I should have thought my self obliged never more to have taken up Arms against him.

After the reading this Paper he delivered it to the Sheriff to do with it as he pleas'd. Then turning to the Block he view'd it close, and finding in it a rough Place, which might offend his Neck, he bid the Executioner chip it off. Having prepar'd himself for the Blow by pulling off his Coat and Waistcoat, he lay down to fit his Head to the Block, telling the Executioner that the Sign he should give him was, *Lord Jesu receive my Soul*, and at the third time of repeating it he was to do his Office ; which accordingly he did at one Blow.

Immediately after the Earl of Derwentwater was executed as above, the Lord Kenmure was brought to the Scaffold, accompany'd by his Son and some Friends, and attended by two Clergymen of the Church of England, which was the Religion he profess'd. He made no formal Speech, but testify'd his Sorrow for having pleaded guilty. Then laying down his Head on the Block, he rais'd it up again, and still continuing on his Knees, gave the Executioner some Money, and told him, he would give him no Sign, but that when he laid down his Head again, he might perform his Office as he saw good. Then having lifted up his Hands a short time in Prayer, he resolutely laid down his Head, which at two Blows was sever'd from his Body.

After his Execution a Letter was found which he wrote to the Pretender (by the Style of King James) in which he declared, *That he died for his faithful Services to his Majesty, but hoped the Cause he died for would flourish after his Death : And as he suffered for his Service, he hop'd his Majesty would provide for his Wife and Children.*



CLXXXVI. The Trial of George Earl of Wintoun, before the House of Lords, upon an Impeachment for High-Treason, March 15, 16, 19. 1715. 2 GEO. I.

Die Lunæ 9 Januarii, 1715.

THE Earl of Wintoun was impeach'd of High-Treason ; and the Articles were brought up against him and read the same Day in the House of Lords : And it was order'd that the said Earl, with the other impeach'd Lords, should be brought to the Bar of the House of Lords the next Day, to hear the said Articles read, and to abide such further Order as the House should think fit to make concerning them.

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Die Martis 10 Januarii, 1715.

The Earl of Wintoun and the other impeach'd Lords were brought to the Bar in the usual Form ; then the said Articles of Impeachment were read unto them ; after which the Lord Chancellor asked them severally what they had to say thereunto, and acquainted them, that if they had any thing to request of the House this was their proper Time.

Thereupon the Earl of Wintoun acquainted the House he was unprepared, and very ignorant of

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the Form of their Lordships Judicature, and desired he might have a Copy of the said Articles, and such Time to answer as the House should think fit, and that Council might be assign'd to assist him. He was directed to withdraw; and being accordingly withdrawn, the House took his Requests into Consideration, and thereupon

Ordered, That his Lordship should be allowed a Copy of the said Articles of Impeachment, and Time 'till *Saturday* next to put in his Answer thereunto; and that Council should be assign'd him in order to assist him in preparing his Answer, and likewise in his Defence in Matters of Law.

Then his Lordship was called in again, and the Lord Chancellor acquainted him with the said Order, and that the House expected he should name such Council as he desired to have.

To which he answered, that no body was allow'd to come to him, he was a Stranger and unprepared, and desired to be allowed Time to name his Council.

Then his Lordship being again withdrawn,

After some time he was again called in, and the Lord Chancellor, by Order of the House, acquainted him, That the House was pleas'd, besides Council, to allow him a Solicitor, and to give him leave to name whom he desired to come to him this Evening, or to-morrow Morning, in order to advise him in the naming of Council and Solicitor.

To which purpose the Earl of *Wintoun* named Mr. *Hereot*, a Clergyman, Mr. *Menzies*, Major *Sinclair*, and Mr. *George Lesly*, a Lawyer.

And then he again withdrew.

And the Names of the several Persons mentioned by the Earl of *Wintoun*, being read to him,

Ordered, That they have leave to repair to the said Earl at any convenient Hour, any time before the sitting of the House to-morrow, in order to advise him in the naming of Council, and a Solicitor to assist him in his Defence.

Ordered, That the several Lords impeached, or any of them, have Liberty to cause Search to be made, and Copies of Records and Journals to be taken out, in order to their Defence; and that the said Lords shall have Summons issued for such Witnesses as they shall respectively send in the Names of, to be by them made use of at their Trials; which Witnesses shall have the Protection of this House for their safe coming and going, during the Time of the said Trials.

Die Jovis 12 Januarii, 1715.

A Petition of *George Earl of Wintoun* was presented to the House and read, praying that he may have some further Time for nominating Council, and a Solicitor to act for him, and in the mean time to allow his Friends formerly named to have access to him; he having caused Application to be made to Sir *Thomas Powis*, and Mr. *Mead*, to have appeared for him, but they both excused themselves.

Ordered, That the same Persons before allow'd to go to the Petitioner, have leave to resort to him at any reasonable Time, before Eleven of the Clock to-morrow in the Forenoon, in order to the advising him in naming other Council, instead of those who have refused.

Whereas by Order of this House on *Tuesday* last, the Lords impeached were to put in their respective Answers to the Articles of Impeach-

ment of High-Treason exhibited against them by the House of Commons on *Saturday* last: The House being this Day moved at the Request of the Earl of *Derwentwater* and Lord *Widdrington*, to grant them further Time to put in their Answers to the said Articles of Impeachment: It is Ordered, that all the said Lords have hereby further Time allowed to put in their respective Answers to the said Articles till *Monday* next at one of the Clock.

Die Lunæ 16 Januarii, 1715.

Whereas by Order of this House on *Thursday* last, the Lords impeached were allowed Time to put in their Answers till this Day to the Articles of Impeachment exhibited against them, the House being this Day, moved in regard the Council assign'd some of the said Lords refused to be concerned for them, that *Thursday* next may be appointed peremptorily for them to put in their several Answers to the said Articles: It is Ordered, That the several Lords do peremptorily put in their several Answers, to the said Articles on *Thursday* next at One of the Clock; and that the Lieutenant of his Majesty's Tower of *London* do bring to this House, on that Day, by that Time, the said several Lords for the Purposes aforesaid; and that Notice be forthwith given them of this Order.

Die Jovis 19 Januarii, 1715.

The Earl of *Wintoun* was brought to the Bar, by the Gentleman-Usher of the Black Rod, where he kneeled until the Lord Chancellor directed him to rise, and his Lordship acquainted him with the above-mentioned Order, and demanded of him if he was ready to put in his Answer.

He said he had a Petition to present to the House: He was an entire Stranger to the Nature of their Lordships Proceedings, and desired his Petition might be read; and the same was read as follows.

*To the Right Honourable the Lords
Spiritual and Temporal in Parlia-
ment Assembled.*

The Humble Petition of *George Earl of
Wintoun*,

Humbly Sheweth,

THAT on *Thursday* last I having applied to your Lordships, representing how I had caus'd Application to be made to two Lawyers, to act as Council for me, in the Impeachment exhibited before your Lordships against me by the Honourable House of Commons, and that they both declin'd to meddle, for Reasons then given; your Lordships were pleas'd to allow me some more Time for nominating of Council, and Solicitors, and this Day for giving in my Answers; but by Reason of my close Confinement, and that your Lordships Order for allowing some Persons to have access to me, expired on *Friday* last at Eleven Forenoon; I have had no Opportunity of naming other Council and Solicitors; nor can I have the Assistance of any, 'till they are appointed by your Lordships and they allow'd access to me.

That

That your Petitioner has several Specialities and Matters of great Moment, which he conceives necessary to be a Part of his Answers, and which cannot be drawn into Form, without the Assistance of his Council and Sollicitors.

Forasmuch therefore as this Affair is to me of the greatest Importance ; may it please your Lordships to assign Sir *Constantine Phipps*, and Mr. *Peer Williams*, to be Council, and *Charles Menzies*, and Mr. *James Leslie*, to be my Sollicitors ; and to order that they may have access to me from Time to Time during my Trial ; as also that your Lordships would be pleased to allow Mr. *George Hereot*, a Minister of the Church of *England*, to have access to me from Time to Time, seeing I am confined in a Room alone.

And your Petitioner shall ever pray, &c.

WINTOUN.

The said Earl of *Wintoun* was directed to withdraw ; and being withdrawn accordingly,

The Order made on *Thursday* last upon his Petition was read, as also the several Orders made on *Monday* last.

Ordered, That the Council mentioned in the said Petition be assigned him, and that either of the said Sollicitors be likewise assigned, and that he have Time to put in his Answer to the said Articles till *Monday* next. And that the Clergyman mentioned in his Petition, being his Relation, may have access to him, provided he will stay in Custody with him during his Confinement.

Then the Earl of *Wintoun* was again called in, and the Lord Chancellor acquainted him, that the House had considered his Petition, and assign'd him the Council he desir'd ; and would assign him either of the two Sollicitors he should chuse ; and that the Clergyman above-mentioned might come to him upon the Condition before expressed. Then the said Earl of *Wintoun* naming Mr. *Menzies*, the House accordingly assigned him for his Sollicitor, and Ordered, that the said Council and Sollicitor may have access to him from Time to Time at all seasonable Hours ; and he withdrew.

Die Sabbati 21 Januarii, 1715.

A Petition of *George Earl of Wintoun* was presented to the House and read, praying that their Lordships would allow him such further Time for putting in his Answer, as their Lordships shall think fit.

Ordered, That the said Petition be rejected.

Die Lunæ 23 Januarii, 1715.

The Earl of *Wintoun* being brought to the House according to Order by the Lieutenant of the Tower, the Gentleman-Usher was commanded to bring him to the Bar, where he kneel'd until he was directed by the Lord Chancellor to rise ; and his Lordship acquainted him that this was the peremptory Day appointed by the House for his putting in his Answer to the Articles of Impeachment exhibited against him by the House of Commons, and asked him if he was ready to put in his Answer.

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He thereupon made some Excuses, and desired further Time for that purpose ;

And was directed to withdraw.

Ordered, That the Earl of *Wintoun* be called in, and acquainted, that this House, upon considering his Petition on *Saturday* last, for further Time to put in his Answer to the Articles of Impeachment exhibited against him, did reject his said Petition ; and having indulged him more than any of the Lords impeached, are still of Opinion (this being the peremptory Day for putting in his Answer) to allow him no further Time, and that the Consequence of his refusing to plead which will ensue in Law is, that Judgment will be awarded against him, as if he had pleaded guilty. Then,

He was accordingly called in, and the Lord Chancellor acquainted him with the said Matter.

He thereupon delivered in at the Bar his Answer fairly engrossed on Parchment, which was read.

Die Sabbati 28 Januarii, 1715.

The Commons replied to the Answer of the Earl of *Wintoun*.

Die Mercurii 8 Februarii, 1715.

Ordered, By the Lords Spiritual and Temporal in Parliament assembled, that *Thursday* the sixteenth Day of this instant *February* be, and is hereby appointed for the Trial of *George Earl of Wintoun* at the Bar of this House in *Westminster-Hall*, upon the Impeachment of High-Treason exhibited against him by the House of Commons.

Die Veneris 10 Februarii, 1715.

Upon reading the Petition of *George Earl of Wintoun*, setting forth, that he had a Petition in the House on *Wednesday* last, when their Lordships appointed *Thursday* next for the Petitioner's Trial, desiring that Consideration might be had to the distance of the Place, and the Season of the Year, for bringing up of his Witnesses, both Men and Women, from *Scotland*, and other Parts ; but the Noble Peer who promised, and would have moved the said Petition, not being present at the Time of making the Motion for appointing a Day of Trial, the said Petition was not presented in Form, which occasioned the Appointment of so short a Time, wherein it is altogether impossible to prepare any thing in order for the said Trial : And praying that this House will grant an Order to compel the several Witnesses following (*viz.*) *John Gordon*, *George Trotter*, *George Hogg*, *John Stewart*, all Servitors to the Earl of *Wintoun*, — *Beatoun*, Wife to Mr. *David Nicholson* in *Tranent*, *Adam Purvis*, Clerk of the Episcopal Meeting-House in *Tranent*, *Christopher Seton* in *Port-Seton*, Lieutenant-General — *Wills*, — *Forster*, Esq; — *Miller*, Esq; Capt. *Alexander Stretton*, — *Mackintosh* of *Bordlim*, — *Aenslie*, and — *Todd*, Bailiffs of *Musselbrough*, and the School-master of *Fisberau*, to appear before this House at the Trial, to give Evidence on behalf of the Petitioner ; and to allow such Time for their coming hither, as, in regard to the Distance of the Place, and the Season of the Year, and the Importance of the

Affair, their Lordships, in their great Wisdom and Justice shall think reasonable: It is Ordered, That the Time appointed for the Trial of the Petitioner in *Westminster-Hall* be, and is hereby, enlarged to *Thursday* the eighth Day of *March* next: And that the several Persons afore-named be, and are hereby required to attend this House on *Thursday* the said eighth Day of *March*, as Witnesses on behalf of the Petitioner, except such of the said Persons as are now Prisoners for High-Treason; and that they shall have the Protection of this House for their safe coming and going, during the Time of the said Trial.

Trial put off to Thursday March 8.

Die Lunæ 5 Martii, 1715.

Upon reading the Petition of *George Earl of Wintoun*, setting forth, that his Agents have used all Diligence possible in serving the Order of this House for the Attendance of his Witnesses; and now they are all on their Way hither, part by Sea and part by Land: And that the Nature of his Defence is such, that if the Witnesses were arrived, as none of them are, the Time would be too short to prepare his Briefs, and instruct his Council; and praying that the Time appointed for his said Trial, may be enlarged for such Time as their Lordships, in their great Justice and Wisdom, shall think proper, in a Case of so great Consequence: It is ordered, that the Time appointed for the Petitioner's Trial be, and is hereby enlarged till *Thursday* the fifteenth Day of this instant *March*, at ten of the Clock in the Forenoon.

Die Lunæ 12 Martii, 1715.

A Petition of *George Earl of Wintoun* was presented to the House and read, setting forth, that his Agents have used all possible Diligence in getting his Witnesses hither, and several of them are lately arrived, but four of the most material of them, though they all be on their Way hither, are not yet come up, some of them being lame and others very infirm, so that they are not able to travel so quickly; and praying, that the Time appointed for his Trial may be enlarged for such Time as their Lordships, in their great Justice and Wisdom, shall think proper, in a Case of so great Concern.

And after Debate thereupon, and reading the Orders made in relation to the said Trial, *Charles Menzies*, the Petitioner's Solicitor, was called in and examined upon Oath at the Bar, touching the Allegations of the said Petition; and failing to make good the same;

And being withdrawn,

It was moved to reject the Petition.

And the Question being put whether the said Petition shall be rejected, it was resolved in the Affirmative.

Die Martis 13 Martii, 1715.

Several Orders were made for preserving the Peace, and touching the Course of Proceeding, to, and at the ensuing Trial; and among them,

Ordered, That the Council assigned the said Earl of *Wintoun* may be present when he is at the Bar, in order to be heard touching any Point or Matter of Law, if any such shall arise.

Die Mercurii 14 Martii, 1715.

Upon reading the Petition of *George Earl of Wintoun*, praying that this House will be pleased

to assign, and add Mr. *Kettelby*, and Dr. *Straban* to his Council formerly named, and that they may have access to him during his Confinement: It is Ordered, that the Council above-mentioned be assigned the Petitioner, to be heard to Matters of Law, but not to Matters of Fact, so as not to put off the Petitioner's Trial, and that they, or either of them have access to the Petitioner from Time to Time, at all seasonable Times.

A Motion being made, that the following Persons, whose Names were contained in a List exhibited at the same Time, on behalf of the Earl of *Wintoun*, might be summoned as Witnesses for the said Earl at his Trial; being then, as alledg'd, in or near the City of *London*.

Ordered, By the Lords Spiritual and Temporal in Parliament assembled, that *John Gordon* of *Kirkhill*, *Alexander Nisbet* Writer in *Edinburgh*, *William Knox*, *Thomas Baine*, *John Wattesone*, all three of *Seaton*, Mrs. *Magdalen Corrbie* of *Cannongate*, *Agnes Duncan* of *Seaton*, Dr. *Lidderdale* a Physician, Dr. *Cockburne* a Divine, Dr. *John Inglis*, Major *Sinclair*, *George Trotter*, and *George Hogg* of *Seaton*, be and are hereby required to attend this House in *Westminster-Hall*, to-morrow at ten of the Clock in the Forenoon, in order to be examined as Witnesses, on the behalf of *George Earl of Wintoun* at his Trial.

The House being informed that the Earl of *Wintoun* desired that *General Carpenter* might be examined as a Witness at his Trial:

The said *General Carpenter* being a Member of the House of Commons;

A Message was sent to that House by Mr. *Holford* and Mr. *Lovibond*, to acquaint them, that the Lords do desire that they will give leave to the said *General Carpenter* to be examined at the said Earl's Trial.

Ordered, That the Witnesses which shall be produced by the Earl of *Wintoun* to be examined in his Defence, shall be examined upon Oath, which Oath to be administer'd to the Witnesses on both Sides at the said Trial shall be this:

The Evidence which you shall give in this Trial, concerning George Earl of Wintoun, Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth.

So help you God, and the Contents of this Book.

Die Jovis 15 Martii, 1715.

The Messengers sent Yesterday to the House of Commons return Answer, That the Commons have given leave to *General Carpenter* to be examined as a Witness at the Trial of *George Earl of Wintoun*.

The House was then adjourned to *Westminster-Hall*.

Begun in *Westminster-Hall* on *Thursday*, *March 15, 1715-16.*

The first Day.

ABOUT one of the Clock, the Lords came from their own House into the Court erected in *Westminster-Hall*, in the manner following.

The Lord High-Steward's Gentlemen Attendants, two and two.

The Clerks Assistant to the House of Lords, and the Clerk of the Parliament, with the Clerk of the Crown in the Court of Chancery; the Clerk of the Parliament bearing the King's Commission to the Lord High-Steward.

The Master in Chancery, two and two.

Then the Judges.

The Peers Eldest Sons, and Peers Minors, two and two.

Four Serjeants at Arms with their Maces, two and two.

The Yeomen Ushers of the House.

Then the Peers, two and two, beginning with the youngest Barons.

Then four Serjeants at Arms with their Maces.

The Serjeant at Arms attending the Great-Seal, and Purse-Bearer.

Then Garter King at Arms; and the Gentleman-Usher of the Black Rod, carrying the White Staff before the Lord High-Steward.

William Lord Cowper. The Lord High-Steward alone, his Train borne.

When the Lords were placed in their proper Seats, and the Lord High-Steward upon the Wool-Pack.

The Clerk of the Crown, in the Court of Chancery, standing before the Clerk's Table, with his Face towards the State, having his Majesty's Commission to the Lord High-Steward in his Hand, made three Reverences towards the Lord High-Steward; and, on his Knee, presented the Commission to the Lord High-Steward; after which, and usual Reverences, the same was carried down to the Table: And then Proclamation for Silence was made in this manner:

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

Then the Lord High-Steward stood up, and spoke to the Peers.

Lord High-Steward. His Majesty's Commission is going to be read; your Lordships are desired to attend.

All the Peers uncovered themselves, and they and all others stood up uncovered while the Commission was reading.

GEORGIUS R.

GEOGIUS, *Dei Gratia, Magnæ Britanniæ, Franciæ & Hiberniæ Rex, Fidei Defensor, &c. Prædilecto & Fideli Consiliario nostro Willielmo Domino Cowper, Cancellario nostro Magnæ Britanniæ, Salutem. Cum Georgius Comes de Winton, cum aliis, coram Nobis in præsentis Parlamento, per Milites, Cives & Burgenses in Parlamento nostro Assemblat' de alta Proditione per ipsum Georgium Comitum de Winton, & al' commiss' & perpetrat' in nomine ipsorum Militum, Civium & Burgensium, & nomine omnium Communium Regni nostri Magnæ Britanniæ impetit' & accusat' existit. Nos considerantes quod Justitia est Virtus excellens & Altissimo complacens, Volentesque quod prædict' Georgius Comes de Winton, de & pro Proditione unde ipse ut præfertur impetit' & accusat' existit coram Nobis in præsentis Parlamento nostro, secundum Leg' & Consuetudinem hujus Regni nostri Magnæ Britanniæ, & secundum Consuetudinem Parlamenti audiatur,*

sententietur & adjudicetur, cæteraque omnia quæ in hac parte pertinent debito modo exercentur & exerquantur, ac pro eo quod Procures & Magnates in præsentis Parlamento nostro assemblat' Nobis humilime supplicaverunt ut Senescallum Magnæ Britanniæ pro hac vice constituere dignaremur. Nos de fidelitate, prudentia, provida circumspeditione, & industria vestris plurimum confidentes, Ordinavimus & Constituimus vox ex hac Causa Senescallum Magnæ Britanniæ ad Officium illud, cum omnibus eidem Officio in hac parte debit' & pertinen' (hac vice) gerend' occupand' & exercend'. Et ideo vobis Mandamus quod circa præmissa diligenter intendatis, & omnia quæ in hac parte ad Officium Senescalli Magnæ Britanniæ pertinent & requiruntur hac vice faciatis, exerceatis, & exequamini cum effectu. In cujus rei Testimonium has Literas nostras fieri fecimus Patentes, Teste meipso apud Westm' Decimo Quinto Die.

Per ipsum Regem propria Manu Signat'

Wrighte.

Serjeant at Arms. God save the King.

Then the Herald and Gentleman Usher of the Black Rod, after three Reverences, kneeling, presented the White Staff to his Grace; and then his Grace, attended by the Herald, Black Rod and Seal-Bearer (making his proper Reverences towards the Throne) removed from the Wool-Pack to an armed Chair, which was placed on the uppermost Step but one of the Throne, as it was prepared for that purpose, and then seated himself in the Chair, and delivered the Staff to the Gentleman Usher of the Black Rod on his Right Hand, the Seal-Bearer holding the Purse on the Left.

Clerk of the Crown. Serjeant at Arms make Proclamation.

Serjeant at Arms. O Yes, O Yes, O Yes! Our Sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made, as follows.

O Yes, O Yes, O Yes! Lieutenant of the Tower of London, bring forth your Prisoner to the Bar, according to the Order of the House of Lords to you directed.

Then George Earl of Winton was brought to the Bar by the Deputy Governour of the Tower, having the Ax carried before him by the Gentleman Jaylor, who stood with it on the Left Hand of the Prisoner, with the Edge turned from him. The Prisoner when he approached the Bar (after kneeling) bowed to his Grace the Lord High-Steward, and to the House of Peers; which Compliment was returned him by his Grace, and the House of Peers.

And Proclamation being again made for keeping Silence,

The Lord High-Steward spake to the Prisoner as follows.

George Earl of Winton, you are brought to the Bar of this August Judicature, in order to a fair and impartial Trial, on the Impeachment of High-Treason exhibited against you by the Commons of Great-Britain in Parliament assembled; to which you have answered, and pleaded Not Guilty: Thereupon the Commons have replied, and undertaken to prove you guilty of the High-Treason whereof you stand impeached.

Under

Under this heavy Charge (of which your Lordship has long since had a Copy, and which you will now hear read again) nothing can be a greater Support to your Mind (especially if not conscious of Guilt) than to consider, that you are about to be tried by your Peers; not any select Number of them, but by their whole Body assembled in Parliament, and indifferently summoned to attend this Trial.

Hence your Lordship may be assured, that Justice will be administer'd to you, attended not only with that common Degree of Compassion which Humanity itself derives to Persons in your Condition, but also with that extraordinary Concern for you, which naturally flows from a Parity of Circumstances common to yourself, and to them who judge you, (those Bonds, the weighty Accusation laid upon you, with its Consequences, almost only excepted.)

On the other hand, you must not hope, that if you shall be clearly prov'd guilty, their Lordships, being under the strongest Obligation to do Right that can be laid on noble Minds, I mean that of their Honour, will not break through all the Difficulties unmerited Pity may put in their way, to do perfect Justice upon you, however miserable that must render your Condition.

Your Lordship will not be interrupted while you are making your Defence in a proper manner; and therefore you will also attend with Patience to what shall be said by the Managers of the House of Commons, or given in Evidence against you.

When any of the Witnesses produced against you by the Gentlemen of the House of Commons are thoroughly examined by them, your Lordship will have Liberty to cross-examine every Witness before another is called.

But the Council assigned you are not to cross-examine any Witnesses, nor to give you any Assistance public or private, while Matter of Fact only is in Question; but if any Matter of Law arise during the Course of your Trial, they may speak to it in your Lordship's Behalf: And to that End they are permitted to be within hearing, that they may be the more ready and able to serve your Lordship on such Occasion.

Your Lordship is the first that on an Impeachment for High-Treason will have had the Benefit of a good Law made in the first Year of the late Queen (since the Revolution;) whereby in all Trials for High-Treason, as well as other capital Offences mentioned in the Act, the Witnesses produced on the Part of the Prisoner are to be examined on their Oaths: So that your Witnesses will become entitled, in Respect of the Obligation under which they give their Testimony, to the same Degree of Credit as the Witnesses produced against you will be.

I take it for granted, that if your Lordship desires it, you will be allowed the Use of Pen, Ink, and Paper, to take Notes in order to your Defence: And I doubt not but if during the Trial you are observed to omit any just Advantage which the Law allows you, I shall not only be excused, but approved, if I put you in mind of it.

I am also commanded to acquaint your Lordship, that when you have Occasion to speak, you are to address yourself to the Lords in general, and not to any Lord in particular; as all others who shall have Occasion to speak in this Trial will likewise take notice they are to do.

The Lord High-Steward having done, commanded the Articles of Impeachment, and the Earl of *Wintoun's* Answer thereunto, as also the Replication of the Commons to the said Answer, to be read; and the same were read accordingly, as follows.

ARTICLES of Impeachment of High-Treason exhibited against James Earl of Derwentwater, William Lord Widdrington, William Earl of Nithisdale, George Earl of Wintoun, Robert Earl of Carnwath, William Viscount Kenmure, and William Lord Nairn.

WHEREAS for many Years last a most wicked Design and Contrivance has been formed and carried on, to subvert the antient and established Government, and the good Laws of these Kingdoms, to extirpate the true Protestant Religion therein established, and to destroy its Professors; and instead thereof, to introduce and settle Popery and Arbitrary Power; in which unnatural and horrid Conspiracy great Numbers of Persons of different Degrees and Qualities have concerned themselves and acted; and many Protestants, pretending an uncommon Zeal for the Church of *England*, have joined themselves with professed Papists, uniting their Endeavours to accomplish and execute the aforesaid wicked and traitorous Designs.

And whereas it pleased Almighty God in his good Providence, and in his great Mercy and Goodness to these Nations, to crown the unwearied Endeavours of his late Majesty King *William* the Third of ever-glorious Memory, by making him the Instrument to procure the Settlement of the Crown of these Realms in the illustrious House of *Hanover*, as the only Means under God to preserve our Religion, Laws and Liberties, and to secure the Protestant Interest of *Europe*; since which happy Establishment the said Conspirators have been indefatigable in their Endeavours to destroy the same, and to make Way for the vain and groundless Hopes of a spurious Impostor and Popish Pretender to the Imperial Crown of these Realms.

And to accomplish these Ends, the most immoral, irreligious and unchristian-like Methods have been taken, but more particularly in the last Years of the Reign of the late Queen *Anne*, during which Time all imaginable Endeavours were used by the said Conspirators to prejudice the Minds of the Subjects of this Realm against the Legality and Justice of the said Settlement of the Crown: And for that purpose the Holy Scriptures were wrested, and the most wholesome Doctrines of the Church of *England* perverted and abused by Men in Holy Orders, in the most public and scandalous Manner, in order to condemn the Justice of the late happy Revolution; and thereby to sap and undermine the Foundation of the said happy Establishment; and the most notorious Instruments of these wicked Purposes were countenanced by particular Marks of public Favour and Distinction; false and dangerous Notions of a sole Hereditary Right to the Imperial Crown of these Realms were propagated and encouraged by Persons in the highest Trust and Employments, contrary to the ancient un-

doubted

doubted and established Laws of these Kingdoms ; jesuitical and scandalous Distinctions were invented and publicly inculcated, to enervate the Force and Obligation of those Oaths which had been contrived in the plainest and strongest Terms by the Wisdom of Parliament for the Security of the said Establishment ; and to conceal their Designs, and thereby the better to enable them to carry on the same, great Numbers of the said Conspirators of all Ranks and Conditions, pretending a Zeal for the Protestant Succession, openly and voluntarily took the said Oaths ; groundless Fears of the Danger of the Church of *England* were fomented throughout these Kingdoms, to disorder the Minds of well-disposed Protestants.

By all which and many other such ungodly Practices of the said Conspirators, the most causeless and dangerous Jealousies and Dissatisfactions were created in the Minds of the good People of this Kingdom, and great Numbers of well-meaning, but deluded Protestants were much disquieted.

But nevertheless these dishonest Methods were pursued by the said Conspirators with indefatigable Industry, as the only Means to weaken the Foundations of the said happy Establishment.

And whereas the Dissolution of the late glorious Confederacy against *France*, and the Loss of the Ballance of Power in *Europe*, were further Steps necessary to compleat the Designs of the said Conspirators ; and the same being effected by the late ignominious Peace with *France*, the *French* King was render'd formidable, and the Protestant Succession was thereby brought into the most imminent Danger ; and by these and other pernicious Measures, the Destruction so long intended by the said Conspirators, for these poor Nations, seem'd near at Hand.

At which Time, and under which most deplorable Circumstances, it pleas'd Almighty God in his infinite Wisdom to call to himself the late Queen *Anne*, and by a Concurrence of many most wonderful Providences to give a quiet and peaceable Accession to his present most Gracious Majesty to the Throne of his Ancestors, to which he was received with one full Voice and Consent of Tongue and Heart, and the united Joy of every good Subject and good Protestant, as their only lawful and rightful Liege Lord ; and altho' from the Moment his Majesty ascended the Throne to this Day, his Reign has been one Series of Wisdom, Justice and Clemency ; his Labours constant, unwearied and successful to retrieve the Honour and Reputation of these Nations ; to re-establish the Trade and recover the Wealth of his Kingdoms ; and although all imaginable Encouragement has been given to the Church of *England*, and all Tenderness shewn even to his Popish Subjects, and his constant Care has been to procure the universal Good of his People ; nevertheless the said Conspirators have, by the most vile and impious Methods, renewed their Endeavours to throw these Kingdoms into the utmost Confusion, and to entail endless Miseries on us and our Posterities : For these Ends many of the abovementioned most wicked and dangerous Practices have been repeated with the utmost Industry and Inveteracy, to delude, disorder and corrupt the Minds of his Majesty's good Subjects ; the most groundless Jealousies have been fomented against his wise and happy Admi-

nistration, and in many Parts of his Kingdoms the most unnatural, unexampled Riots and Tumults, by the secret and malicious Endeavours of the said Conspirators, have been procured, stirred up, and encouraged against his peaceable Protestant Subjects, under false Pretences of Zeal for the Church of *England*, and thereby more effectually to delude his good Subjects, and seduce them from their Allegiance, and prepare them for an open Rebellion.

And the said Conspirators having at length resolved to deprive these Nations of the invaluable Blessings which they now enjoy under the wise and gentle Reign of his present most gracious Majesty King *George*, and of the certain Prospect of Happiness which they have for their Prosperity, in a Succession of Princes derived from himself ; did contrive, confederate, and resolve to put their most malicious, wicked, and traitorous Designs into immediate Execution ; for which purpose, *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viscount *Kenmure*, and *William* Lord *Nairn*, together with *Thomas* Forster, Jun. the Lord *Charles* Murray, *Edward* Howard, *Thomas* Errington, *John* Clavering, *William* Shafroe, Sir *Francis* Amderton, *Ralph* Standish, *Richard* Townly, *Thomas* Butler, *Thomas* Walton, *Gabriel* Hasket, *Richard* Gascoigne, and divers other Persons, as false Traitors to his present most sacred Majesty King *George*, the only lawful and undoubted Sovereign of these Kingdoms, having withdrawn their Allegiance, and cordial Love, and true and due Obedience, which they as good and faithful Subjects owed to his said Majesty, did, in or about the Months of *September*, *October*, or *November*, 1715, most wickedly, maliciously, falsely and traiterously imagine and compass the Death of his said most sacred Majesty.

And for the accomplishing and executing their said traitorous Purpose, they the said *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viscount *Kenmure*, and *William* Lord *Nairn*, did, in or about the said Months, or some of them, and at divers other Times, and in divers Places within this Kingdom, wickedly and traiterously agree, confederate, conspire, and resolve, together with many other evil-disposed Persons, to raise, excite, and levy within the Counties of *Teviotdale*, *Northumberland*, *Cumberland*, and the County *Palatine* of *Lancaster*, and elsewhere within this Kingdom, a most cruel, bloody and destructive War, against his Majesty, in order to depose and murder his sacred Majesty, and to deprive him of his Royal State, Crown and Dignity.

And the said *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viscount *Kenmure*, *William* Lord *Nairn*, their Accomplices and Confederates, in or about the Months aforesaid, in the Counties aforesaid, or some of them, did gather together great Numbers of his Majesty's Subjects, and with them did assemble in a warlike and traitorous Manner, in order to raise Tumults and Rebellion within this Kingdom, and having procured great Quantities of Arms, Ammunition and warlike Instruments, at the Times and Places aforesaid, or some of them, did form and compose, or did assist

assist in the forming and composing an Army of Men, consisting of his Majesty's Liege Subjects, in order to wage War against his said Majesty, for and in behalf and in favour of the said Pretender to the Crown of these Realms; and the said last mentioned Conspirators, their Accomplices and Confederates, at the Time and Times and Places aforesaid; and at divers other Times and Places within this Kingdom, did maliciously and traiterously make, levy, and raise War and Rebellion against his most sacred Majesty; and in a warlike and hostile Manner did march thro' and invade several Parts of this Kingdom; and did unlawfully take and seize the Horses and other the Goods and Chattels of many of the peaceable and good Subjects of his Majesty, and in other Places did take and seize, from his Majesty's faithful Subjects, Guns, and other warlike Instruments, for their carrying on their traitorous Purposes.

And the said last mentioned Conspirators, their Complices and Confederates, during their March and Invasion aforesaid, in open Defiance of his most sacred Majesty's just and undoubted Title to the Imperial Crown of these Realms, did wickedly and traiterously cause and procure the said Pretender to be proclaimed in the most public and solemn Manner, as King of these Realms; and in several Places in the Counties aforesaid, or some of them, did unlawfully take and seize from his Majesty's Officers of the Revenue the public Money, for the Use and Service of the said Pretender; and though many of the Conspirators are avowed Professors of the Popish Religion, yet the more effectually to cover and disguise their most wicked and traitorous Designs, and to delude his Majesty's Subjects, they did prevail on and secure several Men in Holy Orders, Ministers of the Church of *England*, and who had before that Time abjured the said Pretender, to accompany, countenance and abet the said most traitorous Enterprize; and in several Places in the Counties aforesaid, where the said Conspirators, their Complices and Confederates then were, to pray for the said Pretender in the public Churches, as King of these Realms.

That the said last mentioned Conspirators, their Accomplices and Confederates, did, on or about the Ninth, Tenth, Eleventh, Twelfth, or Thirteenth of *November* aforesaid, traiterously seize and possess themselves of the Town of *Preston* in the County *Palatine* of *Lancaster* against his Majesty, and did then and there in a warlike and hostile Manner levy War, oppose, engage, and fight against his Majesty's Forces; and did then and there cause and procure a miserable and horrid Slaughter and Murder of many of his Majesty's faithful Subjects:

All which Treasons and Crimes abovementioned were contrived, committed, perpetrated, acted and done, by the said *James Earl of Derwentwater*, *William Lord Widdrington*, *William Earl of Nitbisdale*, *George Earl of Wintoun*, *Robert Earl of Carnwath*, *William Viscount Kenmure*, *William Lord Nairn*, and other the Conspirators aforesaid, against our Sovereign Lord the King, his Crown and Dignity; and contrary to the Duty of their Allegiance, and against the Laws and Statutes of this Kingdom.

Of all which Treasons and Crimes, the Knights, Citizens and Burgeffes in Parliament assembled,

do, in the Name of themselves and of all the Commons of *Great Britain*, impeach the said *James Earl of Derwentwater*, *William Lord Widdrington*, *William Earl of Nitbisdale*, *George Earl of Wintoun*, *Robert Earl of Carnwath*, *William Viscount Kenmure*, *William Lord Nairn*, and every of them.

And the said Commons by Protestation saving to themselves the Liberty of exhibiting at any time hereafter any other Accusations or Impeachments against the said *James Earl of Derwentwater*, *William Lord Widdrington*, *William Earl of Nitbisdale*, *George Earl of Wintoun*, *Robert Earl of Carnwath*, *William Viscount Kenmure*, and *William Lord Nairn*, or any of them; and also of replying to the Answers which the said *James Earl of Derwentwater*, *William Lord Widdrington*, *William Earl of Nitbisdale*, *George Earl of Wintoun*, *Robert Earl of Carnwath*, *William Viscount Kenmure*, and *William Lord Nairn*, or any of them, shall make to the Premises, or any of them, or to any Impeachment or Accusation that shall be by them exhibited according to the Course and Proceedings of Parliament; and do pray, that the said *James Earl of Derwentwater*, *William Lord Widdrington*, *William Earl of Nitbisdale*, *George Earl of Wintoun*, *Robert Earl of Carnwath*, *William Viscount Kenmure*, and *William Lord Nairn*, be put to answer all and every the Premises: And that such Proceedings, Examinations, Trials, and Judgments may be upon them and every of them had and used as shall be agreeable to Law and Justice.

The Answer of George Earl of Wintoun, to the Articles of Impeachment exhibited against him by the Honourable House of Commons, for High-Treason and other High Crimes and Misdemeanours.

THE said Earl saving to himself all Benefit of Exception to the Incertainties and Insufficiencies in the said Articles of Impeachment contained, and also all Advantages and Privileges belonging to him as a Peer of *Great Britain*, for Answer to the said Articles says, That he cannot but esteem it the greatest Addition to his Afflictions, to fall under the Displeasure of the Honourable House of Commons: Yet as his Innocence under these Misfortunes is his Support, so he hopes it will be his Security. He being taken with Persons that were in Arms against the Government, might reasonably be presumed to be equally guilty, and to be justly joined with them in the same Impeachment; but when it shall appear how much the Circumstances of his Case differ from others, he does not doubt but your Lordships great Justice will distinguish him in Judgment; and that it will be as pleasing to that Honourable Body, who are his Accusers, to have an innocent Man acquitted, as one that is guilty condemned. He begs leave to take notice, that he is descended from a very ancient, noble Family, in whose Blood the Streams of Loyalty were always pure, never corrupted or polluted with Treason or Sedition; and he never degenerated so much from his Loyal Ancestors, as to form or carry on any Design to subvert or alter the Constitution of these Kingdoms, but for the Preservation of it was upon all Occasions ready to sacrifice his Fortune, and even his Life: He was

was so cautious to avoid giving occasion to be suspected by the Government, that about eight Years ago, upon his Return from his Travels, he withdrew from all Conversation, and confined himself to his House, never corresponded by Letter with any Person whatsoever; yet to his great Misfortune, he could not be quiet or safe in his closest Retirement; for many Persons, both Officers and others of the Militia of the Shire of *Lothian*, under the specious Pretence of serving the Government, but in reality actuated by private Pique and Revenge, several times, contrary to Law, forcibly entred by Night into his Dwelling-house, called *Seaton* Palace, rifled it, turned his Servants out of Doors, and carried away the Provisions of his Family. The most Sacred Places did not escape their Fury and Resentment, they broke into his Chapel, defaced the Monuments of his Ancestors, took up the Stones of their Sepulchres, thrust Irons through their Bodies, and treated them in a most barbarous, inhuman and unchristian-like manner; Cannon and Mortars were brought to demolish his House, and several Troops of Dragoons having gotten the Possession thereof, some of them kept Guard there, and when they left it, many of the Militia enter'd, and kept Possession thereof till they were driven from thence by the Highlanders, by whom he was likewise very ill treated, he being the only Person that was plunder'd by them. By these and many other Severities, the said Earl was forced to leave his House, and seek for Shelter among his Tenants and Neighbours, where he was pursued from House to House, and at last very unfortunately driven into the Company of some of the Gentlemen named in the Impeachment. He presumes to affirm to your Lordships, that he did not join them with a traitorous, or rebellious Design, but only with an Intention to preserve himself from being insulted and assassinated; for he had been once before taken up without any Warrant or Authority, and having got from the Persons in whose Custody he was, they threatned, if they could retake him, to murder him; and had before imbrued their Hands in the Blood of the Son of a neighbouring Gentleman. He never intended to have left his own Country; and when some Gentlemen mentioned coming into *England*, he oppos'd it; he was far from assisting or encouraging them in their Undertakings; he was not admitted into their Secrets, nor informed of their Designs, and was so much a Stranger to their Proceedings, that when they marched towards *Northumberland*, he was told they were going along the Skirts of the Hills in *Scotland* to avoid General *Carpenter*; but afterwards discovered they were in *England* when it was too late, and to return alone into *Scotland* was too hazardous, which he did not attempt, because he had reason to believe they would soon go back to *Scotland*.

Although he was constrain'd to keep the other Lords and Gentlemen Company, yet he never joined with them in any act of Hostility, nor assisted in taking any of the public Money, or in seizing any Guns or other warlike Instruments, or countenanced or abetted them therein. He did not at *Preston* or elsewhere fire a Pistol, offer Violence to any Person whatsoever, or in any other manner fight against, or resist his Majesty's Forces, but with the rest surrendered himself to General *Wills*. The Honour of a Peer is more

valuable than Life it self, and therefore he ought to be so much the more cautious that it be not stained with the least Imputation of Guilt. The said Earl knows his Innocence, and hopes your Lordships will excuse him, if in Justice to himself, and for the Preservation of his Honour, he does not take upon him the Guilt of Crimes, the very Thoughts of which were always Strangers to his Breast: And therefore, in Answer to the Impeachment, he says, that he is Not Guilty of the Treason and other the Crimes and Misdemeanors mentioned in the said Articles, or any of them, in Manner and Form as is therein alleged; and for his Trial puts himself on your Lordships, who are his Peers, and begs your Lordships to believe that his Answer proceeds from the Sense he has of the Truth of it, and not from Obstinacy or any Inclination to give your Lordships and the Honourable House of Commons any unnecessary Trouble, or from the least Doubt or Mistrust of his Majesty's Clemency. But if upon his Trial it shall appear, that he hath committed any Act which in the Rigour of the Law may be construed to amount to the Crime of High-Treason, he hopes the Innocence of his Heart, and his Ignorance in the Law will, by the Power of your Lordships Intercession, render him an Object of his Majesty's Mercy, which he and the rest at the Time of surrendering themselves were encouraged by his Majesty's Officers to depend upon. The said Earl submits his Case thus circumstanced to your Lordships great Wisdom and Judgment, and humbly prays your Lordships favourable Interpretation thereof, not doubting but to make his Innocence appear to your Lordships Satisfaction.

WINTOUN.

The Reply of the House of Commons to the Answer of George Earl of Wintoun.

A Message was brought from the House of Commons by Mr. *Hampden* and others, to acquaint this House, that they have considered the Answer of *George Earl of Wintoun* to the Impeachment exhibited against him by the Knights, Citizens, and Burgeses assembled in Parliament, and do aver their Charge against the said *George Earl of Wintoun* for High-Treason to be true, and that the said Earl of *Wintoun* is guilty of the High-Treason in such manner as he stands impeached; and that the Commons will be ready to prove their Charge against him at such convenient time as shall be appointed for that purpose.

Lord High-Steward. The Distance of this Place from the Bar is so very great, that I am obliged to ask your Lordships Leave that I come down to the Table.

Lords. Ay, ay.

Which being done accordingly,

The *Lord High-Steward* said, Gentlemen of the House of Commons, you will be pleased now to proceed.

Mr. *Hampden.* MY Lords, we appear in this Place in behalf of all the Commons of *Great Britain*, to make good the Impachment of High-Treason against the Prisoner at the Bar *George Earl of Wintoun*.

The Commons in Parliament assembled being justly alarmed with the Dangers to which this Nation has been exposed by the late unnatural Rebellion, have found it incumbent on them to enquire into the Authors and Promoters of so fatal and pernicious an Attempt, which was no less than to deprive these Nations of the invaluable Blessings which they enjoy under the wise and gentle Reign of his most sacred Majesty King *George*.

The indispenfable Duty which the Commons owe to his Majesty, and to those they represent, engage them to appear in the Cause of their Country, by examining into the Rise and Progress of the said late traiterous Enterprize, contrived and carried on with an Intent to depose and murder his said Majesty, and to set up a Popish Pretender to the Crown of these Realms, and in consequence, to change the Constitution of this Nation, and to introduce a slavish and arbitrary Government.

The Earl of *Wintoun* appearing to the Commons to have been deeply engaged in the late Rebellion, their Zeal and Affection, and their Concern for the Safety of the Nation, and the Protestant Succession, and the Liberties of the People, have rendered it necessary for them to bring to your Lordships Bar this Offender, against whom they have, in the Name of themselves, and of all the Commons of *Great-Britain*, exhibited Articles of Impeachment of High-Treason, setting forth and charging,

That the Earl of *Wintoun* (with his Associates named in the Articles and divers others) contrary to his Allegiance, did traiterously conspire and imagine the Death of his most Sacred Majesty; and in Aid of such Treason, did in the Months of *September*, *October*, or *November* 1715, resolve to levy in several Parts of *Scotland* and *England* a most destructive War against his Majesty.

That his Lordship, with other his Confederates, did assemble in a warlike manner, and procur'd Arms, Ammunition, and warlike Instruments, and did compose an Army to wage War against his Majesty, and did March thro' and invade several Parts of this Kingdom, and unlawfully seiz'd his Majesty's Treasure for the Service of the Pretender, and took away the Horses and other Goods of many of his Majesty's peaceable Subjects.

And that during the said March and Invasion, the Earl of *Wintoun*, with other Rebels, did, in open Defiance of his Majesty's undoubted Title to the Crown of these Realms, frequently cause the Pretender to be proclaimed in a public and solemn manner as King of these Realms.

That the more effectually to disguise these wicked Intentions, and to delude his Majesty's Subjects, the said Earl, with other Rebels, did prevail on several Ministers of the Church of *England*, and who had abjur'd the Pretender, to pray for the Pretender in several public Churches as King of these Realms.

And that the said Earl, his Associates, and Accomplices, did in *November* last, traiterously possess themselves of the Town of *Preston* in the County-Palatine of *Lancaster*, and did levy War and fight against his Majesty's Forces, and procur'd a miserable Slaughter and Murder of many of his Majesty's good and faithful Subjects.

My Lords, the Earl of *Wintoun* has, in his Plea to the said Impeachment, thought fit to deny part

of this great and heavy Charge; and in Answer to other Parts of it, he suggests to your Lordships to the Effect following;

That being taken with Persons that were in Arms against the Government, he might be presum'd to be equally guilty with them; but that when your Lordships shall consider the Circumstances of his Case, he doubts not of finding a Distinction from others in your Judgment.

He acquaints your Lordships with the Loyalty of his Ancestors, from whose Character, he says, he is not so much degenerated, as to form or carry on a Design against the Constitution of these Kingdoms.

That to avoid being suspected by the Government, he withdrew himself some Years ago from all Conversation, and retir'd to his own House; but that several of the Militia of the Shire of *Lothian*, under pretence of serving the Government, did, contrary to Law, forcibly enter his Lordship's House, which they rifled, and committed several other Disorders there.

That afterwards Cannon and Mortars were brought to demolish his House, and several Troops of Dragoons took Possession of it; and upon their leaving it, the Militia came and kept Possession of his House till they were driven thence by the Highlanders, by whom he was also very ill treated.

That by these Severities, and afterwards not being suffered to live quietly among his Tenants, where he had retir'd for Shelter, he was driven into the Company of some of the Gentlemen named in the Impeachment; but affirms to your Lordships, that it was with an Intent to preserve himself from being assassinated.

That he oppos'd the Proposition of coming into *England*, and was not acquainted with the Designs of the other Gentlemen with him; and was surpriz'd when he found himself in *England*, but declin'd going back, because he believ'd they would soon return to *Scotland*.

That he did not assist in taking any of the public Money, or in seizing any warlike Instruments.

That he did not at *Preston*, or elsewhere, fire a Pistol, offer Violence to any Person, or fight against his Majesty's Forces, but surrender'd himself to the King's General.

And as an Inducement for such Surrender, his Lordship says, that he, and the rest with him, were at that time encouraged by his Majesty's Officers to depend on his Majesty's Mercy.

My Lords, notwithstanding what is contain'd in the Earl of *Wintoun's* Plea to the Impeachment of the Commons, and the specious Explanation of his, as were a Foundation to the Commons to include his Lordship in the Articles against the other Lords mentioned therein; we make no question but we shall shew the Fallacy and Insufficiency of the said Plea to our Charge against him, and make it appear, that no less is contain'd in our Accusation against his Lordship, than what the Law in every Man's Breast, the Light of Nature, and the Rules of Society disapprove of, and condemn.

We shall in the Course of our Evidence prove to your Lordships, that the Earl of *Wintoun* joined early with the Rebels in *Scotland* in the beginning of this Enterprize; and that the Disorders mentioned in his Plea to have been committed

mitted at his House, and which he alledges as the Ground of his leaving it, and seeking Shelter among the Rebels, were not the true Cause of his joining them, since his Lordship had left his House before the Highlanders came to it.

This Noble Peer was too great a Person to act an ordinary Part in this Rebellion. He openly engag'd in it, and not only appeared in Person, but led on, and encouraged his Associates in it; some of which, through the Blessing of God on his Majesty's Arms, are now in the Hands of Justice, and others have suffer'd for the same Treason.

We shall prove to your Lordships, that the Earl of *Wintoun* form'd a Troop of Horse, which he maintain'd at his own Charge.

That he afterwards commanded a Squadron of Horse, and that he continued his Command thereof in the several Marches to *Preston*, and until the Surrender of that Place to the King's Forces.

That during the several Marches of the Rebels, the Earl of *Wintoun* was with them on Horseback, arm'd with a Sword and a Case of Pistols; and that he never shew'd any Uneasiness, but always appear'd as forward as any one; and that at the Action at *Preston* his Lordship was assisting, and very active among the Rebels.

That at several Places in *Scotland* and *England*, his Lordship, and other Rebels, caus'd the Pretender to be proclaimed King of these Realms, and that his Lordship was present at such Proclamations.

That his Lordship, and other Rebels, did in several Places cause his Majesty's Treasure to be seiz'd, for the Service of the Pretender; and did in several Places prevail on Ministers of the Church of *England*, and who had abjur'd the Pretender, to pray for him in the public Churches, as King of these Realms.

That when the Rebels surrender'd themselves at *Preston* to the King's Forces, they were far from receiving any Assurances of Mercy from his Majesty's Officers; but were acquainted by the said Officers, that his Lordship, and others taken with him, had no Reason to expect Mercy, since they were taken in open Rebellion against his Majesty.

My Lords, the Commons, who are ever vigilant for the Safety of his Majesty, and for the Preservation of the Liberties of the People, cannot answer it to God or their Country, if they should neglect to exert themselves, in bringing to exemplary Justice the open and declared Instruments of this Rebellion; and it is a Satisfaction to the Commons, that in the Course of their Interposition, to rescue the Nation from the fatal Consequences of the late unprovok'd Rebellion, whatever Misrepresentations other Prosecutions may have been formerly liable to, the Notoriety of this Rebellion has been so evident, that the most malicious of our Enemies want Confidence to deny it.

We are not surpriz'd, that Papists should be engag'd in this Rebellion, tho' the most unnatural and unexampled in its Circumstances, by being void of the least Pretext of Provocation, since they maintain it lawful to kill a Heretic King, and such they term his present Majesty, and 'tis declar'd by them, that such a Piece of

Service is not only lawful, but pious, and agreeable to God.

But how Protestants could be possess'd with such a Spirit of Infatuation, and to such a Degree be deluded, as to believe the most secure and effectual Way to protect the Church, was to have Recourse to a Popish Prince, to rescue it from the Danger they imagined it liable to, from the Protestant Succession taking place: And how it could enter into the Hearts of Protestants to be fir'd with such an ill-directed Zeal, as to act in conjunction with avow'd Enemies of their Religion and Liberties, is not to be accounted for; unless such unnatural and destructive Attempts are some of the necessary Consequences of the late Male-Administration.

No less was to be the Sacrifice, than of his Majesty, and his Royal Family, (a Succession of Princes appointed by Divine Providence to be the Guardians of the Protestant Interest in *Europe*) and of our present happy Constitution, to appease the Fury of Papists and Protestants associated in this Rebellion, and who envied us the Blessings we enjoy'd by the uninterrupted Exercise of our Religious and civil Rights and Privileges.

Had this Rebellion taken place, this Nation, the Glory of the Reformation, the most substantial Bulwark against Popery, and that had at the happy Revolution, under the Influences of King *William* the Third, of immortal Memory, triumph'd over the arbitrary Designs of our Enemies to subvert our Constitution, was to fall a Victim to Bigotry, Superstition and Slavery, the pernicious and necessary Consequences of introducing a Religion, void of natural Sense and natural Conscience.

If an Attempt to subvert the Government, to destroy the King, and set up a Popish Pretender: if marching in an hostile Manner: if carrying on a destructive War in the Bowels of the Nation, are only Acts of Surprize and Inadvertancy, any Rebellion may be palliated over and excus'd; since scarce any Circumstances can be added in Aggravation of that, which has lately been rais'd and carried in this Kingdom.

My Lords, I have acquainted your Lordships with the necessary Occasion of this Prosecution: I have endeavour'd in the most impartial Manner to discharge the Trust repos'd in me, by opening the Nature of the Charge against the Earl at the Bar. I have likewise stated to your Lordships the Substance of his Plea to the Impeachment of the Commons. I have given your Lordships a general View of the Evidence which we shall produce, to make good our Charge, and to shew the Invalidity of the said Plea; and from the Malignity of the late rebellious and traitorous Enterprize, and its fatal Tendency, I have represented the Necessity the Commons were under of applying to your Lordships for National Justice. I am not insensible how deficient I have been, in not setting a Matter of this Importance in the most advantageous Light; but I make no doubt, but that what is wanting in me, will be supplied by the Abilities of others that follow, and that your Lordships will find no Defect in their Discharge of the Parts they have taken in this Prosecution, whatever you may have found in the Opening of the Charge, and in that Part which has come to my Share.

Sir Joseph Jekyll. I Have the Command of the House of Commons upon me, to bear a Part in the Prosecution of their Impeachment against this Lord at the Bar.

And that which is assigned to me, is first to observe to your Lordships the Nature of the Charge; and in the next Place, to take notice of the Defence made to that Charge; and lastly, to give your Lordships a general View of the Evidence which the Commons will produce to maintain their Accufation.

And this I shall do with all the Plainness I am capable of, without attempting so vain and wicked a Thing, as to impose upon your Lordships, or divert you from the true Merits of this Cause.

My Lords, The Charge exhibited against this Lord, is a Charge of High-Treason; High-Treason at the Common Law, as declared by the Statute of the 25th of King *Edward III.* And there are two Species of High-Treason mention'd in that Statute, which the Commons have taken notice of in their Articles of Impeachment. The First is compassing and imagining the Death of the King; the Second is levying War against his Majesty.

My Lords, The Overt-Acts that are set down in the Articles, I think, may be reduced to these Heads: First, a Conspiracy of the Earl of *Wintoun*, with other Lords and Gentlemen his Accomplices, to levy War with an Intent to depose the King; and a Conspiracy to levy such a War hath been held a sufficient Overt-Act of compassing and imagining the Death of the King.

My Lords, The next Overt-Act is, his Lordship's joining with his Accomplices in proclaiming the Pretender, which is endeavouring to set up another Prince in the Room of his Majesty; and I believe it will not be doubted, but that is likewise an Overt-Act of the same Species of Treason. And if there wanted another Overt-Act, the levying War against the King with an Intent to depose him (which is likewise mention'd in the Articles, as a distinct Species of Treason) may serve for an Overt-Act of the other Species of compassing and imagining the King's Death; for tho' it is reckon'd in the Statute as a distinct Treason; yet it doth not thereby cease to be of the Nature of an Overt-Act of compassing and imagining the King's Death which it was antecedent to, its being declar'd a distinct Species; and this Point is likewise supported by Authorities, and many Attainders have been upon it.

My Lords, The second Species of High-Treason I charge upon this Lord, is that of levying War against the King; and the Overt-Acts mentioned are, the forming an Army, marching in an hostile Manner, seizing a Town, the Town of *Preston*, engaging and fighting with the King's Forces.

My Lords, Perhaps it was not necessary to have alledged any of these Overt-Acts of levying War against the King, because levying War itself being an Act, it supersedes the Necessity of instancing particular Acts of Hostility. But to avoid all Cavals, these particular Acts are likewise alledged in the Commons Impeachment.

My Lords, I find another Crime charged upon this Lord who stands at the Bar, and that is Murder, the Murder of many of the King's faithful Subjects. And although this Crime is not mentioned in the Title of the Articles, and there was

a good Reason for not doing it, since it is swallow'd up in the High-Treason, the greater Crime in the Eye and Estimation of the Law, yet it doth not thereby lose its moral Existence or real Guilt; but on the contrary, by accompanying the other Crime of High-Treason, is aggravated, and shews with what Mischief his Heart may be filled, who at the same time he is murdering his Fellow-Subjects, is meditating the Destruction of his Prince, and the Overthrow of his Country's Liberty.

My Lords, this is the Nature of the Charge against my Lord. In the next Place I shall take notice of that which occurs to me to be material in his Lordship's Defence, or the Answer he hath put in to this Charge.

My Lords, he hath pleaded generally Not Guilty; but not wholly relying on that general Plea, he hath in his Answer added a particular Specification of his Case. He begins in his Answer, by taking notice and admitting, *That he being taken with Persons that were in Arms against the Government, might reasonably be presumed to be equally guilty, and to be justly joined with them in the same Impeachment.* He goes on to acquaint your Lordships with what severe and barbarous Usage he met with at his Dwelling-House, which he says forced him from his House. He tells your Lordships at last, he was *very unfortunately driven into the Company of some of the Gentlemen named in the Impeachment*; but he presumes to affirm to your Lordships, *that he did not join them with a traitorous or rebellious Design, but only with an Intention to preserve himself from being insulted and assassinated*; then he says, *Altho' he was constrain'd to keep the other Lords and Gentlemen Company, yet he never joined them in any Act of Hostility.* But yet he is still under some Diffidence of his Case, therefore your Lordships will find at the Close of his Answer he says, *But if upon his Trial it shall appear that he hath committed any Act, which in the Rigour of the Law may be construed to amount to the Crime of High-Treason, he hopes the Innocence of his Heart, and his Ignorance in the Law, will, by your Lordships Intercession, render him an Object of his Majesty's Mercy, which he and the rest, at the Time of Surrendering themselves, were encouraged by his Majesty's Officers to depend upon.*

My Lords, this special Case which my Lord hath made in his Answer, is not at all like the Case in my Lord Chief Justice *Coke's* Third Institutes, Fol. 10. upon an Impeachment of High-Treason. Several Persons were found to join with Sir *John Oldcastle* and others (who were in open Rebellion) *pro timore Mortis, & quam cito potuerunt recesserunt*, and thereupon they were acquitted; but here my Lord doth not pretend that any Force was upon him, when he went in and joined the Rebels. I may therefore presume to say this Lord's Defence is a weak and doubtful one, but far be it from the Commons to desire to convict his Lordship of the High-Treason charged upon him by an Infirmary in his Defence, or by any Means whatever, but by the Strength and Clearness of the Evidence they shall produce to your Lordships, and for that I shall trouble your Lordships but a very little with representing to you the general View of the Evidence that we shall produce, and it is this: This Lord thought fit to go in and join the Rebels, not alone, but accompanied with fourteen of his own Servants; when he was there, he formed a Troop, consisting of his own Servants, and others; he paid the Troop,

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commanded a Squadron of the Rebels Horse in their March; assisted at the several Proclamations of the Pretender; when there was an Alarm given of the coming of the King's Forces, he got on Horse-back in order to oppose and fight them; and he was in Arms and active with the Rebels in the Action at *Preston*; and we shew your Lordships that at the Surrender there no Promise was made, no Expectation of Mercy was raised by any of the King's Officers in the Mind of this Lord, or of any of his Accomplices.

My Lords, though this be not material to the Issue now joined before your Lordships, yet it being put into my Lord's Answer, and being necessary for the Vindication of public Justice, we shall shew plainly there was not the least Encouragement or Intimation of that kind given.

My Lords, the Evidence will be more largely and particularly taken notice of, by the Gentleman who is to come after me; and I am sure my Defects will be amply made up, by what he will offer to your Lordships.

But I can't sit down without taking notice, that if this heavy Accusation be prov'd against the Lord at the Bar, it is a strange Notion of Loyalty, so much boasted of in my Lord's Answer, which he hath been pleased to entertain.

My Lords, there is not a nobler or more useful Principle belonging to a *British* Subject, than true Loyalty: Loyalty is a faithful and dutiful Obedience to the King, under the Sanction and Direction of the Law. If therefore his Lordship hath contracted the Guilt of this high Offence against the Law, which is charged upon him, he hath offended against this Principle: And this I will say in general, whoever they be who cast the Law out of the Idea of Loyalty, they loosen the Bands of Allegiance; for it is the Law that binds upon the Conscience of the Subject the Faith and Allegiance he owes to his Sovereign, as it doth upon the Conscience of the Sovereign, that Justice and Protection he affords to his Subjects.

Mr. Attorney-General. MY Lords, the Charges mentioned in the Articles of Impeachment exhibited by the Commons of *Great-Britain* against the Earl of *Wintoun*, the Prisoner at the Bar, and the Nature of his Crimes, having been fully open'd by *Mr. Hampden* and *Sir Joseph Jekyll*; what remains for my Part is to give your Lordships an Account of the Nature of the Evidence we shall produce to your Lordships against the Prisoner, to prove him guilty of the High-Treason for which he stands impeached. He is charged with two Species of Treason, mentioned in the Statute of the 25 *Edw. III. viz. First*, compassing and imagining the Death of our sovereign Lord the King, whom God long preserve. *Secondly*, levying War against the King within this Realm.

The Evidence that will be a Proof of the latter Treason, will also prove the first: For levying War to depose the King, is an Overt-Act of conspiring the Death of the King, and hath always been so adjudged.

I shall briefly, and with as much Clearness and Truth as I can, state the Evidence against the Prisoner, as it will appear by the Witnesses we shall produce, without aggravating any thing which I do not think proper or necessary, your Lordships being Judges of the Fact, and of the Law arising thereupon. I shall only make this

Observation on the Preamble to the Earl's Plea, that it directly contradicts his Plea of Not Guilty; and that if what he alledges be taken as true, he therein owns himself to be guilty, though from thence he concludes, that he is not guilty.

In *September* last, the late Earl of *Mar* in *Perthshire*, and in the beginning of *October*, *Mr. Forster* with some of the attainted Lords in *Northumberland*, with a great Number of armed Men, raised a Rebellion in Favour of the Pretender, and proclaimed him King of these Realms, and set up his Standard.

About the seventh or eighth Day of *October* last, the Earl of *Wintoun* left his Seat at *Seaton* in the County of *Lothian*, armed with a broad Sword and Pistols, and carry'd with him fourteen or fifteen of his Servants well mounted, and so armed; about the tenth Day of *October* joined the Earl of *Carmarthen* and the Lord Viscount *Kenmure* at *Moffett* in the County of *Annamdale*, and there they formed a little Army, which was commanded by Lord *Kenmure* till they joined *Forster*.

The Lord *Wintoun* formed a Troop with his own Servants and others, and it was called his Troop, and he paid his own Servants eighteen Pence or two Shillings a Day, and he commanded from that Time a Squadron of Horse, till he and the others surrendered to the King's Forces at *Preston*.

About the fourteenth or fifteenth Day of *October*, the Earl of *Wintoun* and the rest of the Rebels marched from *Moffett*, in a hostile Manner, with Trumpets and a Standard to *Lochmaben*. There the Pretender was proclaimed King of *Scotland, England, &c.* and the Earl of *Wintoun* attended, and joined in the Proclamation, with his Sword drawn. Thence the Rebels marched to

<i>Auchterfechen,</i>	<i>Fedburg,</i>
<i>Langholm,</i>	<i>Rodberry,</i>
<i>Hawick,</i>	<i>Wooler,</i>

where, about the twentieth Day of *October*, *Forster* and his Rebels, being about five hundred, joined the Lord *Wintoun* and the other *Scots*, being three Troops of Horse.

From *Wooler* they all marched to *Kelsoe* in *Tiviotdale*, where the Highland Foot, commanded by *Mackintosh*, joined them. There, at the Cross, the Pretender was again proclaimed King, with Sound of Trumpet and Colours flying, the Lord *Wintoun* and the rest assisting.

On the seventeenth Day of *October* they marched back to *Fedburg*, and there were alarmed with an Account that the King's Forces were near; on which they mounted, and marched out of Town, and drew up, the Earl of *Wintoun* being very active; but the Forces advancing being discovered to be part of the Rebels, they returned to *Fedburg*; and on the twenty-ninth Day of *October* they marched to *Hawick*.

Here Cockades were made of blue and white Ribbons for the *Scots* Rebels, to distinguish them from the *English*, who had red and white, and the Earl of *Wintoun* wore one, and gave others to his Men.

On the thirtieth Day of *October*, from *Hawick* they marched to *Langholm*: Here, on the thirty-first Day of *October*, about five or six Hundred of the Highland Foot left them, and went back; and they would not suffer any Person to come to them, to persuade them to return, but the Earl of *Wintoun*; and he went to persuade them, but could not prevail, and he returned, and declared it

it was not his Fault that they went away ; and he after very much promoted the Rebels coming into *England*.

Here the Earl might have safely left the Rebels, if he had thought fit, without Hazard ; and he had not gone alone, as in his Preamble he alledges.

From *Langholm* the Rebels marched to *Langtown* in *Cumberland* ; and on the first Day of *November* to *Brampton* ; on the Second to *Penrith* ; on the Third to *Appleby* ; on the Fifth to *Kendall* ; and on the Sixth to *Kirby-Lonsdale*.

At all these Places the Pretender was proclaimed King, the Earl of *Wintoun* assisting.

On the Seventh Day of *November* they marched from *Kirby-Lonsdale* to *Lancaster*, into which the Rebels marched with their Swords drawn, particularly the Earl of *Wintoun* ; and here they again proclaimed the Pretender King, Lord *Wintoun* assisting in the Circle.

Here the Rebels seized Arms, and some pieces of Cannon.

From *Lancaster* the Horse of the Rebels marched on the Ninth Day of *November* to *Preston*, the Foot halted at *Garstang*, and came to *Preston* the Tenth.

In the Way to *Preston* the Rebels were joined with about Fifteen Hundred Men, most part being of the County of *Lancaster*.

And at *Preston* the Pretender was again proclaimed at the Cross.

During this March, at several Places, particularly at *Duns*, *Brampton* and *Appleby*, the public Revenue of the King was collected by the Rebels, and Cesses raised on the King's Subjects.

They marched with Drums, Trumpets and Colours ; and, where they could, took Prisoners, such as appeared for his Majesty.

They caused the Pretender to be pray'd for, as King, in the Churches in *Lancaster*, and other places in their March.

Their constant Health was the Pretender's, by the Name of King *James*, and Success to their Cause.

During the whole March the Earl of *Wintoun* never shewed any Uneasiness or Backwardness, but always appeared as forward and active as any of the Rebels.

Mr. *Calderwood*, their Quarter-Master quartered the Scots in all Places ; and the best, next to the Lord *Kenmure's*, he provided for the Earl of *Wintoun*, who used to complain, if good Quarters were not provided for him.

The next Part of our Evidence will be to shew what happened at *Preston*, of which the Rebels had taken Possession the Tenth Day of *November*.

On *Saturday* the Twelfth Day of *November*, about One in the Afternoon, General *Wills* with the King's Forces invested the Town, and attacked it that Day and on *Sunday*, and the Rebels defended it, and had made a Barrier at the entering of the Town, and planted the Foot in several Lanes and Streets for their Defence, and had the Cannon with them which they seized at *Lancaster*.

The Earl of *Wintoun* during the Attack was with the other Lords, at the Head of two hundred Men, drawn up in the Market-Place ; he had his Sword, a Pistol in one Hand, and another in his Breast ; during that Attack, several of his Majesty's Officers and Soldiers were killed.

On *Sunday*, about Ten in the Morning, Ge-

neral *Carpenter* came also to *Preston*, with the King's Forces under his Command. Thereupon the Rebels finding themselves to be surrounded, about Three in the Afternoon sent out Colonel *Oxborough* to the Generals, to know what Terms would be granted to them if they would surrender ; the Generals gave this Answer, That no Terms would be granted to them, but that they must surrender at Discretion.

Soon after the Rebels sent out Captain *Dalziel*, to desire time till Seven a Clock on *Monday* Morning, to consider whether they should surrender at Discretion. Upon which General *Carpenter* sent Colonel *Churchill*, and General *Wills* Colonel *Cotton*, into the Town, to acquaint the Rebels that the Time desired should be allowed them, provided they sent out immediately an *English* Lord, and one of the *Mackintoshes*, as Hostages, that none within the Town should attempt to Escape, or make any Works for their Defence.

Colonel *Churchill* and Colonel *Cotton* went into the Town, and there met the Earl of *Wintoun* and the other Lords, and Mr. *Forster*, and told them their Message : All the Lords treated with them about the surrendering the Town, and severally gave their Words, that if Time might be allowed them till next Morning to surrender, they would use their Endeavours that none should make their Escape, and that they would not throw up any new Works for their Defence. Which Terms were agreed to, and the Earl of *Derwentwater* and Colonel *Mackintosh* were delivered to them, and brought to the Generals as Hostages, and staid all Night ; and in the Morning early the Rebels agreed to surrender at Discretion ; and the Lord *Forester* took Possession of the Town, where he found the Earl of *Wintoun* in Arms, and he surrendered himself to the Lord *Forester*, and delivered to him two Cases of Pistols ; and being in Custody, complained of the little Regard Mr. *Forster* had shewed to a Man of his Quality, and said all the Respect that he had shewed him, was to give him the Post of Honour when there was any Danger.

The Generals *Carpenter* and *Wills* never offered any other Terms than that the Rebels should surrender at Discretion, never promised them Mercy, or that they would even intercede for Mercy for them ; nor gave the Colonels, sent into the Town, any Orders to offer Mercy ; nor did they : All the Encouragement they gave them to surrender at Discretion, was, that if they did so, they should not be immediately put to the Sword by the Soldiers ; and denied to promise, even to recommend them to the King's Mercy.

This is the Substance of the Evidence we shall lay before your Lordships, and the Order we shall give it in ; and if what I have opened be proved, as I believe it will, or I would not have mentioned it, I apprehend it will fully prove the Charge against the Noble Lord, and shew how vain the Allegations in the Preamble to his Plea are.

I beg leave to say one thing more. The Noble Lord alledges, in the Preamble to his Plea, that he never shot off a Pistol : Certainly that is not material ; for assembling and marching in a Hostile manner for a public Purpose, and opposing the King's Forces, is levying a War, although the Lord accused never shot off a Pistol.

We

We will call our Witnesses, and begin with *William Calderwood*, who was Quarter-Master the whole time with Lord *Wintoun*.

Sir *J. Fekyll*. My Lords, we desire that *William Calderwood* may be sworn.

L. H. Steward. Is it *William Calderwood* you call?

Sir *J. Fekyll*. My Lords, we desire *William Calderwood* may be sworn.

And he was sworn by the Clerk accordingly.

Sir *J. Fekyll*. Mr. *Calderwood*, pray acquaint my Lords with what you know concerning this Rebellion, or any Part that the Noble Lord at the Bar had in it; tell the Story according to your own Method.

L. H. Steward. Do you hear what Question is asked? You are upon your Oath; give an Account of what you know of the late Rebellion, and what Part the Noble Lord at the Bar had in it.

Calderwood. Upon the Eleventh of *October* I went, with about Seventy Horse, to join my Lord *Carnwath*, my Lord *Wintoun*, and my Lord *Kenmure* at *Moffett*; where the Pretender was proclaimed.

Attorney-General. We desire that he may acquaint your Lordships, what Number of Men they had at *Moffett*.

Calderwood. One Hundred and Fifty.

Att. Gen. What Number of Men?

Calderwood. One Hundred and Fifty.

Att. Gen. Was the Prisoner at the Bar amongst them? and did he bring in any with him?

Calderwood. Yes.

Att. Gen. About what time did he come in?

Calderwood. Towards the Evening of the Eleventh Day.

Att. Gen. What Day?

Calderwood. The Eleventh.

Sir *J. Fekyll*. What Number did the Lord *Wintoun* bring with him?

Calderwood. About Fourteen.

L. H. Steward. You speak of the Prisoner at the Bar; he came in with Fourteen Men?

Calderwood. Yes, my Lord.

Att. Gen. Were they all armed; or how many were armed?

Calderwood. I don't know whether all were, but the most part of them were, with Sword and Pistol.

L. H. Steward. You have said at what Place they were, but your Voice did not reach hither; at what Place?

Calderwood. At *Moffett*.

Sir *J. Fekyll*. When my Lord at the Bar joined the Rebels, what did they do? Go on, and tell your Story.

Calderwood. They went to *Lochmaben*.

Sir *J. Fekyll*. When did the Lord at the Bar join them there?

Calderwood. The next Day.

Att. Gen. What was done there?

Calderwood. The Pretender was proclaimed there next Day.

Att. Gen. Was the Noble Lord at the Bar assisting at the proclaiming of him?

Calderwood. Yes, he was.

Att. Gen. In what manner did he assist?

Calderwood. With his Sword drawn on Horseback.

L. H. Steward. Who did assist at the Proclamation with a drawn Sword?

Calderwood. The Earl of *Wintoun*.

Att. Gen. Whence did you march from thence?

Calderwood. To *Auchteltechen*.

Att. Gen. Whither did you march from thence?

Calderwood. To *Langholm*.

Sir *J. Fekyll*. And whither then?

Calderwood. To *Hawick*.

Att. Gen. Go on.

Calderwood. The Pretender was proclaimed there.

Sir *J. Fekyll*. Was the Lord *Wintoun* present at the Proclamation?

Calderwood. Yes.

Sir *J. Fekyll*. Whence did you go from thence?

Calderwood. To *Fedburg*.

L. H. Steward. Was the Pretender proclaimed there?

Calderwood. Yes.

Sir *J. Fekyll*. Who were present?

Calderwood. The Earl of *Wintoun*, *Carnwath*, and all the Lords.

Att. Gen. Where did you march then?

Calderwood. To *Rodberry*.

Att. Gen. What happened there?

Calderwood. We were join'd by General *Forster*.

Att. Gen. How long did you stay there?

Calderwood. Two Nights.

Att. Gen. Was the Pretender proclaimed at *Rodberry*?

Calderwood. No.

Att. Gen. What Place did you go next to?

Calderwood. To *Wooler*.

Att. Gen. Whither from thence?

Calderwood. To *Kelsoe*; where we were join'd by the Highland Foot.

Sir *J. Fekyll*. What Foot do you mean?

Calderwood. The Highlanders.

Sir *J. Fekyll*. Who commanded them?

Calderwood. Brigadier *Mackintosh*.

Sir *J. Fekyll*. From *Kelsoe* whither did you go?

Calderwood. Back again to *Fedburg*.

Sir *J. Fekyll*. Whether from *Fedburg*?

Calderwood. To *Hawick*.

Att. Gen. What happened at either of these Places?

Calderwood. Nothing.

Sir *J. Fekyll*. At *Hawick*; did nothing happen there?

Calderwood. No.

Att. Gen. Was the Pretender proclaimed at *Hawick* at either of the Times?

Calderwood. Yes, the first time, but not the second.

Att. Gen. Who were present?

Calderwood. All the Lords.

Att. Gen. Name them — Was the Prisoner at the Bar there?

Calderwood. Yes.

Sir *J. Fekyll*. From *Hawick*, the second time, to what Place did you go?

Calderwood. To *Langholm*.

Att. Gen. What happened at *Langholm*?

Calderwood. Five or Six Hundred of the Highland Foot went from us.

Att. Gen. Was there any Endeavours used to bring those Five Hundred Highlanders back again?

Calderwood. I don't know of any.

Sir *J. Fekyll*. Who went to them? Did any of those that were in Arms go to them?

Calderwood. I was not there when they went off.

Att. Gen.

Att. Gen. Did the Noble Lord attempt to go with them, the Prisoner at the Bar ?

Calderwood. No ; at *Fedburgh* the Earl of *Wintoun* went up to them, to make them come back ; where the Foot designed to go, and the Horse were drawn up ; and they would have no Body come to them but the Prisoner.

L. H. Steward. I do not hear you ; What do you say ?

Calderwood. At *Fedburgh* the Earl of *Wintoun* went to them.

Att. Gen. Did he declare any thing after his Return, about their going off, or their not returning ?

Calderwood. No, not at *Fedburgh*.

Att. Gen. Any where else ?

Calderwood. I heard him at *Langtown* say, it was not his Fault they were gone off.

Att. Gen. Pray, might not my Lord *Wintoun* have gone off with them, if he would ?

Calderwood. Yes, he might.

Att. Gen. From *Langtown* whither did you go ?

Calderwood. To *Brampton*.

Att. Gen. Whither next ?

Calderwood. To *Penrith*.

Att. Gen. Whither next ?

Calderwood. To *Appleby*.

Att. Gen. Whither next ?

Calderwood. To *Kendall*.

Att. Gen. Whither next ?

Calderwood. To *Kirby-Lonsdale*.

Att. Gen. What happened there ?

Calderwood. The Pretender was proclaimed at the two last Places.

Sir J. Fekyll. Who was there ?

Calderwood. I saw him there ?

Sir J. Fekyll. Who ?

Calderwood. The Earl of *Wintoun* at *Kirby-Lonsdale*.

Sir J. Fekyll. Whither did you go from thence ?

Calderwood. To *Lancaster*.

Sir J. Fekyll. Was the Pretender proclaimed there ?

Calderwood. Yes.

Sir J. Fekyll. Who were present ?

Calderwood. Earl of *Wintoun*, *Kennure*, *Carnwath*, *Nithisdale*.

Sir J. Fekyll. How did they enter the Town of *Lancaster* ?

Calderwood. Sword in Hand.

Att. Gen. Was there any Arms or any Guns seized ?

Calderwood. Yes, six Cannon were seized ?

Att. Gen. From whence did they take them ?

Calderwood. From a Ship.

Att. Gen. Speak up, and tell my Lords.

Calderwood. They seized six Guns.

Att. Gen. Whence did they take them ?

Calderwood. From a Ship.

Att. Gen. What became of them ?

Calderwood. They carried them to *Preston*, and mounted them there.

Att. Gen. What time came you to *Preston* from *Lancaster* ?

Calderwood. What time ? we staid two Nights at *Lancaster*.

Mr. Cowper. Sir, I desire to ask you a Question — Whether you was at Church at *Lancaster* ?

Calderwood. Yes.

Mr. Cowper. Who was prayed for there ?

Calderwood. The Pretender as King of *England*.

Sir J. Fekyll. Who was at Church ? Was it the Parish Church ?

Calderwood. Yes, the Parish Church.

Sir J. Fekyll. Who was present at Church ?

Calderwood. I don't remember.

Mr. Cowper. From *Lancaster* whither did you go then ?

Calderwood. We went to *Preston*.

Mr. Cowper. What Day did you arrive at *Preston* ?

Calderwood. The Ninth or Tenth Day of *November*.

Mr. Cowper. Did the Horse and Foot arrive the same Day ?

Calderwood. No, the Horse came in one Day, and the Foot another.

Mr. Cowper. How long after the Horse did the Foot come ?

Calderwood. The next Day ; then the Pretender was proclaimed. The Horse came in on a *Wednesday*, the Foot on *Thursday*.

Att. Gen. Had you any Distinction between the *Scots* and *English*, by Cockades ?

Calderwood. Yes.

Att. Gen. What was the Distinction ?

Calderwood. The *Scots* had Blue and White, and the *English* had Red and White.

Att. Gen. Did the noble Lord meddle with any Cockade ?

Calderwood. Yes, he had one at *Hawick*.

Att. Gen. Did he distribute them ?

Calderwood. Yes, he delivered them from my Hands.

L. H. Steward. Who do you speak of ? Raise your Voice.

Calderwood. I say, my Lord, the Earl of *Wintoun* had a Cockade at *Hawick*, and took several of them from my Hands, and gave them away as he thought fit.

Sir J. Fekyll. You saw the Earl of *Wintoun* at *Preston* when the King's Forces came thither ; do you remember what passed afterwards ?

Calderwood. My Lord, I saw him, he had Sword and Pistols ; he was a Foot by the Church-yard.

Att. Gen. As you came along to *Preston*, acquaint my Lords whether you know any think of the public Revenues being collected ?

Sir J. Fekyll. Before that, when my Lord was on Foot with Sword and Pistols going towards the Church-yard, was there any Forces drawn up there ?

Calderwood. Yes, both Horse and Foot were drawn up in the Church-yard.

Sir J. Fekyll. While my Lord was in Company, and in this March, was there any Troop formed ?

Calderwood. Yes, there was a Troop.

Sir J. Fekyll. Who had any of those Troops ?

Calderwood. My Lord *Wintoun* had the First.

Sir J. Fekyll. Of whom did his Troop consist ?

Calderwood. It consisted partly of Gentlemen, and partly of his own Servants.

Sir J. Fekyll. By whom were they paid ?

Calderwood. By my Lord *Wintoun*.

Sir J. Fekyll. How much a Day ?

Calderwood. Two Shillings a Day.

Sir J. Fekyll. In what manner was the Troop accoutred ?

Calderwood. Very well, with Swords and Pistols.

Att. Gen.

Att. Gen. Did my Lord's Servants retain his Livery in the Army?

Calderwood. He had five in Liveries.

Att. Gen. What were the rest?

Calderwood. Domestic Gentlemen.

Att. Gen. Did my Lord command only that, or any other Body?

Calderwood. He commanded a Squadron.

Sir J. Fekyll. In your Passage, did my Lord discover any Uneasiness, or seek for any Opportunity of leaving them?

Calderwood. He never did that I know of.

Sir J. Fekyll. I think you quarter'd him, did he complain of his Quarters at any time?

Calderwood. He order'd me to give him good Quarters.

Sir J. Fekyll. And accordingly you did for him?

Calderwood. Yes.

Att. Gen. We will go on. What happened at *Preston*? What time did the King's Forces come there?

Calderwood. We came on *Wednesday*, they came on *Saturday*.

Att. Gen. Tell my Lords what happen'd after the King's Troops came to Town.

Calderwood. We defended the Town two Nights.

Att. Gen. When did they surrender?

Calderwood. They surrender'd on *Monday*.

Att. Gen. What pass'd before? Did the King's Troops attack it, and demand a Surrender?

Calderwood. Yes, and we defended it.

Sir J. Fekyll. Was there any Provision made to secure the Town? Acquaint my Lords how it was defended.

Calderwood. We barricado'd it in every Street.

Sir J. Fekyll. After what manner? how?

Calderwood. We had two Cannon in every Street.

Att. Gen. During the Time the King's Troops were at the Town, what Share did my Lord *Wintoun* bear in the Defence of it? where was he?

Calderwood. I saw him go towards the Church-yard;

Att. Gen. Was there a Body of Men with him in the Church-yard?

Calderwood. Yes, there was.

Sir J. Fekyll. When my Lord joined the Men, and in his March, was there any levying of Money.

Calderwood. They raised Taxes as they called it, a Cess.

Sir J. Fekyll. We have done with this Witness; if my Lord hath a Mind to ask him any Questions, he is at Liberty to do it.

L. H. Steward. My Lord, if you have any Question to ask, propose it, and it shall be asked.

L. Wintoun. I can't examine him, I desire my Council may examine him.

L. H. Steward. I told your Lordship your Council are not to assist your Lordship in cross-examining the Witnesses; you have a Liberty of cross-examining them yourself, by proposing your Questions, and they will be ask'd by the Court.

L. Wintoun. I never examined a Witness in my Life, I desire my Council may do it for me.

L. H. Steward. Have you any Questions?

L. Wintoun. My Lord, I hope you will allow my Council to speak for me.

L. H. Steward. Have you any Question you desire to be ask'd, and it shall be ask'd?

L. Wintoun. I desire my Council may ask for me; it is very hard to have none to speak for me, and there are twenty against me.

Proclamation for Silence as usual.

L. H. Steward. My Lord *Wintoun*, I hope now you will be better heard. If you have any Question to ask this Witness, if your Lordship propounds it, it shall be ask'd him.

L. Wintoun. My Lord, allow my Council to speak for me, I have but two.

L. H. Steward. My Lord, I have acquainted you, (but apprehend you did not hear me) that the Law of the Land doth not allow it.

Sir J. Fekyll. My Lords, if my Lord at the Bar doth not think fit to ask this Witness any Questions, nor your Lordships, we must call another Witness.

L. H. Steward to Calderwood the Witness. Direct your Answer this way. You have mention'd several Proclamations of the Pretender, was there any at which my Lord, the Prisoner at the Bar, was not present?

Calderwood. I did not see him at the Proclamation at *Preston*.

L. H. Steward. At how many other Places did you see him?

Calderwood. I saw him at *Wooler*, *Jedburg*, *Kelsoe*, and *Kirby-Lonsdale*, and *Lancaster*, where the Pretender was proclaimed.

L. H. Steward. Did he join in causing him to be proclaim'd, or did he seem to dislike it?

Calderwood. No, my Lord, he was always among the rest.

Att. Gen. With your Lordship's Favour, the next Witness is *James Lindsey*, we desire he may be sworn.

L. Wintoun. My Council are present, pray allow my Council to speak for me, I am not used to speak in such Assemblies.

Lindsey was sworn accordingly.

L. H. Steward. Who do you call next, Gentlemen?

Att. Gen. *James Lindsey* is sworn, we desire he may give your Lordship's an Account, whether he was at any time at *Moffett*, when the Pretender was proclaim'd, and what Share my Lord *Wintoun* had in it? — I believe it will be better to have something for the Witnesses to stand upon; — stay a little, till something is brought to stand upon.

A Chair was brought to stand upon.

Sir J. Fekyll. Was you at *Moffett*?

Lindsey. Yes.

Sir J. Fekyll. What pass'd there, and who was at that Place?

L. H. Steward. Keep your Face, and direct your Answer this way; tho' the Gentlemen on the left Hand ask you Questions, keep your Face this way.

Lindsey. I saw several Gentlemen.

Sir J. Fekyll. But did you see my Lord *Wintoun* there?

Lindsey. First I saw him there; the second time at *Jedburg*, the third time at *Kendall*, and the last at *Preston*.

Sir J. Fekyll. You saw him at these Places you have mentioned, what happened at either of these Places?

Lindsey. The first time I saw him, he was riding on a grey Horse, mounted with Sword and Pistol; the second time, sitting with the Guard; and at *Kendall* on Horseback, when he came out of Town, I saw him riding on Horseback; and at *Preston*, I saw him riding at the Market-Place, with other Gentlemen along with him.

Sir *J. Fekyll.* Was there any Proclamation made at any of these Places?

Lindsey. Yes, there was a Proclamation at *Fedburg*, they told me they proclaim'd the Pretender.

Sir *J. Fekyll.* Did you hear the Proclamation?

Lindsey. I heard the Voice, but not the Words pronounced.

Sir *J. Fekyll.* Who assisted at it?

Lindsey. A great many Gentlemen on Horseback.

Sir *J. Fekyll.* Was the Prisoner at the Bar there?

Lindsey. I did not see him.

Sir *J. Fekyll.* Was the Prisoner at the Bar at *Lancaster*?

Lindsey. I do not know, I was not there.

Sir *J. Fekyll.* Was he at *Preston*?

Lindsey. Yes, he was there.

Sir *J. Fekyll.* Was you present when they proclaimed the Pretender there?

Lindsey. I was standing at a great distance, but did not hear it, but saw the Army.

Sir *J. Fekyll.* From those Places when you marched, in what manner did you march? In Squadrons?

Lindsey. Yes, in Squadrons?

Sir *J. Fekyll.* Did the noble Lord at the Bar command a Squadron?

Lindsey. I did not know what his Lordship's Command was, he rode at the Head of the first Squadron.

Att. Gen. Did he march along with the Forces?

Lindsey. I had very seldom Occasion to see his Lordship. I believe he did.

Sir *J. Fekyll.* Do you know any thing of raising Money.

Lindsey. I heard talk of it only.

Sir *J. Fekyll.* What Troops were with the Rebels?

Lindsey. I can't tell how many.

Sir *J. Fekyll.* Do you remember any one Troop?

Lindsey. Yes, there was *Lockbart's*.

Sir *J. Fekyll.* Any beside?

Lindsey. There was one went by the Name of my Lord *Wintoun's*, but I knew it not.

Att. Gen. Who was there in that Troop of *Lockbart's*?

Lindsey. Several Gentlemen.

Att. Gen. Was there any but Gentlemen?

Lindsey. Some private Men and Servants.

Att. Gen. Whose Servants?

Lindsey. The Captain's, Mr. *Lockbart* had two or three himself.

Att. Gen. Was there any other Servants?

Lindsey. No, I don't think there was any other.

Att. Gen. Did you know the Troop called my Lord *Wintoun's*?

Lindsey. I did not know it, there was one called his.

Att. Gen. Was there any Servants in it?

Lindsey. There were Servants in that Company.

Sir *J. Fekyll.* Were they armed with Sword and Pistol?

Lindsey. Yes.

Sir *J. Fekyll.* Was you at *Preston* when the King's Forces invested it?

Lindsey. Yes.

Sir *J. Fekyll.* How did the Prisoner behave himself?

Lindsey. I cannot tell.

Sir *J. Fekyll.* My Lords, we have done with our Examination of this Witness.

L. H. Steward. My Lord *Wintoun*, if you would ask this Witness any Question, propose it, and it shall be asked.

After a considerable Pause,

Att. Gen. Our next Witness is *Elias Cammeron*, we desire he may be sworn.

He was sworn accordingly.

Mr. Cowper. My Lords, we desire he may be asked whether he was in the Rebels Army.

L. H. Steward. You hear the Question; direct your answer this way.

Cammeron. Yes, I was there.

Mr. Cowper. Under whose Command?

Cammeron. Under the Command of Captain *Mackcleane*.

Mr. Cowper. And in whose Regiment?

L. H. Steward. Turn your Face this way, that your Voice may be heard.

Cammeron. My Lord *Charles Murray's* Regiment.

L. H. Steward. Whose Command was you under?

Cammeron. Under Captain *Mackcleane*.

Sir *J. Fekyll.* In whose Regiment?

Cammeron. In my Lord *Charles Murray's* Regiment.

Sir *J. Fekyll.* Will you give a general Account of what you know from the first time you came into the Army of the Rebels?

Cammeron. I joined them at *Moffett*, and then we proceeded to a Place called *Lockmaben*; and then we march'd to *Duns*, from thence to *Kelfoe*; within two Miles of *Kelfoe* we met the Horse. Then we went from *Kelfoe* to *Fedburg*, I saw my Lord *Wintoun* there; the next Day we rested. Then we marched, from *Langtown* to *Brampton*; from *Brampton* to *Penrith*; from *Penrith* to *Kirby-Lonsdale*; and from *Kirby-Lonsdale* to *Lancaster*; where I saw my Lord *Wintoun* at the Head of his Horse with a Trumpet sounding before him; I saw them march; we staid a Day at *Lancaster*, and the Horse went into *Preston* the next Day; either *Wednesday* or *Thursday* I saw my Lord *Wintoun*, and after the King's Forces were come I saw my Lord *Wintoun* with other Lords.

Mr. Cowper. You have mentioned proclaiming the Pretender at one or two Towns, pray give an Account at how many Places you observed that he was proclaimed?

Cammeron. I heard him proclaimed at *Duns*, at *Kelfoe*, and at *Lancaster*.

Mr. Cowper. I desire to know if at any of these Places you observed the Prisoner, my Lord *Wintoun*?

Cammeron. At *Lancaster* I did observe him to go into the Ring when they were going to proclaim him, but at the Time of the Proclamation I did not see him, being in the outward Part of the Ring.

Att. Gen. Please to acquaint my Lords, whether in your March you took any Prisoners.

Cammeron. When we were near *Penrith*, we took a great many Prisoners. I did not see them taken.

Att. Gen. Was the Prisoner at the Bar with you in that March?

Cammeron. I can't really determine. I saw him there.

Att. Gen. Where did you see him first?

Cammeron. At *Kelfoe*, when the Foot join'd us.

Att. Gen. Where did you take the Prisoners?

Cammeron. At *Penrith*.

Att. Gen. Did the noble Lord at the Bar ever leave you after he joined you?

Cammeron. I heard he was not for coming into *England*. I only heard this by Report.

Sir J. Fekyll. Was you at *Seaton House*?

Cammeron. Yes.

Sir J. Fekyll. Was my Lord *Wintoun* there?

Cammeron. No, only Brigadier *Mackintosh* and the Foot.

Sir J. Fekyll. What Time did they come to *Seaton House*?

Cammeron. On *Saturday* to my best Remembrance, they were at *Seaton House*; then the Duke of *Argyle* returned back, and that Night about six or seven o'Clock we retreated to *Seaton House*, and staid there *Sunday*, *Monday*, and *Tuesday*.

Att. Gen. At the Time the Highlanders came to *Seaton House*, was this Lord there?

Cammeron. No, I do not know that he was.

Att. Gen. Do you know any thing of the public Revenues being gathered at *Duns*, *Brampton*, and *Appleby*?

Cammeron. Yes.

Att. Gen. Did they give any Receipts?

Cammeron. Yes, they gave Receipts. I saw one which was to this Effect: After the Year and Date, then, Received such a Sum of Money as Excise-Duty, due from such a Person to such a Person.

Att. Gen. During the Time the King's Forces attack'd *Preston*, what did you observe my Lord *Wintoun* do?

Cammeron. What I observed of my Lord *Wintoun*, was this: I was there by the Church-yard, there I saw my Lord *Wintoun* in the Church-yard, with my Lord *Kenmure* and *Derwentwater* at the Time of the Action, but I did not see him in the Action, and whether he had Pistols or not I can't be positive.

Att. Gen. Was there any Persons at the Market-Place?

Cammeron. I was not at the Market-Place.

Att. Gen. You was at the Church-yard?

Cammeron. Yes.

Sir J. Fekyll. When you observed my Lord *Wintoun*, what did you see him do?

Cammeron. I observed nothing, but he was like the rest, riding to and fro with the rest.

Sir J. Fekyll. Did you see him assisting at the Proclamation of the Pretender at *Preston*?

Cammeron. I saw him go into the Ring with the rest, but I did not see him at the time of the Proclamation.

L. H. Steward. I believe in this Narration his Voice did not reach this End of the Court; therefore if he hath said any thing proper to be taken notice of, you will do well to have it over again.

Att. Gen. We ask him whether he knew the noble Lord to be at any of those Places assisting at proclaiming the Pretender?

Cammeron. I did not observe him but at *Lancaster*.

Att. Gen. What happened there?

Cammeron. They proclaimed the Pretender there, and I saw him go into the Ring.

Att. Gen. But did you not observe him at the time of proclaiming the Pretender?

Cammeron. I saw him go into the Market-Place with the rest:

L. H. Steward. You saw him go in when the rest went in to proclaim the Pretender?

Cammeron. Yes.

Att. Gen. Did he then ride at the Head of the Scots Horse?

Cammeron. Yes; he rid at the Head of some Horse, and a Trumpet sounding before him.

Att. Gen. Was that the Time when the Pretender was proclaimed at *Lancaster*?

Cammeron. Yes.

Att. Gen. Whether had my Lord his Sword by his Side, or had he it drawn?

Cammeron. Really I cannot be positive to that.

L. H. Steward. My Lord *Wintoun*, will you ask this Witness any Question?

L. Wintoun. My Lords, I be not prepared, so I hope your Lordships will do me Justice; I was not prepared for my Trial; I did not think it would come on so soon, my material Witnesses not being come up, and therefore I hope you will do me Justice, and not make use of *Cowper-Law*, as we used to say in our Country, hang a Man first, and then judge him.

L. H. Steward. Did you hear? My Lord *Wintoun*, please to speak it again.

L. Wintoun. I said that I was not prepared for my Trial; I did not think it would come on so soon. Some Gentlemen are just come up; please your Lordships to let me know what they say, that I may be the better able to make my Defence.

L. H. Steward. If your Lordship will ask this Witness any Question, now is your Time; but if what you are saying is your Defence, you should reserve that till the Commons have done.

Robert Patten is called and sworn.

Proclamation made for Silence as usual.

Sir W. Thomson. With your Lordships Permission I beg leave to ask this Witness, whether at any time he was in Company with these Rebels; and when he first joined them?

Patten. I join'd them on the 20th of *October*, at *Wooler*.

Sir W. Thomson. Pray Sir will you give an Account what past from that Time you join'd them till they were taken.

Patten. I remember from *Wooler* we march'd to *Kelfoe*.

Sir W. Thomson. Did you see my Lord *Wintoun* at *Wooler*?

Patten. I can't say I did.

Sir W. Thomson. Did you see him at *Kelfoe*?

Patten. I saw him when the Proclamation was there.

Sir W. Thomson. What Proclamation?

Patten. To proclaim the Pretender.

Sir W. Thomson. Was my Lord *Wintoun* present?

Patten. Yes.

Sir W. Thomson. In what Manner?

Patten. He appear'd among the rest of the Gentlemen.

Sir W. Thomson. Was he armed?

Patten. Only his Sword, that I saw.

Sir W. Thomson. Pray what pass'd afterwards?

Patten. We came to *Kelsoe*, and from thence we went to *Fedburg*.

Sir W. Thomson. Where did you go?

Patten. To *Fedburg*.

Sir W. Thomson. What pass'd there?

Patten. After they came to *Fedburg* they were alarmed by a Party, they thought of the King's Forces, but it happened to be some of their own Party.

Sir W. Thomson. What happened on that Occasion?

Patten. I saw the Lords, and among the rest my Lord *Wintoun*, at the Head of some Horsemen there drawn up.

Sir W. Thomson. In what Manner?

Patten. The Earl of *Wintoun* was drawn up with his Men, and the *Scots* Lords with their Men.

Sir W. Thomson. With what Intent?

Patten. They apprehended General *Carpenter* with the King's Forces was coming to attack them.

Sir W. Thomson. You say my Lord *Wintoun* marched out at the Head of some Horsemen?

Patten. I can't say I saw him march out, but I saw him at the Head of some Horse.

Sir W. Thomson. What happened afterwards?

Patten. They returned to *Fedburg* and staid all Day, and the next Day they marched to *Hawick*.

Sir W. Thomson. What happen'd at *Hawick*?

Patten. At Midnight we were again alarmed with a Party.

Sir W. Thomson. What happen'd upon that?

Patten. I saw my Lord *Wintoun* in the Street.

Sir W. Thomson. Was there any Preparation made for Defence.

Patten. Yes they were going out to defend themselves.

Sir W. Thomson. You saw my Lord *Wintoun* there?

Patten. Yes.

Sir W. Thomson. In what manner?

Patten. He had his Sword by his Side.

Sir W. Thomson. When you went from that Place, whither did you go then?

Patten. We went to *Langholm*.

Sir W. Thomson. What pass'd there?

Patten. We continued there till next Morning, when we consulted whether to march for *England* or for *Scotland*; a Party of Horse went for *Dunfreise*. The Highlanders, a great Part of them went off there, and would not march for *England*.

Sir W. Thomson. Was my Lord *Wintoun* with them at their going off?

Patten. I saw my Lord *Wintoun* go off, and come up again: I spoke to my Lord upon that account.

Sir W. Thomson. What did his Lordship say?

Patten. Nothing material, but asked me if I knew the Country.

Sir W. Thomson. When the Foot went off at *Langholm*, did my Lord go to them?

Patten. I saw him go up to them, and make a Halt.

Sir W. Thomson. But he came back again?

Patten. Yes.

Sir W. Thomson. At that time, if my Lord had had any Inclination to it, whether might he not have gone off?

Patten. Yes: I can't tell my Lord's Inclination, but any Body might have gone off, there was no Restraint upon him.

Sir W. Thomson. Whither did you march from *Langholm*?

Patten. To *Langtown*.

Sir W. Thomson. Did any thing happen at *Langtown*?

Patten. We march'd through.

Sir W. Thomson. Whither did you go then?

Patten. To *Brampton*.

Sir W. Thomson. Whither from thence?

Patten. To *Penrith*.

Sir W. Thomson. What happened there?

Patten. There was the *Posse Comitatus*, whether that *Posse Comitatus* were the Militia I can't tell; they were got together, and upon our advancing they dispers'd themselves.

Sir W. Thomson. Where was my Lord *Wintoun* then?

Patten. I saw him among the *Scots* Lords there after his usual manner, on Horseback, with Sword and Pistols.

Sir W. Thomson. Was his Sword drawn?

Patten. No.

Sir W. Thomson. Whither did they go then?

Patten. They went to *Appleby*.

Sir W. Thomson. What pass'd at *Appleby*?

Patten. They went from *Appleby* to *Kendall*.

Sir W. Thomson. What happened there?

Patten. A Proclamation was read, as at most of the Towns.

Sir W. Thomson. Did you see my Lord *Wintoun* at any of those Proclamations?

Patten. No, I did not.

Sir W. Thomson. Where did you go then?

Patten. To *Kirby-Lonsdale*.

Sir W. Thomson. Did any thing happen remarkable there?

Patten. I dined with the *Scots* Lords at *Kirby*.

Sir W. Thomson. What happen'd there? and what Healths were drank there?

Patten. The Pretender's Health, and Success to our Cause, that was the usual Health.

Sir W. Thomson. Was my Lord *Wintoun* there?

Patten. Yes, there was my Lord *Kenmure*, *Carnwath*, and the other Lords.

Sir W. Thomson. Did he drink the Health among the rest?

Patten. All the Table did.

Sir W. Thomson. From thence whither did you go?

Patten. To *Lancaster*.

Sir J. Fekyll. At the Place where you drank Healths, was there any other remarkable Health?

Patten. The usual Health was good Success to the Cause in Hand.

L. H. Steward. Who drank that Health?

Patten. All the Company.

L. H. Steward. Who was in Company? was the Prisoner at the Bar in Company?

Patten. Yes, he was.

Sir W. Thomson. When you came to *Lancaster*, in what manner did you enter that Town?

Patten. We entered that Town more regularly than any other we had marched through.

Sir W. Thomson. After what manner?

Patten. They march'd into the Town with their Swords drawn, and the Highlanders were drawn round

round the Cross; the Gentlemen marched into the Town on Horseback; the Pretender was proclaimed there.

Sir W. Thomson. You was by when the Pretender was proclaimed?

Patten. Yes.

Sir W. Thomson. Was my Lord *Wintoun* there?

Patten. I can't say I saw him there: I saw him in the Town at the head of some Horse with his Sword drawn.

Sir W. Thomson. Was there any Cannon seized at *Lancaster*?

Patten. Some Pieces of Cannon were seized.

Sir W. Thomson. What did you do with the Cannon?

Patten. We carried them with us to *Preston*.

Sir W. Thomson. When there were Prayers in the Parish Church at *Lancaster*, who was prayed for?

Patten. The Pretender.

Sir W. Thomson. Do you know who were present?

Patten. A great many.

Sir W. Thomson. Was the Lord *Wintoun* there?

Patten. I can't tell.

Sir W. Thomson. Did you observe at any time any Force or Compulsion used to detain my Lord *Wintoun*?

Patten. No, none at all.

Sir W. Thomson. Did he shew any Uneasiness, or any Backwardness to go with them?

Patten. I can't be Judge of my Lord's Uneasiness, it did not appear so.

Sir W. Thomson. By whose Direction was the Prayer for the Pretender?

Patten. By Order of Mr. *Forster*.

Sir W. Thomson. My Lords, we have done with this Witnesses.

L. H. Steward. My Lord *Wintoun*, will you please to ask this Witnesses any Question?

L. Wintoun. No.

Att. Gen. My Lords, we desire to call my Lord *Forrester*.

Then a Chair was placed for Lord *Forrester* near the Clerks Table.

And the Oath was administered to him by the Lord High Steward.

Sir J. Fekyll. My Lords, we beg leave to ask this Noble Lord a Question or two: Was your Lordship at *Preston*?

L. Forrester. Yes, my Lords.

L. H. Steward. Your Lordship will please to raise your Voice.

L. Forrester. I was there with the King's Troops, and had the Honour to command Brigadier *Preston's* Regiment. We came before *Preston* on *Saturday* the 12th of *November*.

Att. Gen. Will your Lordship acquaint my Lords what pass'd at *Preston* when you was there? whether you was by at *Preston* when the King's Forces attacked it, and whether it was defended by the Rebels, and what else pass'd there?

L. Forrester. I was there, and commanded one of the Attacks under Brigadier *Honywood*.

Att. Gen. Was the Town defended by the Rebels, and were any of the King's Officers and Soldiers killed?

L. Forrester. Yes, a great many.

Att. Gen. Please to give an Account what Number.

L. Forrester. We lost a great many.

Att. Gen. Can you guess the Number?

L. Forrester. No, I can't exactly tell: A good many; we had 'twixt sixty and seventy of the Regiment I had the Honour to command killed and wounded.

Att. Gen. How many were killed?

L. Forrester. About thirty were killed dead on the Spot.

Att. Gen. How long did that Attack last, before they desired to capitulate?

L. Forrester. From *Saturday* till *Sunday* Morning between one and two o'Clock.

Sir J. Fekyll. I think your Lordship had a command to take Possession of the Town?

L. Forrester. Yes; I took Possession of the Church-yard *Monday* Morning about six o'Clock.

Sir J. Fekyll. Will you please to give an Account of what you know of the Noble Lord at the Bar when the Town surrendered.

L. Forrester. The Town surrender'd at six a Clock in the Morning; I came into the Church-yard and took Possession of it; then I went to the *Mitre Tavern*, where that Lord and the rest of the Lords were; I disarm'd them.

Att. Gen. What Arms did my Lord *Wintoun* deliver up at that time?

L. Forrester. Two Cases of Pistols.

Sir J. Fekyll. If my Lord hath a mind to ask any Question of the Noble Lord that hath been examined, we desire he may do it.

L. H. Steward. My Lord *Wintoun*, will you be pleased to ask this Noble Lord any Question concerning this matter at *Preston*?

L. Wintoun. I had no Arms: Please to ask him whether I had Sword or Pistol in my Hand?

L. H. Steward. Take my Lord's Question in Writing.

Then the Clerk went and took it.

Question. Whether the Arms your Lordship mentioned to have been delivered to you, whether he had the Arms then about him, or his Lordship did not say they were in the Stable?

L. Forrester. He brought the Arms to me himself, and gave them me out of his own Hands.

L. H. Steward. My Lord says you brought the Arms to him your self, and gave them him out of your own Hands.

L. Forrester. I got so many of them that I should not have made any Distinction of his from the rest, but that I remember he gave me his Arms out of his own Hands, and desired me to give them to my Lord *Kimmergem*.

L. H. Steward. You desired my Lord *Forrester* to give them my Lord *Kimmergem*.

L. H. Steward. Another Question proposed is, Whether my Lord *Wintoun* did not give Orders to his Servant to bring the Arms out of the Stable, and to give them my Lord *Kimmergem*?

L. Forrester. I believe he did bring them out of the Stable.

L. H. Steward. My Lord believes you did bring them out of the Stable.

L. Wintoun. I desire he may be asked whether I had a Sword about me?

L. H. Steward. My Lord *Forrester*, the Question is, Whether your Lordship found a Sword about my Lord *Wintoun*?

L. Forrester. I did not see any Sword that he had; he had a great Coat on, and might have had a Sword under that, but I saw none.

L. H. Steward. My Lord *Forrester*, did the Prisoner at the Bar deliver himself and his Arms to your Lordship as one of those in the Surrender?

L. For.

L. Forrester. I took it so.

Sir J. Jekyll. We beg leave to call General *Carpenter*, and desire he may be sworn in his Place, and give your Lordships his Evidence.

General *Carpenter* was sworn in his Place.

Proclamation for Silence as usual.

Sir J. Jekyll. Mr. *Carpenter*, please to give my Lords an Account when you came to *Preston*, and what happened there.

Gen. Carpenter. I came to *Preston* on *Sunday* the 13th of *November* last : The Troops under Mr. *Wills* had been there the Afternoon before. I got there about Ten a Clock on *Sunday* Morning, with Three Regiments of Dragoons ; and there had been no Intercourse nor Message passed before I came.

Att. Gen. Please to inform my Lords what passed there after you came to *Preston*.

Gen. Carpenter. After I came, the Rebels sent out to know what Terms they might expect, and were answered none but at Discretion. They soon after sent out one Captain *Dalziel*, to desire a Cessation till next Morning ; upon which I sent in Colonel *Churchill* to tell them, I agreed to a Cessation, provided they sent out an *English* Lord and a *Scots* Lord as Hostages : I nam'd my Lord *Derwentwater* and my Lord *Kenmure*. Captain *Dalziel* said he thought my Lord *Kenmure* would 'not come out. I named then Brigadier *Mackintosh* : He also thought he would not come out. I was unwilling to make great Difficulties, it growing towards Night ; and said either of the *Mackintosh's* and an *English* Lord : And he brought out my Lord *Derwentwater* and Colonel *Mackintosh* as Hostages, that they should make no Attempt to escape, nor any Works for Defence in the Town.

Att. Gen. Pray, Sir, acquaint my Lords who you sent in with Colonel *Churchill*.

Gen. Carpenter. Colonel *Cotton*.

Att. Gen. When did they agree to the Surrender of the Place ?

Gen. Carpenter. Not till the next Morning. The Hostages were, that none should attempt to escape, nor any Defences should be made in the Town till the next Morning, at which time they would determine whether they would surrender or not.

Att. Gen. I desire you to acquaint my Lords, whether these were all the Terms offered, or whether there was any Hopes of Mercy given them ?

Gen. Carpenter. I gave them none at all my self, and it is very unlikely any Body else should : I commanded in Chief his Majesty's Forces there : No Body ought to have done it ; and if any Officer whatsoever took upon him so to do without my Order or Leave, it was very unanswerable by the Rules and Discipline of War ; and what he cannot answer : I hope no Body did : I am sure I gave no such Directions : Colonel *Churchill* can acquaint your Lordships whether I directed him to mention any other Conditions to them than at Discretion.

Sir J. Jekyll. Did you hear any other Officer give them any Hope or Expectation of Mercy ?

Gen. Carpenter. No, I did not.

Sir J. Jekyll. If my Lord *Wintoun* hath any Questions to ask this honourable Person, he may do it.

L. H. Steward. My Lord *Wintoun*, now is your Time if you'll ask any Question of General *Carpenter*.

L. Wintoun. Whether I was concern'd in making any —

L. H. Steward. I don't hear the Question— Then the Clerk was sent down to take it in Writing.

And the Question being brought up to the Lord High-Steward by the Clerk.

L. H. Steward. The Question my Lord asks is, Whether he was concerned in making any Capitulation, or knew any thing about it ?

Gen. Carpenter. Not that I know of ; it is impossible for me to know, except by Hearsay : He was not the Person treated with, I treated with my Lord *Derwentwater* and one of the *Mackintosh's*, so that I know nothing of his being concerned in any manner of Treaty.

L. H. Steward. You hear the Answer.

Sir J. Jekyll. We beg leave to call General *Wills*.

L. Wintoun. I desire to ask my Lord *Forrester* a Question.

L. H. Steward. My Lord *Wintoun* desires to propose a Question to my Lord *Forrester*.

Sir J. Jekyll. Though that be out of Method, yet don't oppose it.

L. H. Steward. Bring up the Question. My Lord, the Question my Lord *Wintoun* proposes is, Whether he had any Sword or Arms when he first saw your Lordship at *Preston* ?

L. Forrester. I don't remember I had a Sword from him ; I can't tell whether he had a Sword about him, for he had a great Coat on ; but I remember I took none from him, I had only the two Cases of Pistols which he gave me.

L. H. Steward. He could not tell whether you had a Sword about you, you had a great Coat that he could not well see ; but he remembers he took none from you, only the two Cases of Pistols which you gave him.

L. H. Steward. Who do you call next ?

Sir J. Jekyll. My Lords, we desire that General *Wills* may be sworn.

He was sworn accordingly.

Sir J. Jekyll. Mr. *Wills*, pray give my Lords an Account when you came before the Town of *Preston*, and what happened there.

Gen. Wills. My Lords, I had the Honour to command the King's Troops that attack'd the Rebels at *Preston* ; I came before that Town the 12th of *November* last about One o'Clock, and ordered two Attacks upon the Town ; that Attack which leads two *Wigan* was commanded by Brigadier *Honywood*, who beat the Rebels from their first Barricade, and took Possession of some of the Houses in the Town ; the other Attack which leads to *Lancaster* was commanded by Brigadier *Dormer*, who lodg'd his Troops nigh the Barricade of the Rebels. The next Day, about Two o'Clock, Mr. *Forster* sent out one Mr. *Oxborough*, an *Irishman*, offering to lay down their Arms and submit themselves, and hoped that I wou'd recommend them to the King for Mercy ; which I refused, and told them I would not treat with Rebels, for that they had killed several of the King's Subjects, and that they must expect to undergo the same Fate ; upon which he said, that as I was an Officer, and a Man of Honour, he hoped I wou'd shew Mercy to People who were willing to submit : Upon which I told them all I would do for them was, that if they laid down their Arms, and submitted Prisoners at Discretion, I would prevent the Soldiers from cutting them to pieces till I had further Orders, and that I would give them but one Hour to consider of it ; and

and sent him back again into the Town to acquaint *Forster* of it; before the Hour was expired they sent out Mr. *Dalziel*, Brother to the Earl of *Carnwath*, and he wanted Terms for the *Scots*. My Answer was, that I would not treat with Rebels, nor give them any other Terms than what I had before offered them: Upon which it was desired that I would grant further Time till Seven o'Clock next Day, to consult the best Method of delivering themselves up. I agreed to grant them the Time desired, provided that they threw up no new Intrenchments in the Streets, nor suffered any of their People to escape, and that they sent out the chief of the *English* and *Scots* as Hostages for the Performance; and I sent in Colonel *Cotton* to bring them out, who brought out the Earl of *Derwentwater* and Mr. *Mackintosh*. The next Day about Seven o'Clock Mr. *Forster* sent out to let me know, that they were willing to give themselves up Prisoners at Discretion, as I had demanded. Mr. *Mackintosh* being by when the Message was brought, said he could not answer that the *Scots* would surrender in that manner; for that the *Scots* were People of desperate Fortunes, and that he had been a Soldier himself, and knew what it was to be a Prisoner at Discretion; upon which I said, go back to your People again, and I will attack the Town, and the Consequence will be, I will not spare one Man of you. *Mackintosh* went back, but came running out immediately again, and said, that the Lord *Kenmore*, and the rest of the Noblemen, with his Brother, would surrender in like manner with the *English*.

Sir *J. Fekyll*. When the Attack was made by the King's Forces, whether any, and how many were killed?

Gen. *Wills*. I believe between sixty and seventy but few of the Horse; there were killed and wounded about a hundred and thirty.

Att. Gen. If you please to acquaint my Lords, whether any of the Rebels came and treated with you, or if you gave them any Encouragement to hope for Mercy.

Gen. *Wills*. All the Terms I gave them was, that I would save their Lives from the Soldiers till further Orders, if they surrender'd at Discretion: I desire to explain the Meaning of surrendering at Discretion, which is, then it is in our Power to cut them all to pieces; but I would give them their Lives till further Orders; for I could have cut them to pieces immediately after they are made Prisoners at Discretion, by the Rules of War; and if they did not comply I would renew the Attack, and not spare a Man.

L. H. *Steward*. You told them that if they did not comply, you would renew the Assault?

Gen. *Wills*. Yes, and not spare a Man of them.

Sir *J. Fekyll*. Did you give your Officers any Directions to give any other Terms?

Gen. *Wills*. No, I did not.

L. H. *Steward*. Then you gave no Directions to any other Officer to give other Terms than you yourself had offer'd?

Gen. *Wills*. No, I did not.

Mr. *Cowper*. Was there any other but these two, Colonel *Churchill* and Colonel *Cotton* sent in by you, or by General *Carpenter*?

Gen. *Wills*. Yes, Colonel *Nassau*, to bid our own People forbear firing.

Mr. *Cowper*. Had Colonel *Nassau* any Authority to treat?

Gen. *Wills*. No, he went in only to bid our Troops to forbear firing, and order Colonel *Cotton* to come out with the Hostages.

Sir *J. Fekyll*. You say the Rebels desired you to recommend them to the King's Mercy? who made that Proposition?

Gen. *Wills*. One *Oxborough*.

Sir *J. Fekyll*. Had you any other Proposition by any other?

Gen. *Wills*. Mr. *Dalziel*, Brother to my Lord *Carnwath*, for the *Scots*. I refused him likewise, and told him I wou'd treat with no Rebels, nor give them any Quarter.

Sir *J. Fekyll*. If my Lord at the Bar will ask this honourable Gentleman any Question, now is the Time.

L. H. *Steward*. My Lord *Wintoun*, the Clerk is sent down to you again; if you have any Question he will take it.

The Clerk return'd with the Question to my Lord High-Steward.

L. H. *Steward*. The Question my Lord proposes to General *Wills* is, whether you, General *Wills*, gave any Summons to surrender before you made the first Attack; or if you did not make the Attack without any Summons at all?

Gen. *Wills*. When I was viewing the Town they shot two of my Dragoons, and I did not summons them.

Another Question taken by the Clerk and brought up.

L. H. *Steward*. Another Question my Lord desires to be ask'd is, whether you offer'd to prevent the Forces from falling upon the Gentlemen at *Preston*, provided they surrender'd at Discretion?

Gen. *Wills*. Before ever I had drawn up the Troop——

L. H. *Steward*. The Question is, whether you offer'd to prevent the Forces from falling upon the Gentlemen at *Preston*, provided they surrender'd at Discretion?

Gen. *Wills*. Yes, my Lords, I did hinder the Troops from falling upon them after they offered to surrender.

Another Question brought up by the Clerk.

L. H. *Steward*. General *Wills*, my Lord desires you may be asked what you know, or have been informed of his Lordship's being against coming to *England*; or of my Lord's being against fighting with any of yours, or General *Carpenter's* Troops?

Gen. *Wills*. I never knew my Lord *Wintoun*, nor saw him till four Days after he was taken at *Preston*, so that I can say nothing to that I don't know any thing of.

L. *Wintoun*. I desire General *Carpenter* may be ask'd the same Question.

L. H. *Steward*. Do you know any thing, or have heard that my Lord *Wintoun* was against coming into *England*, or fighting the King's Forces?

Gen. *Carpenter*. My Lords, I heard that at *Fedburg* they held a Council of War, the chief Officers, &c. this is only Hearsay, I speak not of my own Knowledge.

Sir *J. Fekyll*. For the sake of Evidence it is incumbent on us to desire that my Lord confines himself to ask the General what he knows, and not to what he heard said.

Att. Gen. We have two Witnesses more, the Colonels that were sent into the Town by the two Generals, Colonel *Churchill* and Colonel *Cotton*.

Colonel

Colonel *Churchill* was sworn.

Mr. *Cowper*. The Question proposed is, whether you was sent into *Preston*, and by whom?

Col. *Churchill*. I came up to *Preston* on Sunday Morning, under General *Carpenter's* Command, about Ten o'Clock; about One they sent out to capitulate; about Five I was sent in by General *Carpenter*, their Request being, that they might have Time till next Day to consider whether they should surrender or not. My Directions were, they should have that, upon Condition they sent out Hostages that none of them should attempt to escape, and that no Defence should be made in the Town. The People nam'd to me by General *Carpenter* were my Lord *Derwentwater* or my Lord *Widdrington*, and my Lord *Kenmure* or *Mackintosh* was mention'd for the *Scots*. I directed them to send the Hostages to me. They could not find my Lord *Derwentwater* nor *Widdrington*, and *Mackintosh* was gone to Bed. A little before eight I went with them, and told them the Terms I was to deliver to them, that they were to throw up no Works to fortify themselves, and should answer for the People, that none of them should escape. My Lord *Derwentwater* and *Mackintosh* went out with me: I carried them to the two Generals there, and at Seven o'Clock next Morning they surrender'd themselves.

Mr. *Cowper*. Please to give me leave to ask you, whether you had any Commission from the General that sent you into the Town, or whether you of yourself, without such Commission, gave them any Hopes of Mercy?

Col. *Churchill*. I had not any Power to do it, and was so far from doing it, that I don't remember a single Syllable was mention'd either on our Side or theirs about it.

Mr. *Cowper*. Did you at any other Time hear any other Officers give them such Assurance?

Col. *Churchill*. I never heard a single Word like it.

Att. Gen. Who did you treat with?

Col. *Churchill*. The Body I treated with carried me to Mr. *Forster*, and then to my Lord *Kenmure*. I deliver'd my Message to Mr. *Forster*. I did not know any *Scots* Lord but *Kenmure*.

Att. Gen. Who was present besides my Lord *Kenmure*?

Col. *Churchill*. I saw a great many, but I did not know particularly any.

Att. Gen. The next is Colonel *Cotton*, who was sent in by General *Wills*. We desire Colonel *Cotton* may be sworn.

He was sworn accordingly.

Att. Gen. We desire to ask Colonel *Cotton*, whether he was sent into *Preston* by General *Wills*, and what Instructions were given him when he went in?

Col. *Cotton*. I was sent into the Town by General *Wills* at their Desire, they having Terms to offer: I told them we could give them none; they urged they had Disputes amongst the *Scots* and *English*, and desired till the next Morning to reconcile them. General *Wills* sent me again into the Town, to allow them that time, provided that the Lords would give their Words that they would throw up no Works for their Defence from that time, and do their utmost that none of their People shou'd make their Escape; and the Lords did give their Words; and the Lord at the Bar was present.

Att. Gen. I desire you would acquaint my Lords

upon what Terms they surrender'd.

Col. *Cotton*. I had no Power from Mr. *Wills* to promise them any Terms, nor I did not.

Sir *J. Fekyll*. Did you acquaint them you had no Power to offer them any Terms?

Col. *Cotton*. I did.

Att. Gen. Who did you acquaint?

Col. *Cotton*. All the Lords, and the People that had any Influence over the common Men.

Sir *J. Fekyll*. Was the Noble Lord at the Bar amongst them?

Col. *Cotton*. He was.

Sir *J. Fekyll*. Was there any Overtures made of obtaining the King's Mercy?

Col. *Cotton*. I had no such Order from Mr. *Wills*, and I did not offer it neither directly or indirectly.

Att. Gen. My Lords, I think it hath been desired to call Brigadier *Munden*, who speaks only as to the Attack; and I think, my Lords, if this Evidence need to be corroborated, we shall desire to call another Evidence who was with General *Wills* all the Time the Overtures pass'd?

Sir *J. Fekyll*. My Lords, if the Lord at the Bar hath any Question to ask Colonel *Cotton*, we desire he may be indulged.

L. Wintoun. I would know whether they did not take Prisoners and kill them, notwithstanding the Capitulation?

L. H. Steward. The Question my Lord desires may be asked is, whether you did not take Prisoners and kill them, notwithstanding the Capitulation?

Col. *Cotton*. My Lords, upon my coming out of the Town, though the Lords had engaged to prevent any of their People making their Escape, we were alarm'd with an Account that several were attempting it, and about six of those who were endeavouring to escape were cut to Pieces. Upon this Breach of their Parole Colonel *Churchill* and my self were sent in to demand Hostages, and brought out Lord *Derwentwater* and Mr. *Mackintosh*.

Att. Gen. We desire Brigadier *Munden* may be Sworn.

He was accordingly call'd and Sworn.

Att. Gen. We desire Brigadier *Munden* may be asked whether he was sent with these two Colonels into the Town, and what Directions were given them.

L. H. Steward. You hear the Question, please to give your Answer.

Brigadier *Munden*. I humbly apprehend I am called to give some Account of the Attack at *Preston*, which I will do in as few Words as I can. I am first to tell your Lordships, after the Rebels demanded an Audience of General *Wills*, their first Demand was for Terms: The Answer they received was, that General *Wills* would not treat with Rebels, but if they surrendered as Prisoners at Discretion, they should have their Lives spared 'till his Majesty's Pleasure was known. They asked if those were the only Terms; it was answered yes. Afterwards this Gentleman went into the Town, who had an Hour's time allowed him to consider of it. I remember his insisting upon Terms, but all the Answer Mr. *Wills* gave them was, if he had Inclination, he had no Power to give them any, otherwise than saving their Lives till his Majesty's Pleasure was further known. If they expected other Terms, they might return into the Town immediately, and he would attack them and cut them to Pieces.

After

After this the Gentleman went into the Town, my Lord *Derwentwater* and Mr. *Mackintosh* came out to us. Mr. *Mackintosh* and my Lord *Derwentwater* and I heard them frequently repeat their Request to the General for Terms, and I heard *Mackintosh* give a particular Account of the Bravery and Hardiness of their Troops. Mr. *Wills* told him he might have proved and tried them if he had pleased, and then it would have been seen whether the King's Troops, or a parcel of Rebels would have acted the braver Part. Mr. *Wills* received them with the utmost Detestation and Contempt, and gave them no hope of Mercy either directly or indirectly.

Att. Gen. Did you ever hear any other of the Officers offer them any other Terms?

Brig. Munden. No, I did not hear any. I heard the Instructions that were given to Colonel *Cotton* by General *Wills*, and when Mr. *Cotton* came out of the Town the third time, which was when he went to take their Parole of Honour.

Sir J. Fekyll. Did my Lord *Wintoun* come to give his Parole?

Brig. Munden. When Colonel *Cotton* came out, I very well remember he said he had received his Parole of Honour among the rest.

Sir J. Fekyll. If my Lord at the Bar hath any mind to ask this honourable Person, *Brigadier Munden*, any further Questions, we have done with him.

L. H. Steward. My Lord *Wintoun*, do you ask this Witness any Question?

L. Wintoun. No.

Sir J. Fekyll. We that are entrusted by the House of Commons have no more Evidence to offer to your Lordships.

L. H. Steward. My Lord *Wintoun*, the Gentlemen of the House of Commons have done with the Evidence they proposed to call against you; therefore it is your Lordship's time to open what Evidence you have, or if you have made any Observations on the Evidence given against you, to deliver them, or to call your own Witnesses—Take your own Method.

Proclamation was made for Silence as usual; and after some Pause,

L. H. Steward. My Lord *Wintoun*, I acquainted your Lordship that the Gentlemen of the House of Commons who manage the Evidence to support the Impeachment, have done with giving their Evidence; they design to give no more against you; therefore this is the time that is proper for your Lordship to make your Defence; you are to do it in your own Method, either by calling your Witnesses, or making such Observations in your Defence as you think proper.

L. Wintoun. Please to allow me some time, for my Witnesses are not yet come. I have used all possible Endeavours to get them, please to allow me till this Day Month 'till they come up. It will signify nothing to examine any Witnesses after I am dead. I never saw my Council but once, that they might instruct me what I have to say. My Lords, I am informed they will be here some time next Week.

L. H. Steward. What your Lordship said is not heard.

L. Wintoun. I said I never spoke to any of my Council, and that but once I have sent to my Council; I never saw them.

Proclamation for Silence was made as usual.

L. H. Steward. My Lord offer what you have

to say now, while the Court is in Silence.

L. Wintoun. My Lords, the most material of my Witnesses are not come up, they will be here some time next Week; I have not talk'd to my Council.

L. H. Steward. Your most material Witnesses are upon the Road, you desire some time till they come up; the effect of your Petition to the House of Lords, that is what you offer again?

L. Wintoun. Yes, my Lords.

Att. Gen. We think it our Duty to acquaint your Lordships, that what that noble Lord insists upon now is out of Time. If he had any Reasons to offer to defer the Trial, he knew the proper Time and Place. Our Duty is to let your Lordships know, that when the Evidence for the Prosecution is given, the Prisoner is not to have time to delay the Proceedings, not any longer time. He ought to have applied before. We must submit it to your Lordships.

Mr. Cowper. This Request of his Lordship, the Prisoner at the Bar, seems to concern the Methods of Justice, and is, we think, of great Consequence with respect to the Commons. My Lords, we should have been very far from pressing to bring on his Lordship's Trial sooner than might have been thought consistent with the Rules of Justice: But when we consider the Time your Lordships have allowed him upon several Applications he has made to your Lordships for that purpose; when we all know he has had Notice ever since he was seized and made Prisoner at *Preston*, that a Defence would be necessary, and that it concerned him to provide for it, when we reflect how long it is since the Commons exhibited their Impeachment against him, it's surprizing after all to find his Lordship alledge, that he hath not had Time to bring up his Witnesses. With what View his Lordship is advised to make this Defence may be easily explained: It is, my Lords, to move the Compassion of the People, and, I fear, to traduce the Justice of your Lordships Proceedings. Surely it must be confessed, that he hath had more than Time sufficient, more than any one in the like Circumstances hath been allowed by your Lordships great Indulgence; and yet at last to have nothing to offer, but that his Witnesses are not come, without attempting to produce one single Witness to prove that he has, or expects any one Witness to appear for him.

My Lords, the stated Rules of Proceeding in Trials of this Nature ought to be ever sacred; and I don't know that any one Prisoner hath a Right to be indulged in Methods unknown to the Constitution.

My Lords, I believe when a Prisoner impeached by the Commons puts himself upon his Defence, and is brought upon his Trial, there ought to be no Interruption or Delay whatsoever. Sure I am, it is inconsistent with the Proceedings of all other Courts of Justice.

Your Lordships, as we are informed, lately denied the Prisoner any further Time; and if it was then thought not proper to be granted, certainly now he hath put himself upon his Trial, and stands upon his Defence at your Lordships Bar, he shall not be indulged to making the same Request.

My Lords, whatever Compassion we may have for this unhappy Lord, yet the Commons, when they reflect that the Methods and Forms of Justice

are essential to Justice it self, they then think themselves obliged to oppose a new Attempt, and hope the Trial shall proceed.

L. Wintoun. My Witnesses are not come up. They will be up about *Monday* or *Tuesday* next. I have had no longer time than since the 10th of *February* last to bring up my Witnesses, when it was very bad travelling.

A Motion was made to adjourn.

L. H. Steward. My Lord *Wintoun*, your Lordship hath heard the Commons oppose your Request: You have heard the Reasons given for such Opposition. Doth your Lordship, having heard the Reasons, yet insist upon it, or do you withdraw your Request?

L. Wintoun. I insist upon it, my Lords.

Then the House was adjourned to the Chamber of Parliament.

And being returned in about an Hour, and the House resumed, and Proclamation made for Silence, as usual.

L. H. Steward. My Lord *Wintoun*, I am commanded by the Lords to let you know, that they have considered your Request, and that they are of Opinion it is not now consistent with the Rules of Justice to allow you further Time for sending for your Witnesses; therefore you are to proceed in your Defence. I am likewise to acquaint you, that in respect to the lowness of your Voice, the Lords have ordered a fit Person to stand by you (after he is sworn) to report truly to their Lordships what you say during your Trial.

Is it your Lordships Pleasure that one of your Lordships Clerks be appointed to stand by and report to your Lordships?

Lords. Yes, Yes.

A Clerk was sworn to make true Report; but my Lord *Wintoun* began to speak so very low, as scarce any could hear. Whereupon,

Sir J. Fekyll. My Lords, I perceive it is your Lordships Pleasure to indulge the Lord at the Bar, to have a Person sworn to report truly to your Lordships what he shall say in his Defence; but it is not your Lordships Intention that the Lord at the Bar should speak so low, as it is impossible for us or any near him to hear what he says.

L. H. Steward. My Lord *Wintoun*, Speak as loud as you can, so as the Managers may hear; he is only to help your Voice, so as their Lordships may hear.

Clerk from L. Wintoun. I think it very hard, and great Injustice, that I should not be allowed Time to make my own Defence; and that my Witnesses should not come up; and that I should be tyed down to a foolish Form, which I am not accusom'd to, when I am in danger of my Life.

Then the House was adjourned to the Chamber of Parliament.

Friday, March 16. *The Second Day.*

L. H. Steward. **T**HE House is resumed. Do your Lordships give the Judges leave to be cover'd?

Lords. Ay, ay.

Proclamation made for Silence, and another to bring forth the Prisoner, as usual.

The Prisoner brought to the Bar, and kneels.

L. H. Steward. My Lord *Wintoun*, you may

rise.—My Lord *Wintoun*, you may proceed upon your Defence.

The Clerk ordered to report as before.

L. H. Steward. I again remind your Lordship, you are to speak in your Defence as loud as you can; if your Voice is not heard, he is ready to report to the Lords what you say, but you must speak as loud as you can.

Clerk from Lord Wintoun. My Council is ready here to speak for me.

L. H. Steward. My Lord, I would not presume to make an Answer, but that it is known Law; that undoubtedly your Lordship cannot have Council, by the Law of the Land, to speak in your Defence, unless it be to Matter of Law; for the Law supposes every Man sufficient to answer for himself as to Matter of Fact.

Clerk from Lord Wintoun. My Lords, I am not accustomed to speak on such Occasions; therefore I hope your Lordships will allow my Council to speak for me.

L. H. Steward. My Lord, I must acquaint you, that the Law in this Case admits of no Exception, but holds to the general Rule.

Clerk from Lord Wintoun. My Lords, I don't understand the Law; I am perfectly a Stranger to the Customs of the House, therefore hope your Lordships will allow my Council that know them to speak for me.

L. H. Steward to the Clerk. You let your Voice fall.

Clerk from Lord Wintoun. I am not accustomed to the Practice of this House; therefore I desire that your Lordships would please to allow other People to speak for me that understand them.

L. H. Steward. My Lord *Wintoun*, your Council are not to be allowed to speak for you, as to those Things that are Matter of Fact, in an Impeachment of High-Treason, but to what is Matter of Law; and I believe if you ask your own Council they will tell you, as the Law stands they cannot be heard for you here as to Matter of Fact.

Clerk from Lord Wintoun. The Council will inform your Lordships of the Matter of Fact, and they know how better to express it than I do.

L. H. Steward. My Lord *Wintoun*, have you any Witnesses to call in your Defence?

Clerk from Lord Wintoun. I told your Lordships Yesterday, my most material Witnesses were not yet come up.

L. H. Steward. My Lord, I acquainted your Lordship Yesterday, and now would remind you of your own Petition exhibited to the House of Lords, wherein you acknowledge that a great many of your Witnesses were come up; those Witnesses were arrived, you only then pretended Four were not yet come. Doth your Lordship design to make no manner of use of those great Numbers of Witnesses that you admitted were come?

Clerk from Lord Wintoun. Without those they would not be of such an Effect—They would serve for nothing without those Witnesses coming.

L. H. Steward. My Lord *Wintoun*, your Lordship will please to observe the Lords wait with great Patience, to see if your Lordship would be better advised, and go into your Defence.

Clerk from Lord Wintoun. I don't really know, my Lords, what to say for it, for I don't understand the Proceedings of this House. It was always the Custom in any Court where I was, for People to be allowed to speak, or the Council be allowed

allowed to speak for me, for I am not accustomed to speak any manner of way in my own Defence, therefore I hope you will allow my Council to speak for me. My Council have a Point of Law to speak to; they say so, but I know nothing of it.

L. H. Steward. My Lord *Wintoun*, your Council have had Access to you; and tho' your Lordship can't speak and argue to the Point of Law, can't your Lordship propose what the Question is?

Clerk from L. Wintoun. It is impossible for me to do a thing I don't understand; I don't know what the Point of Law is, no more than a Man that knows nothing about it.

When some laugh'd,

L. Wintoun. I am only speaking in my own Defence; I don't expect to be laugh'd at.

L. H. Steward. I think his Lordship does observe well; I hope every one will forbear that.

L. H. Steward. Won't your Lordship be pleased to name what Matter the Question concerns?

Clerk from L. Wintoun. It will be something about the Trial; no doubt something of what the common People have been speaking about—It is, no doubt, in Answer to the Managers of the House of Commons. I have not seen my Council since I was last here in the House; I have been kept close Prisoner all the time, and no Body come near me; nor had I any Time to speak with any Body, particularly with my Council; so that I have not had Time to be exactly informed of all the Points of Law they have to plead. The Council will tell themselves what Point of Law they have to plead.

L. H. Steward. My Lord *Wintoun*, regularly you should propound your own Question before your Council speak. Before it appears to be a Point of Law, it is not fit for your Council to be heard.

Clerk from L. Wintoun. It is impossible I should direct a Council, I, that don't understand Law: I can't introduce a Point of Law; my Council will speak to the Point of Law.

L. H. Steward. My Lord *Wintoun*, did not you speak to your Council last Night?

Clerk from L. Wintoun. I could not.

L. H. Steward. Why?

Clerk from L. Wintoun. Because it was late when I went from hence; and your Lordships know I am a close Prisoner in the *Tower*; and was lock'd up and could not see them. I see no Body but the Guards.

L. H. Steward. Hath not your Lordship several times seen your Council, as often as you required an Order for so doing?

Clerk from L. Wintoun. I never saw my Council but once, before I gave in my Answer.

L. H. Steward. Did you desire to see them oftner?

Clerk from L. Wintoun. My Lords, my Solicitor spoke to them; and my Witnesses not being come up, it was needless for me to speak to my Council, before that they might know what the Witnesses had to say, and so might draw up the State of the Question. I did not doubt but the Lords would have given me more Time; and therefore I was not so desirous to see my Council, as I would have been, if I thought I should have been so much cramped in Time.

Mr. Cowper. My Lords, I had the Honour to receive the Commands of the Commons, to re-

ply to his Lordship's Defence, and it was reasonable to expect that the Prisoner, having pleaded Not Guilty to the Impeachment, would have attempted to give some Evidence in support of his Plea; but since it seems to be his Lordship's Resolution not to enter into a Defence, I think it my Duty to say something to your Lordships upon this unexpected Occasion. Such is the Treason, and so full the Evidence to prove it, that I think his Lordship's Behaviour, unaccountable as it is, more to his Purpose than any other could have been. My Lords, I am very unwilling to speak my own private Sentiment of his Lordship's present Conduct, although the Observations I could make arise out of his Lordship's Answer to the Impeachment: Whoever shall read and consider it, will find my Lord *Wintoun* not denying, but confessing the several Overt-Acts of Treason laid to his Charge, and then drawing a false Conclusion, that he is Not Guilty however of the Treason whereof he is accused. He denies that what he did was done with a traitorous Intention, and says very emphatically, that the pure Streams of Loyalty, which have always run in the Blood of his Ancestors, are derived to him uncorrupted; and thus, my Lords, a Popish Pretender being the Object of his Lordship's Loyalty, he thinks he may be guilty of the whole Impeachment without being a Traitor. This is the true state of the Case. It seems to me, his Lordship is determined to maintain his Point; and how far he may think it proper to acknowledge your Lordship's Jurisdiction I know not. My Lords, as to the Impeachment which the Commons with great Justice have exhibited against this Prisoner, your Lordships have observed that the several Treasons therein contained have been fully proved; I am unwilling, in a case so plain, and where no Defence has been, or can be made, to waste your Lordship's Time. Your Lordships have heard, in the course of the Evidence which we have produced, that this Lord departed from his Seat of *Seaton* House with about fourteen of his own Servants free and unconstrained; that he joined others of the Rebels at *Moffett*, at which Place his Lordship was pleased to form a Troop, which from thenceforth was called the Earl of *Wintoun's* Troop. The Prisoner had the Command of it and for fear his Zeal for the Pretender should pass unobserved, his own Servants rid in his own Troop in his own Livery; and I may add, that it appears his Lordship's Troop was paid after the rate of Two Shillings *per diem* each Man, by his Lordship's Order, and with his own Money. From the Town at *Moffett*, which I mentioned, your Lordships had an account of many Marches and Countermarches; his Lordship and the Rebels under him ever where increasing in their Numbers; every where declaring and proclaiming the Pretender to his Majesty's Crown, as King of these Realms. And, my Lords, I may venture to say it appears through the whole course of the Evidence, that no one was more zealous and active than the Prisoner. My Lords --

L. Guilford. I am very lorry to interrupt that Gentleman, but I think it proper, before the House of Commons sum up their Evidence, to move your Lordships to adjourn to the House of Lords.

Then the House was adjourned to the Chamber of Parliament; and after about half an Hour returned, and the House was resum'd.

And Proclamation for Silence being made as usual,

L. H. Steward. My Lord *Wintoun*, I am order'd by their Lordships to acquaint you, that they are yet ready to hear any thing that you have to say in your Defence by way of Observation upon what hath been prov'd against you, or alledged against you, or otherwise; they are likewise ready to hear any Witnesses you are pleas'd to call or produce; but then I am to acquaint your Lordship, that if you neglect this Opportunity now given you, then it is their Lordships Pleasure that I should signify to the Managers of the House of Commons, that they should go on to their Reply; and if such Reply be made, your Lordship hath no further Opportunity to alledge any thing, or to prove any thing. This Notice is ordered by their Lordships to be given you. I am likewise to acquaint you, that it is their Lordships Opinion, as I before told you, that if you have any Question of Law to be spoken by your Council, their Lordships cannot admit any other Form, but that you should propound it to their Lordships yourself.

Clerk from L. Wintoun. I believe my Council, my Lords, have something to say in Answer to what the Managers have said. My Lords, the Gentleman who was present, knows they would not let me know what they had to say.

Clerk. He says I was by when his Council said so.

L. H. Steward. My Lord, if your Lordship hath any Notes or Papers you may help your Memory by them in your Defence.——Read or look upon them.

Clerk from L. Wintoun. I shall read it as I can, and you will excuse it if I don't do it right as I should do.

Lord Wintoun reads, and the Clerk repeats.

The Council have a Point of Law arising from what hath been pass'd in the House, to shew that he is such a Person as is not capable of committing the Treason laid in the Impeachment. I plead Not Guilty, and this alledges the same. I say I am Not Guilty, and the Paper says it will demonstrate I am not.

The Paper read again and repeated as before. The Council have a Point of Law arising from what hath passed in the House, to shew that he is such a Person that is not capable of committing the Treason laid in the Impeachment.

Clerk from L. Wintoun. I don't understand Law, and how should I introduce a Point of Law?

L. H. Steward. My Lord *Wintoun*, if your Lordship doth not proceed to make a Defence, and to call your Witnesses, I have already acquainted you, and I believe I shall be excused for doing it a second Time, that I shall signify to the Managers of the House of Commons to reply, after which your Lordship can't have them examined.

Clerk from L. Wintoun. I heard your Lordship what you said, but I don't understand what is meant by it.

L. H. Steward. They may proceed to say what they think proper touching that Sort of Defence your Lordship is making, to answer what they have already said and proved against your Lordship; after they have said and done this, the Lords won't allow you to speak afterwards.

Clerk from L. Wintoun. The Council desire to be heard, since they have written a Paper, to be

heard on that Paper.

L. H. Steward. The Paper is allowed to help your own Memory, but you must not give in any Paper as written by your Council, nor mention it as such.

Clerk from L. Wintoun. I desire my Council may be heard on the Point of Law contained in what I call the Paper. I desire my Council may be heard to the Point of Law, which I read out of the Paper. I desire my Council may be heard to the Point of Law, which they urge they have to say.

L. H. Steward. My Lord *Wintoun*, you have by the help of a Paper, propounded that which you call a Point of Law. Their Lordships have heard what you have propounded. I don't find any Motion is made to adjourn, to consider whether such a Point is fit for your Council to be heard to, that is, whether it is a Point of Law. If there be any Doubt, you will presently see it by the Effect, by such a Motion as I have mentioned.

After some Pause,

L. H. Steward. If your Lordship doth not proceed, I must intimate to the Managers of the House of Commons that they may reply.

Clerk from L. Wintoun. My Lords, if your Lordships will allow my Council to be heard on the Point of Law I have given in.

L. H. Steward. My Lord, I think I may now presume to tell you, that I humbly apprehend it is no Point of Law which you propose.

Clerk from L. Wintoun. I am not a Judge of a Point of Law, for I don't understand Law, nor never did.

L. H. Steward. My Lord *Wintoun*, the same Matter must not be drawn over and over again. If your Lordship doth not proceed to something proper for your Defence, I must signify immediately to the Managers that they may reply.

Clerk from L. Wintoun. If your Lordships please to hear the Council, they will tell you what it means. The Council dare not speak till they be desired.

L. H. Steward. Gentlemen of the House of Commons, you may reply.

Mr. Cowper. My Lords, I shall avoid, as near as I am able, repeating any Thing I have already said before your Lordships last Adjournment. I was observing that the Behaviour of the Prisoner, my Lord *Wintoun*, throughout all his Conduct, during the whole Progress of the Rebellion, appeared in a quite different Light, to that in which he would now willingly appear: Your Lordships find him, according to the Evidence, at every false Alarm very inquisitive to know the Occasion; having assumed the Command of a Squadron, his Lordship was instantly at his Post, ready to receive and encounter his Majesty's Forces, and the Reverend Mr. *Patten* has done Justice to his Lordships Vigilance and Courage upon this Occasion; but it seems the Alarms were both false: Hence we may observe, that Alarms may be false, and *Dangers may be imaginary*; which Mr. *Patten*, and Men of his Principles would do well to reflect on at leisure. My Lords after great Numbers of Marches and Counter-marches, during which his Majesty's Subjects were plundered, the Public Money seized, and Taxes exacted from the People by Force and Violence. Your Lordships have heard that the Town of *Preston* was seiz'd by this Lord,

and

and the Traitors, his Accomplices. At this Place ensued a terrible Slaughter of his Majesty's faithful Soldiers, Men who deserved a better Fate than to die by the Hands of such perfidious Rebels. But when the usual Bravery of the King's Troops prevailed, and there was nothing left but the undeserved Hope of Mercy, you find the Prisoner amongst the rest surrendering his Arms and his Person to the Discretion of his Majesty's Generals. The Commons cannot, my Lords, but take a particular Satisfaction in one Incident, occasion'd by this Lord's putting himself upon his Trial, which is, that it has administer'd to them a Time and an Opportunity, in the most public Manner before this August Assembly, to vindicate his Majesty's Generals from a malicious Calumny suggested even by this Lord, the Prisoner, in his Answer to the Impeachment, and not only by him, but by the rest of his Accomplices already attained. It seems not to be accidental, that all the Lords mentioned in the Impeachment should every one of them (false as it appears to be) alledge that they surrender'd, some say upon Promises, but all agree upon Hopes given of Mercy, considering how fully it now appears, that there is not the least Colour or Shadow of Truth to support this Suggestion; it is no uncharitable Reflection to say, that their Lordships, I doubt, to supply the Mischiefs their Arms could not accomplish, were willing to assist their Party, by furnishing them with an Untruth to propagate. With what Zeal and Industry has it been accordingly propagated! I may take the Liberty, I presume, to say, with the Consent of this whole Assembly, that it appears on the Evidence to be utterly false; nay further, that the very Reverse is true, the Rebels would willingly have obtained a Promise, or even a Hope of being recommended, but the Generals rightly told them, Rebels deserved no Mercy, nor would they treat with Rebels of surrendering otherwise than at Discretion. I cannot conclude without touching shortly upon a Question which I observed his Lordship to ask, during the Course of the Evidence; I think it was propos'd to Colonel *Cotton*, Whether any of *our Men*, as his Lordship was pleas'd to express it, were slain during the Time of the Cessation of Arms at *Preston*? which, in fact, was true; and if it had been answer'd in the Affirmative without Explanation, I believe his Lordship would have been gratified, by furnishing his Friends with another Story to propagate, which, well improved, might have lasted a good while; but when the Witness (who, I presume, discerned the Tendency and Malignancy of the Question) gave his Answer, the Case appears this; The Rebels stipulate and agree (Hostages being deliver'd) that no Works shall be erected in the Town during the Suspension; that no Person then in the Town shall go out of it during the same time; in Breach of which Stipulation and Agreement about six of the Rebels attempt, Sword in Hand, to charge through the King's Troops, in which Attempt they fell, and if the King's Troops had done less they had not done their Duty. My Lords, I thought it not improper to make some few Observations upon the Evidence; not that his Lordship's Defence has made it requisite, but to answer, according to my Power, the End of that Trust which the Commons have been pleas'd to repose in me.

Sir *William Thomson*. My Lords, I should think myself unworthy the Honour of being allowed any Share of your Lordships Time; but as I was entrusted by the Commons to assist the learned Gentleman who spoke last, in a Reply to such Defence as should be made by the Noble Lord at the Bar, although no Evidence has been produced by him, yet I must request your Lordships Patience to make a few Remarks upon the Nature of this Cause, as it stands before your Lordships.

The Answer of the Noble Lord not being supported by Evidence, ought to go for nothing; but since several Matters are alledged in it to mitigate, if not to justify his Proceedings, which are falsified by our Evidence, I beg leave to take some notice of it.

I must agree with the Noble Lord, that "It will be very pleasing to that honourable Assembly who are his Accusers to have an innocent Man acquitted, as well as a guilty one condemned." Nor can I differ with him where he asserts, "That to be taken with Persons in Arms against the Government, is a reasonable Presumption of his Guilt, and a very just Foundation to accuse him with the rest so taken; but that the Circumstances of his Case appear so different from the others, as to require your Lordships distinguishing him in Judgment." I cannot say, that any thing has been offer'd to your Lordships which makes room for such a Distinction.

"This Noble Lord is pleas'd to give an Account of what happened to him about eight Years ago, when he endeavour'd to avoid the Suspicion of the Government; he mentions the ill Usage of the Militia and the King's Troops, and several Transactions, *viz.* rifling his House, and committing Disorders there, without telling when they happened, or from whom; he is pleas'd to say that he was unfortunately driven into the Company of some of the Persons mentioned in the Impeachment; that he joined them without any Intention to assist their Designs; that he never meant to leave his own Country; that he was ignorant of the Purposes of his Companions; that he was constrained to keep them Company, but never join'd in any Act of Hostility, or countenanced or abetted them therein.

My Lords, the Evidence against this Noble Lord sufficiently explains how far he abetted the Undertakings of his Companions.

It was prov'd to your Lordships, that when he first came to join the Rebels at *Moffett*, he brought fourteen of his Domestic's with him, most of them well armed and accoutred; that he came with them to a Place of Rendezvous, where were assembled the Lord *Kenmure*, and about one hundred and fifty Horse; that from the Time he joined them till he was taken, he march'd along with them in a Hostile Manner through all the Towns at the Head of his Troop that he had formed, and which he commanded upon all Occasions; that he had also a Squadron under his Command and Direction, to whom he gave Orders, and was very ready to have dispos'd them to Action, particularly on two Alarms of the King's Troops; that he assisted several Times at the proclaiming the Pretender by the Rebels in
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the Towns where they passed thro' with his Sword in Hand; that he was with them at those Towns where they seized the public Money, the Cannon, and other warlike Instruments; and when he came to *Preston*, that in the Preparations to resist the King's Troops he was as active as any of the rest; and particularly in the Church-yard, where the Rebels were drawn together in order to that Resistance, he had his Sword and Pistols with him, and was assisting in making the Dispositions for Engagement.

And for the Constraint that is pretended, 'tis plain, that as he came in to the Rebels in the manner I have mentioned without any Force or Compulsion whatever, so he continued all along with them, and gave them the best Assistance he could; and was far from shewing any Backwardness or Uneasiness at their Proceedings through the whole Progress of this Affair. He drank the Pretender's Health, and the other usual Healths among the Rebels, *viz.* Success to their Cause; and if he had not wish'd it, he might have left them whenever he would, if he had an Inclination so to do; he did not want an Opportunity, particularly at *Langholm*, when about five hundred Highlanders went back to *Scotland*; before they went they suffered him to come to them (though they would not any other) that he discoursed them, and came back from them, and declared it was not his Fault that they would not go along with him into *England*. My Lords, whether the whole Tenor of this Proceeding does not manifest the Intentions of this Noble Lord, and whether the Evidence of these Facts does not falsify every Allegation in his Answer, by which he would justify himself, your Lordships will easily determine.

The Noble Lord says further in his Answer, "That if he hath committed any Act which by the Rigour of the Law may be construed High-Treason, he hopes the Innocence of his Heart, and his Ignorance of the Law, will, by your Lordships Intercession, render him an Object of his Majesty's Mercy; which, he says, at the Time of his Surrender, he was encouraged to depend upon by his Majesty's Officers."

As to any Assurances or Encouragement to expect Mercy upon the Surrender, the direct contrary is fully made out, I dare say, to your Lordships entire Satisfaction. And for your Lordships Intercession, that is not the Consideration now before you: The Question is only, whether the Witnesses have proved him guilty of the High-Treason of which he is accused?

I find the noble Lord cannot condescend to own the Facts he is charged with to amount to this Crime: He is pleased to say, "That he is descended from a noble Family, in whose Blood the Streams of Loyalty were always pure, never corrupted or polluted with Treason or Sedition; that he never degenerated from his loyal Ancestors, so as to form or carry on any Design to subvert or alter the Constitution of this Kingdom, but that he was always ready to sacrifice his Fortune, and even his Life for its Preservation."

My Lords, I could wish, for the Sake of this unhappy Lord, the Object of your present Consideration, that it were not too evident what Constitution he meant to preserve, and for which he has ventured his Life and Fortune.

All Mankind, who will not shut their Eyes, must see that the Purpose of this Noble Lord and

his Accomplices was to dethrone his most sacred Majesty, our Protestant King, whom God and the Laws have set over us, and in his Stead to set up a Popish Pretender to his Crown, bred up in Superstition, and under the Maxims of Tyranny and Arbitrary Power: The Success of this Design must necessarily have produced a most dreadful Scene of Blood and Confusion; the Life of our most gracious Sovereign, the Lives of all his Royal Family, your Lordships, and those other brave and honest *Britons* who would have stood in the Defence of the Religion, the Laws and Liberties of their Country, must have been sacrificed to the Rage and Fury of Popish Bigotry, and to the insatiable Cruelty of Jesuits and Priests, who, as we are Protestants, are our most implacable Enemies.

Instead of the Happiness we now enjoy under our most excellent Form of Government, where every thing that is dear and valuable to human Nature is protected by the Laws from the least Violence or Invasion whatever, what could this Nation expect from Popery and Arbitrary Power, but endless Miseries and Calamities, and the most abject Slavery?

My Lords, it is a melancholly Reflection, that there should be any, who pretend to the Name of *Britons*, who would engage in so groundless, so unprovok'd, and, most properly called, so unnatural a Rebellion; or that others should be so deluded or corrupted, as by their false and malicious Insinuations, and by their vile Calumnies on the best of Princes, or by their avowed Indifference towards him, to encourage that traitorous Enterprize.

All such Enemies to the Welfare and Prosperity of their Country, ought to reflect, with the utmost Shame and Confusion on the dismal Prospect they were preparing for us by the natural Tendency of their Proceedings: And I cannot but think, that it must add to the Affliction of this unfortunate Lord who stands before this August Judicature, while he reflects on the Assurances given him of generous Compassion as far as is consistent with the Rules of Justice, while he considers of that Humanity and tender Regard expressed towards him by that great and noble Mind, who so justly represented all your Lordships Sentiments, while he observes that Care and Concern shewn to him, that Assistance granted him towards making his Defence, and that his Judges are so many noble Peers, who can never be influenced to condemn the Innocent, and who will be governed only by full Proof and clear Conviction: Sure he must now reproach himself, when he thinks that he was about to subvert those very Laws by which even his Life, who has so transgressed, is thus protected.

My Lords, I am here led to take notice also, that his most gracious Majesty (against whom this unfortunate Lord, with his Associates, have so signally offended) hath been pleased to express his mild and gentle Disposition, even to them his most inveterate Enemies. *It was an Uneasiness to him that he could not distinguish the first Years of his Reign by the endearing Marks of Peace and Clemency; it afflicted him that the Calamities of his faithful Subjects should require indispensable Returns of Severity.*

I may presume your Lordships natural Compassion would incline you to the same merciful Dispositions; but the Commons are persuaded that

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your Lordships will have some Regard to the Lives of those many brave and gallant Men, who by the base Methods of the Rebels were murder'd, and expir'd in their Country's Cause; that their Blood demands the Justice of that Country in whose Defence it was spilt; and the Commons are assured that your Lordships must think that the Public Safety also requires your exemplary Justice, more especially on the principal Offenders; and that 'tis the most effectual Method to prevent any future Insurrections or Disturbance of the Public Repose and Tranquillity of the Kingdom, and to render firm and lasting our present happy Establishment.

Sir *J. Fekyll*. My Lords, the Gentlemen of the House of Commons have nothing more to offer to your Lordships, but desire your Lordships Opinion on this Evidence.

Then the House of Lords was adjourned to the Chamber of Parliament; and being returned, the House resumed, and Proclamation made for Silence as usual.

Then the Lord High-Steward being seated on the Chair, placed as before-mentioned, stood up uncovered, and beginning with the youngest Peer, said,

Thomas Lord Parker, what says your Lordship, is *George Earl of Wintoun* Guilty of the High-Treason whereof he stands impeached, or not Guilty?

Then *Thomas Lord Parker* standing up in his Place, and laying his Right Hand on his Breast, said, Guilty upon my Honour.

In like manner, the several Lords after-mentioned, being all that were present, answered as followeth.

Richard Lord Cobham, Guilty upon my Honour.

Henry Lord Carleton, Guilty upon my Honour.

Bennet Lord Harborough, Guilty upon my Honour.

James Lord Saunderson, Guilty upon my Honour.

Robert Lord Bingley, Guilty upon my Honour.

Allen Lord Bathurst, Guilty upon my Honour.

Thomas Lord Mansell, Guilty upon my Honour.

Charles Lord Boyle, Guilty upon my Honour.

Simon Lord Harcourt, Guilty upon my Honour.

John Lord Belhaven, Guilty upon my Honour.

William Lord Ross, Guilty upon my Honour.

John Lord Gower, Guilty upon my Honour.

Maurice Lord Haversham, Guilty upon my Honour.

Henry Lord Herbert, Guilty upon my Honour.

John Lord Ashburnham, Guilty upon my Honour.

Francis Lord Guilford, Guilty upon my Honour.

Richard Lord Lumley, Guilty upon my Honour.

Peregrine Lord Osborn, Guilty upon my Honour.

Charles Lord Cornwallis, Guilty upon my Honour.

John Lord Colepepper, Guilty upon my Honour.

Charles Lord Bruce, Guilty upon my Honour.

William Lord Brook, Guilty upon my Honour.

James Lord Compton, Guilty upon my Honour.

William Lord St. John, Guilty upon my Honour.

Thomas Lord Howard, of *Effingham*, Guilty upon my Honour.

Charles Lord Fitzwalter, Guilty upon my Honour.

John Lord Delawar, Guilty upon my Honour.
Peregrine Lord Willoughby, of *Eresby*, Guilty upon my Honour.

Henry Lord Viscount Tadcaster, Guilty upon my Honour.

Henry Lord Viscount Lonsdale, Guilty upon my Honour.

Talbot Lord Viscount Longueville, Guilty upon my Honour.

Charles Lord Viscount Townshend, Guilty upon my Honour.

Lawrence Lord Viscount Say and Seal, Guilty upon my Honour.

George Earl of Hallifax, Guilty upon my Honour.

John Earl of Bristol, Guilty upon my Honour.

Heneage Earl of Aylesford, Guilty upon my Honour.

Charles Earl of Tankerville, Guilty upon my Honour.

Lewis Earl of Rockingham, Guilty upon my Honour.

James Earl of Carnarvon, Guilty upon my Honour.

Thomas Earl of Strafford, Guilty upon my Honour.

Archibald Earl of Ilay, Guilty upon my Honour.

Henry Earl of Deloraine, Guilty upon my Honour.

Hugh Earl of Loudoun, Guilty upon my Honour.

Thomas Earl of Hadington, Guilty upon my Honour.

John Earl of Rothes, Guilty upon my Honour.

Hugh Earl of Cholmondeley, Guilty upon my Honour.

Francis Earl of Godolphin, Guilty upon my Honour.

John Earl Poulet, Guilty upon my Honour.

John Earl of Greenwich, Guilty upon my Honour.

Henry Earl of Grantham, Guilty upon my Honour.

William Earl of Jersey, Guilty upon my Honour.

Edward Earl of Orford, Guilty upon my Honour.

George Earl of Warrington, Guilty upon my Honour.

Richard Earl of Scarborough, Guilty upon my Honour.

Henry Earl of Portland, Guilty upon my Honour.

Robert Earl of Holderness, Guilty upon my Honour.

Henry Earl of Rochester, Guilty upon my Honour.

Daniel Earl of Nottingham, Guilty upon my Honour.

Charles Earl of Radnor, Guilty upon my Honour.

Richard Earl of Burlington, Guilty upon my Honour.

Arthur Earl of Anglesey, Guilty upon my Honour.

Edward Earl of Clarendon, Guilty upon my Honour.

Thomas Earl of Stamford, Guilty upon my Honour.

Charles Earl of Manchester, Guilty upon my Honour.

George Earl of Northampton, Guilty upon my Honour.

John Earl of Leicester, Guilty upon my Honour.

Scroop Earl of Bridgewater, Guilty upon my Honour.

Lionel Earl of Dorset and Middlesex, Guilty upon my Honour.

Henry Earl of Lincoln, Guilty upon my Honour.

Thomas Earl of Pembroke, Guilty upon my Honour.

James Earl of Derby, Guilty upon my Honour.

William Marquis of Annandale, Guilty upon my Honour.

Thomas Duke of Newcastle, Guilty upon my Honour.

Evelin Duke of Kingston, Guilty upon my Honour.

Robert Duke of Ancaster and Kesteven, Lord Great Chamberlain, Guilty upon my Honour.

Henry Duke of Kent, Guilty upon my Honour.

John Duke of Roxburgh, Guilty upon my Honour.

James Duke of Montross, Guilty upon my Honour.

John Duke of Montagu, Guilty upon my Honour.

John Duke of Buckingham and Normanby, Guilty upon my Honour.

John Duke of Marlborough, Guilty upon my Honour.

Charles Duke of Shrewsbury, Guilty upon my Honour.

Charles Duke of St. Albans, Guilty upon my Honour.

Charles Duke of Richmond, Guilty upon my Honour.

Charles Duke of Somerset, Guilty upon my Honour.

Charles Duke of Bolton, Lord Chamberlain of his Majesty's Household, Guilty upon my Honour.

William Duke of Devonshire, Lord Steward of his Majesty's Household, Guilty upon my Honour.

Charles Earl of Sunderland, Lord Privy-Seal, Guilty upon my Honour.

L. H. Steward. My Lords, I am of Opinion that *George Earl of Wintoun* is Guilty of the High-Treason whereof he stands Impeached, upon my Honour.

Proclamation for Silence, and Proclamation to bring forth the Prisoner, as usual.

L. H. Steward. *George Earl of Wintoun*, the Lords have considered of the Charge, and the Evidence given against you; and likewise of what you have said in your Defence, and of the whole Matter as it hath been before them in this Trial, and are of Opinion that your Lordship is Guilty, and have found your Lordship guilty of the High-Treason whereof you stand impeached.

Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. H. Steward. This House is adjourned to the Chamber of Parliament.

Then all the Lords returned in the Order before-mentioned to the Chamber of Parliament.

Monday, March 19. *The Third Day.*

Proclamation for Silence, and Proclamation for the Prisoner to be brought to the Bar, as usual.

L. H. Steward. *George Earl of Wintoun*, when you was last at this Bar, I let your Lordship know that your Peers had found you guilty of the High-Treason whereof you stand impeached, that is in the Terms of Law, convicted you of High-Treason. I am now to ask your Lordship if you have any thing to offer why Judgment of Death should not pass upon you according to the Law.

Clerk from L. Wintoun. My Lord *Wintoun* faith his Council have a Point of Law to offer to your Lordships, to shew that he is such a Person against whom, by Law, Judgment ought not to be given.

L. H. Steward. My Lord, will your Lordship state the Point upon which your Lordship is advised, that you are not such a Person against whom Judgment ought to be given?

Clerk from L. Wintoun. I don't know what your Lordship means.

Sir C. Phipps. If your Lordships please, we have a Point of Law humbly to offer to your Lordships, if—

Att. Gen. My Lords, I hear a Gentleman of the long Robe offering to speak. I do humbly insist on it that they are not to speak, unless there be a Point of Law stated by the Prisoner, and which your Lordships shall think to be a Point of Law, we think it irregular.

Mr. Cowper. We apprehend the Objection to that Gentleman's being heard is so obvious, that we are surprized to find he should presume to speak without your Lordship's Direction so to do; he cannot but know that the Prisoner is to propound the Question in Law; and if your Lordship shall conceive it to be a Point of Law proper to be argued by Council, your Lordships will direct him to speak; but he ought not in any case to propound a Question in Law, nor when a Question is propounded by the Prisoner, to speak to it without your Lordship's express Direction.

Lord High-Steward. *Sir Constantine Phipps*, you know the Practice to be so, and the Point must be first stated by the Prisoner before you can speak to it.

Sir C. Phipps. My Lords, if I had been heard but ten Words more—

Sir W. Thomson. My Lords, we humbly insist upon it that that Gentleman be not heard one Word more—

Lord Ilay moved to adjourn.

L. H. Steward. Is it your Lordship's pleasure to adjourn?

Lords. Ay, ay.

L. H. Steward. This House is adjourned to the Chamber of Parliament.

The Lords went in their Order to the Chamber of Parliament.

And after about half an Hour being returned,

The House was resumed, and Proclamation made for Silence, as usual.

L. H. Steward. My Lord *Wintoun*, the Lords have consider'd of the Matter which you have moved in Arrest of Judgment, which was to this effect,

effect, that you are not such a Person as against whom Judgment of Death for High-Treason ought to be pronounced. I am directed to acquaint you that their Lordships are of Opinion it is Matter of Fact, and not of Law; and that the Lords think you are such a Person as against whom Judgment ought to be given in this Case. I am likewise ordered by the Lords to reprimand you Sir *Constantine Phipps*, for having, in a Proceeding of this Nature, presumed to be so forward as to speak for the Prisoner at the Bar before a Point of Law was first stated, and you had leave to speak to it; and your Fault is certainly the greater, for having presumed to do this to a Matter which you cannot but know is Matter of Fact, and that the Law is not doubtful one way or other, the Fact being supposed. My Lord *Wintoun*, I am allowed again to ask your Lordship, if you have any thing further to alledge or move why Judgment of Death should not pass upon you according to the Law.

Clerk from L. Wintoun. My Council are ready to offer, in Arrest of Judgment, that the Impeachment is insufficient, for the Time of committing the Treason is not therein laid with sufficient Certainty.

L. H. Steward. I think the Matter moved by my Lord is, that his Council should be admitted to shew that the Impeachment is insufficient, in respect that the Time therein is not laid with sufficient Certainty. This I think is the Matter mov'd. Will your Lordships be pleas'd that the Council have Leave to speak?

L. H. Steward. Is it your Lordships pleasure that the Council for the Prisoner may be allowed to speak to this Point?

Lords. Ay, ay.

L. H. Steward. I ask your Lordships leave to go nearer to the Table.

Which being done,

Proclamation for Silence was made as usual.

L. H. Steward. Gentlemen that are of Council for the Prisoner at the Bar, you have liberty to speak to the Point propos'd.

Sir Constantine Phipps. **M**AY it please your Lordships, we that have the Honour to be assigned by your Lordships as Council in this Case, do humbly apprehend the Impeachment against the noble Lord at the Bar to be insufficient; it is so uncertain, that we (with the greatest Submission) take it no Judgment can be given upon it. My Lords we beg leave to take Notice to your Lordships, that in Indictments in the Courts below, even for Trespasses, the Law requires the certain Day when the Offence is supposed to be committed to be alledged, and if a particular Day be not laid, the Indictment is insufficient. And if such Certainty is requisite in Offences of the most minute Nature, it is much more so in capital Crimes, and more still in Offences of the highest Nature, such as Treason, with which this noble Lord is charged.

My Lords, there be two Reasons why, in Indictments for High-Treason, a certain Day should be assigned when the Treason was committed.

One is for the Advantage of the Prisoner, that being apprised not only for the Facts with which he is charged, but also of the Time when those Facts are supposed to be committed, he may be the better able to make his Defence: 'Tis possible he may have Witnesses to prove he was at ano-

ther Place, and in other Company, at the Time when he is accused to have committed the Treason, or may by other Circumstances make his Innocence appear.

The second Reason is for the Benefit of the Crown, that it may be known to what Time the Forfeiture shall relate; for in Treason the Forfeiture relates to the Time laid in the Indictment; and if there be no precise Time alledged in the Indictment, the Forfeiture can relate no farther than to the Judgment.

My Lords, the Forfeitures in Cases of Treason are very great, therefore we conceive, with humble Submission, that the Accusation ought to contain all the Certainty it is capable of, that the Prisoner may not by general Allegations be rendered incapable to defend himself in a Case which may prove so fatal to him.

Our Books, my Lords; furnish us with many Instances where Indictments have been held to be insufficient for less Faults than not specifying the Day when the Offence was committed; but in Cases so plain, I will not trouble your Lordships with citing Authorities; for I believe there is not one Gentleman of the long Robe but will agree an Indictment for any capital Offence to be erroneous, if the Offence be not alledged to be committed upon a certain Day.

My Lords, an Attainder upon an Impeachment subjects the Offender to the same Punishment, the same Forfeitures, as an Attainder upon an Indictment; and therefore I am at a loss to find out a Reason why there should not be the same Certainty in the one as in the other; if equal Certainty be required in both, then we humbly submit to your Lordships Judgment whether this Impeachment be not erroneous and insufficient, in that there is no particular certain Time alledged when the Treason or the Overt-Acts were committed. The Treason alledged is conspiring and imagining the Death of the King, and the Impeachment sets forth, "That the Conspirators, (and names them) as false Traytors to his present most sacred Majesty King *George*, the only lawful and undoubted Sovereign of these Kingdoms, having withdrawn their Allegiance, and cordial Love, and true and due Obedience, which they, as good and faithful Subjects, owed to his said Majesty, did, in or about the Months of *September, October, or November 1715*, most wickedly, maliciously, falsely, and traiterously imagine and compass the Death of his most sacred Majesty." My Lords, a Prosecution by Impeachment is a Proceeding at the Common Law, for *Lex Parliamentaria* is a Part of the Common Law; and we humbly submit it to your Lordships Consideration, whether there is not the same Certainty required in one Method of Proceeding at the Common Law as in another.

Your Lordships observe with what Uncertainty, as to the Time, the Treason is alledged. 'Tis said to be in or about the Months of *September, October, or November 1715*. Who is able to say to which of these Months, much less to what Day of either of these Months, the Forfeiture shall relate? And how is it possible for the noble Lord, the Prisoner at the Bar, to make a Defence to a Charge so general, unless he bring for Witnesses all those Persons with whom he has had any Conversation during those three Months at least?

My Lords, the Overt-Acts are alledged with the same Insufficiency and Uncertainty as the Treason it self is; for in charging the first Overt-Act, which is conspiring to levy War and to depose the King, it is said, "That for accomplishing and executing their said traiterous Purposes, they the said *James Earl of Derwentwater, &c.* did, in or about the said Months, or some of them, and at diverse other Times, and at diverse other Places within this Kingdom, wickedly and traiterously agree, confederate, &c. to raise, excite, and levy, within the Counties of *Tewiotdale, Northumberland, Cumberland,* and the County-Palatine of *Chester,* and elsewhere within this Kingdom, a most cruel, bloody, and destructive War against his Majesty, in order to depose and murder his sacred Majesty, and to deprive him of his royal State, Crown and Dignity." My Lords, can any thing be more uncertainly alledged, than to say that the Conspirators did, in or about the said Months, or some of them, and at diverse other Times, and at diverse other Places within this Kingdom, confederate, &c. to levy War within the Counties of *Tewiotdale, Northumberland, Cumberland,* and County-Palatine of *Chester,* and elsewhere within this Kingdom?

The next Overt-Act, which is actually levying War, is not laid with greater Certainty; for the Impeachment sets forth, "That the said Earl of *Derwentwater, &c.* their Accomplices and Confederates, *in or about the Months* aforesaid, in the Counties aforesaid, *or some of them,* did gather together great Numbers of his Majesty's Subjects, and with them did assemble in a warlike and traiterous manner, in order to raise Tumults and Rebellion within this Kingdom; and having procured great Quantities of Arms, Ammunition, and warlike Instruments, *at the Times and Places aforesaid, or some of them,* did form and compose, or did assist in forming and composing an Army of Men, consisting of his Majesty's liege Subjects, in order to wage War against his said Majesty, for, and in behalf, and in favour of the said Pretender to the Crown of these Realms; and at the Time, and Times, and Places aforesaid, *and at divers other Times and Places* within this Kingdom, the said Conspirators did levy and raise War and Rebellion against his most sacred Majesty, &c.

The next Overt-Act is proclaiming the Pretender, which is more uncertain than any of the other; for the Impeachment sets forth, "That the aforesaid Conspirators, *during their March and Invasion aforesaid,* in open Defiance of his most sacred Majesty's just and undoubted Title to the Imperial Crown of these Realms, did wickedly and traiterously cause and procure the said Pretender to be proclaimed in the most public and solemn manner as King of these Realms.

Here is no certain Time or Place alledged when or where the Pretender was proclaim'd, but only that it was during their March and Invasion.

The last Overt-Act seems to be laid with greater Certainty than the rest; for 'tis said, "That the Conspirators did, on or about the 9th, 10th, 11th, 12th, or 13th of *November* aforesaid, traiterously seize and possess themselves of the Town of *Preston,* in the County Palatine of *Lancaster,* against his Majesty, and did then,

"and there, in a warlike and hostile Manner, levy War, oppose, engage, and fight against his Majesty's Forces, and did then and there cause and procure a miserable and horrid Slaughter and Murder of many of his Majesty's faithful Subjects." Here indeed are particular Days mention'd, but then the Words *or about* leave it at large, for no Man can tell how many Days may be included in these Words *or about.* We humbly apprehend that a Charge of this high Nature ought not to be alledged with such uncertainty, and that the Impeachment is as erroneous as an Indictment drawn in this Manner would be; this being a Proceeding of the same Nature, and according to the Course of the Common Law.

My Lords, I do not pretend any great Skill in Parliamentary Proceedings, but presume to say that in my little Experience in Business in other Courts, I never saw a Charge exhibited against any one that was laid in so uncertain a manner, unless in Libels in the Ecclesiastical or Admiralty Courts, which cannot in the least influence the Case now before your Lordships; this (as I have observed) being a Proceeding according to the Course of the Common Law.

Upon the whole Matter I humbly submit to your Lordships Judgment, whether for the Reasons I have offer'd to your Lordships Consideration, the Impeachment is not erroneous, and whether your Lordships will think fit to proceed to Judgment against the noble Lord the Prisoner at the Bar upon an Impeachment so uncertain and insufficient as I humbly apprehend this to be.

Mr. Williams. MY Lords, I am also assign'd, by your Lordships, of Council for this unfortunate Lord, and humbly insist in arrest of Judgment, that there is a Defect in this Impeachment, in regard no certain Day is laid, when the Treason is charged to have been committed.

In the Impeachment 'tis said, that this noble Lord did, *in or about* the Months of *September, October* or *November, 1715,* together with the others in the Impeachment nam'd, traiterously compass the Death of his most sacred Majesty: That this noble Lord did, *in or about* the said Months, *or some of them,* together with the rest, agree and confederate to levy War, against his Majesty: That *in or about* the said Months, *or some of them,* this noble Lord with others did levy War, and did march thro' several parts of the Kingdoms, and did proclaim the Pretender to be King: And that *on or about* the Ninth, Tenth, Eleventh, Twelfth, or Thirteenth of the said *November,* the noble Lord with others did seize and possess themselves of the Town of *Preston,* and fought against his Majesty's Forces.

This is the Effect of the Impeachment.

And with great Submission I take it, that in Point of Law, the Impeachment is defective in respect of the Uncertainty of the Time when this Treason is said to have been committed.

I humbly apprehend, that the Honourable the House of Commons is the *Grand Inquest of the whole Nation;* and that their Impeachment is in Nature of an Indictment, found by that Grand Inquest: Differing from an Indictment in this Respect, that an Indictment is found by the Inquest of a County only; but an Impeachment by the *Grand Inquest of the whole Kingdom.*

And taking it, that Impeachments are properly to be resembled to Indictments.

Then as the omitting of the laying of a certain Day when the Treason was committed wou'd be a material Fault in the Case of an Indictment; with great Submission, it is as material a Defect in the Case of an Impeachment.

It seems plain, that in the Case of an Indictment, a certain Day ought to be laid when the Treason was committed.

It will, I believe, hardly be denied, but that in Case of an Indictment for Treason, it wou'd be ill, if 'twere laid, that the Party indicted committed the Treason *on or about* the first of September, 1715.

It wou'd be apparently worse, if 'twere laid in an Indictment, that the Party committed the Treason *in or about the Month of September*, 1715.

It wou'd be still worse (because more uncertain) if it were laid in an Indictment, that the Party committed the Treason *in or about the Months of September, October or November*, 1715.

And, with great Submission, this, as I humbly take it, is the very Case before your Lordships; I mean, taking it, that Impeachments and Indictments, as to the material Part of them, are to be measured by the same Rules of Law, as I humbly conceive they ought to be.

That the certain Day, for the committing the Treason, ought to be laid in Case of Indictments for Treason, seems to be proved, not only from the constant Practice of laying a Day certain in all Indictments of Treason; but from the Reason of the Law, which shews it to be a *Substantial and Material Part* of the Indictment.

That the constant Practice, in Case of Indictments for Treason, is to lay the Day on which the Treason is supposed to be done, will, as I presume, be admitted.

And such constant Practice is, of itself, a strong Argument that the Law requires it.

But I humbly take it, that the Reason of the Thing argues still much stronger for me, and shews it to be an *essential Part* of the Indictment.

The Reason of mentioning a Day certain in the Indictment when the Treason is supposed to have been committed, is in some Respects even for the Benefit of the Crown itself, and in some Respects for the Advantage of the Party indicted.

It concerns the Crown, in respect of the Forfeitures accruing to the King, of the Lands of the Party indicted; for where an Attainder ensues upon an Indictment for Treason, the Lands of the Party indicted are forfeited to the Crown, not only from the Judgment, but from the Day mentioned in the Indictment when the Treason is charged to have been committed.

This is expressly said, in the *Lord Coke's 1 Inst.* 13. a. b. 390. b. and the Difference there taken is, between a Writ of Appeal and an Indictment. 'Tis there said, That if a Man be indicted for a capital Offence and out-law'd upon it, the Land of the Party is forfeited from the Day laid in the Indictment, for the committing of the Treason, or other capital Crimes; but in the Case of an Out-lawry upon a *Writ of Appeal*, because no Day is mentioned in the Writ, the Forfeiture is only from the Judgment.

And though in the Case of a Writ of Appeal, which is called in *Latin (Breve)* from its Brevity, no Day is mention'd, yet in the Declaration upon

the Appeal (which resembles an Indictment) 'tis necessary not only to mention the Day, but even the Hour when the Murder or Felony was committed.

In the Case of *Wilson* against *Law*, which was adjudg'd in the Court of *King's-Bench*, in the sixth Year of King *William* and Queen *Mary*, in an Appeal of Murder, an Exception was taken to the Appeal that it was too uncertain, in regard the Murder was laid to be done, *circa horam primam post meridiem*, and this Incertainty even of the Hour was much insisted upon: But this, 'tis true, was at length over-rul'd, and held that *circa horam primam*, or *inter horam primam & secundam*, was well enough.

However no one, as I humbly apprehend, ever doubted, but that laying of a certain Day when the Fact was committed, is necessary both in the Case of an Indictment, and in a Declaration upon an Appeal; and that as to the Land of the Party indicted, the Forfeiture relates to the Day mentioned in the Indictment.

But, if the Question were ask'd in the present Case, from what Day the real Estate of this unhappy Lord should be forfeited, it wou'd, as I humbly apprehend, be difficult to answer it.

And that Difficulty arises from the Incertainty of the Impeachment, as to the Time when the Fact was committed.

If then the laying in an Indictment the certain Day when the Treason was committed concerns the Benefit of the Crown, as it surely does;

If it entitles the King to the Forfeiture of the Lands from the Day laid in the Indictment, as from the Authorities I have mentioned it appears to do;

If this Matter concerns that great Prerogative and Flower of the Crown, and its Right to Forfeitures;

Then surely this Omission can by no means be called a slight Omission, or a Fault in Form only.

It will also have its Weight with your Lordships, That the mentioning a Day certain in the Indictment, when the Crime is laid to have been done, is likewise for the Benefit of the Party indicted. 'Tis for his Advantage to know the Time when he is charg'd to have committed the Offence, and by that he will be the better enabled to defend himself against the Accusation.

It is a known Rule in Law, that in all Cases of Indictments, (though for Misdemeanors only) they ought to be strictly certain.

This Rule holds *a fortiori* in Cases of Indictments for capital Offences;

And still, *a fortiori*, in Cases of Indictments for High-Treason, where for Example sake the Judgment, though just, is as terrible as can well be thought of.

My Lords, I am sensible I ought to have too great a Value for your Lordship's Time, to cite any of those numerous Cases in the Law-Books, which justify that known Rule in the Law that requires Certainty in Cases of Indictments.

I shall only beg leave to mention to your Lordships one Case, which is an Authority of your Lordships, upon a Writ of Error before your Lordships, which shews how strict the Law is in the penning of Indictments for Treason; and that it requires that even what seems to be Matter of Form only in such Indictments must be complied with. It is the Case of the King against *Tucker*,

which was in the sixth Year of King *William* and Queen *Mary*, and is reported in Serjeant *Levinz*, 3. *Rep.* 396. where *Tucker* was indicted for Treason, and in the Conclusion of the Indictment it was not said to be *contra allegiantie sue debitum*; and upon this Indictment *Tucker* was attainted, and his Lands forfeited to the Crown, and afterwards purchas'd under the Attainder; but afterwards this Attainder was revers'd in a Writ of Error in the King's-Bench upon very great Debate, for want of those Words in the Indictment, *contra allegiantie sue debitum*, and upon a Writ of Error before your Lordships the Judgment of Reversal was affirmed, by which means a Purchaser under the Attainder lost the Estate.

With Submission, this Case is much stronger than the principal Case now before your Lordships.

In that Case it might with seeming Reason be objected, that the Word (*Proditiorè*) which is always in the Body of every Indictment, shews and necessarily implies, that the Treason committed was against the Party's Allegiance, for else how cou'd it be *Proditiorè*?

Also in that Case the Treason is set forth at large in the Indictment, together with the Over-Act, which *demonstrates* that the doing this must be against the Party's Allegiance.

But all this would not maintain the Indictment, in regard Indictments for Treason were always laid to be against the Party's Allegiance.

And if the constant Forms of Indictments be an Argument,

'Tis as strong a one for us in the present Case; for I believe there never was an Indictment without mentioning the Day when the Fact was committed.

Neither, with Submission, is this Matter of Form only, but 'tis the substantial Part of the Indictment, in regard in this Point the King is interested in respect of the Forfeiture, and the Party in respect of his Defence.

It will, I humbly presume, hardly be expected, from us, that we should cite Precedents of Impeachments, especially if 'twere known what few Hours Notice we had of attending your Lordships in arrest of Judgment.

However, I will beg leave to mention one Case of an Impeachment fresh in your Lordships Memory, *Dr. Sacheverell's* Case.

Dr. Sacheverell was impeach'd before your Lordships by the Honourable House of Commons, for seditious Expressions in two Sermons, the one preach'd at *Derby* Assizes, and the other at *St. Paul's, London*; and in that Impeachment the precise Days are laid when the Doctor preach'd each of these two Sermons.

And I humbly take it, that by a like Reason a certain Day ought to be laid in the Impeachment, when this Treason was committed; and that the Authority of *Dr. Sacheverell's* Case seems so much stronger than the present Case in question, as the Crime of Treason is higher than that of a Misdemeanour.

My Lords, I have nothing else to say on behalf of this unhappy Lord; unhappy, as being in that doubtful State of Memory, not *insanæ* enough to be within the Protection of the Law, nor at the same time *sane* enough to do himself in any respect the least Service whatever.

Here the Managers gave some Interruption to the Council.

Lord High-Steward. Mr. *Williams*, I apprehend the Reason why the Managers of the House of Commons appear uneasy with you, is, that you are going into a Matter of Fact, and which you have not leave to speak to; you must therefore confine yourself to the Point of Law that was stated.

Mr. *Williams.* My Lords, I shall take up no more of your Lordship's Time; but humbly hope that the Cases of Indictments are parallel with those of Impeachments;

That, as in an Indictment for Treason, the want of laying a Day when the Treason is charg'd to have been committed, is a manifest Error;

That as the constant Forms of Indictments are so;

That as the Reason of the Law requires they should be so;

So for want of this Certainty in this Impeachment, we with great Submission insist that the Impeachment is defective:

And therefore pray that the Judgment against this unfortunate Lord may be arrested.

Mr. *Walpole.* MY Lords, the Commons have attended to the Objection made by the Council on the Part and Behalf of the Noble Lord at the Bar, and they humbly conceive those learned Gentlemen seem to forget in what Court they are. They have taken up so much of your Lordships time in quoting of Authorities and using Arguments to shew your Lordships what would quash an Indictment in the Courts below, that they seem to forget they are now in a Court of Parliament, and on an Impeachment of the Commons of *Great-Britain*. For should the Commons admit all that they have offered, it will not follow that the Impeachment of the Commons is insufficient; and I must observe to your Lordships, that neither of the learned Gentlemen have offered to produce one Instance relating to an Impeachment, I mean, to shew that ever the Sufficiency of an Impeachment was called in question from the Generality of the Charge, or that any Instance of that Nature was offered at before. The Commons don't conceive, that if this Exception would quash an Indictment, it would therefore make this Impeachment insufficient; nor do they think it necessary, in Justice to the Noble Lord at the Bar, that a certain Day should be mentioned in the Impeachment. They don't think, from the Nature of this Crime, and the Evidence that has been given, that there can be any Hardship for want of fixing a certain Day on which the Treason was committed. What he is charged with, is being concerned in a most notorious Rebellion. The Time mentioned in the Impeachment is the Months of *September, October, and November*, and particularly the Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Days of *November*. He is charged with being concerned from the Time that he left his own House, to the Time he was taken at *Preston*; and it hath been proved, I believe, in a more ample Manner than ever any Crime of the like Nature hath been. And how can this Noble Lord suffer because no particular Day is mentioned, after he continu'd in Rebellion for so many Days and Months, and marched through so many Counties? It is impossible to conceive he can suffer from any Uncertainty in the Charge, in not having a particular Day fixed.

But,

But, my Lords, the Commons think themselves sufficiently justified, and their Impeachment supported by a Precedent I have in my Hand, the Trial of my Lord *Stafford*, who was tried for High-Treason, and was executed for the same. And I observe that he had Council, and it appears he offer'd some Things in Arrest of Judgment; and altho' it will appear that the Time was more uncertain in that Impeachment, yet that was never attempted to be offer'd in Arrest of Judgment. In his Case the Words of the Articles of Impeachment are, that for divers Years last past a damnable Contrivance and Conspiracy had been form'd and carried on, that is just as these Articles are; and when they come to the particular Charge, all that is said is, That within the Time aforesaid, &c. that is, some Time within diverse Years last past; but this Impeachment is so far from being uncertain, that the Commons have named three Months, in which the Treason charged in the Impeachment was committed; and in the Precedent it is only said, Within some of the Years last past; so that here the Commons are sufficiently justified in the Articles exhibited by them, by the Precedent I have mentioned; and there Judgment passed, and nothing of this Nature was offered in Arrest of Judgment. I hope this will satisfy your Lordships, that this Impeachment is sufficient, notwithstanding this Objection; and I hope it will never be allowed here as a Reason, that what quashes an Indictment in the Courts below, will make insufficient an Impeachment brought by the Commons of *Great-Britain*.

Mr. *Attorney-General*. MY Lords, the Council for the Prisoner have made two Objections, as I apprehend, in Point of Law, which I would give a short Answer to, without taking notice of the other Matter which was spoke to by one of the Gentlemen, contrary to the Orders of the House.

The First Objection is, That there is no certain Day charged in the Impeachment, when the Treason was committed.

The Second is, that as to several of the Overt-Acts there is no Time mentioned at all.

I would follow the Steps of the learned Gentleman who spoke before me, and I think has given a good Answer to these Objections: I would take notice, that we are upon an Impeachment, and not upon an Indictment. The Courts below have set Forms to themselves, which have prevailed for a long Course of Time, and thereby are become the Forms by which those Courts are to govern themselves; but it never was thought, that the Forms of those Courts had any Influence on the Proceedings of Parliament. In *Richard* the Second's Time it is said in the Records of Parliament, That Proceedings in Parliament are not to be govern'd by the Form, of *Westminster-Hall*.

I beg leave to take notice, in Answer to this Objection, that tho' it is the usual Form in the Courts below to alledge a certain Day on which the Crime is charged to be committed, yet at the same time they add (and at divers other Days and Times) and that Day which is laid, is only for Form sake; but that Day is not material, they are not bound to prove the Crime committed on that Day, but they may prove the Defendant Guilty at any Time, either before or after the Duty laid in the Indictment. There has been produced by the Honourable Gentleman who spoke

before, a Precedent in Parliament much stronger than this Case, it is the Case of the Lord *Stafford*; there is not so much Certainty as there is in this Impeachment. Here it is said, That on or about the Months of *September*, *October*, or *November*, or on or about one of them, the Crimes charged in the Impeachment were committed; but all that is said in my Lord *Stafford's* Case is, That there had been for many Years then last past a damnable Conspiracy carried on; and when they came to charge the noble Lord with particular Facts, there is no Time mentioned at all.

One of the Gentlemen cited another Case in Parliament, which was Dr. *Sacheverell's* Case: There was in that Case an Exception taken to the Impeachment for Uncertainty: and it was said and argued from the Forms of the Courts in *Westminster-Hall*, that where Indictments were for Words spoke or writ, the Words must be laid as they were spoke or wrote; and the Opinion of the Judges was, that it was necessary according to the Forms of the Courts below, but it was resolved to be otherways in the Court of Parliament, and they were not bound but by their own Forms; so that upon this Head we apprehend we are clear of the Forms of Law in the Courts below, and that they are of no Use, since if a certain Day is laid, they are not by Law bound to prove the Crime committed on that Day, but may prove it upon any other Day.

The Second Objection is, That there is no Time laid for some of the Overt-Acts.

I think there is a certain Day charged when one of them was done, the seizing of *Preston*; and in the inferiour Courts it has been held, that it is not necessary there should be a Day and Place alledged for every Overt-Act.

We think this Objection has no Weight in it, and therefore would not spend more of your Lordships Time in it; we are in the Case of an Impeachment, and in the Court of Parliament. Your Lordships have already given Judgment against Six upon this Impeachment, and it is warranted by the Precedents in Parliament; therefore we insist that the Articles are good in Substance, and according to the Forms of Parliament.

Mr. *Cowper*. THE Objection, as stated by the Prisoner, and upon which his Council have argued, is this, That the Time of the Treason committed is not laid in the Impeachment with sufficient Certainty. The Council have acquainted your Lordships with the Practice of inferior Courts, and have insisted too much upon the Precedents of Trespasses and other Crimes set forth in Indictments, considering the Question arises upon the Usage and Practice of the High-Court of Parliament; and they cannot but know that the Usages of Parliaments are Part of the Laws of the Land, altho' they differ in many Instances from the Common Law, as practised in the inferior Courts, in Point of Form.

My Lords, if the Commons, in preparing Articles of Impeachment, should govern themselves by Precedents of Indictments, in my humble Opinion they would depart from the ancient, nay, the constant Usage and Practice of Parliament.

It is well known that the Form of an Impeachment has very little Resemblance to that of an Indictment: and I believe the Commons will endeavour to preserve the Difference, by adhering to their own Precedents.

One of the learned Gentlemen has said that he had not time to search Parliamentary Precedents: That Gentleman seldom wants time to make himself serviceable to his Clients; but when he has more leisure, I believe he will not find one Precedent, where, in the case of an Impeachment of High-Treason, there hath been a certain Day or Time laid when the Treason was committed. The Precedent that hath been mentioned of my Lord *Stafford* is directly otherwise: There your Lordships will find it laid thus, that for many Years last past there has been contrived and carried on by Papists a traitorous and execrable Conspiracy. And afterwards when it comes to charge the Treason and Overt-Acts, it alledges *they were done* and committed *within the time aforesaid*. And yet we don't find any Exception was taken for want of Certainty, although not so much as a Year was laid with Certainty, within which the Treason was committed.

In the Case of my Lord *Wintoun* the Commons have charged, that his Lordship, together with *James Earl of Derwentwater*, and several others, as false Traitors to his Majesty, did, in or about the Months of *September, October, or November, 1715*, traitorously imagine and compass the Death of the King: That his Lordship and the rest, to accomplish their said traitorous Purpose, did, in or about the said Months, or some of them, conspire and agree to levy War within this Kingdom, in order to depose and murder his Majesty: That his Lordship did, within the time aforesaid, traitorously levy a War and Rebellion in the Bowels of the Kingdom; and that he together with his Accomplices and Confederates, did, on or about the Ninth, Tenth, Eleventh, Twelfth, or Thirteenth of *November* aforesaid, traitorously seize and possess themselves of the Town of *Preston*; and did then and there cause and procure a miserable and horrid Slaughter and Murder of many of his Majesty's faithful Subjects. So that, my Lords, here is a Certainty not only of the Year, but of the Months and Days; and the Treasons committed by the Prisoner are, with Submission, not only charged with Certainty as to the Point of Time, but are charged with a great deal more Certainty than was necessary, in a Case where his Lordship's Treason began at *Seaton House*, and continued from thence till the Surrender at *Preston*.

Surely there is not the least Weight in the Prisoner's Objection; for even in the Case of an Indictment, though it be necessary to lay a Day, yet it is not necessary to prove the Treason to be done upon that Day: So that even in inferior Courts it is an immaterial Form. One would think, if it be necessary to assign a Day certain, it should be necessary also to prove the Treason to be done upon that Day; but it is not requisite to prove the Treason upon the Day; therefore in inferior Jurisdictions it seems rather a Form than Substance. The Courts below have, it's true, their Forms, many Forms for which no Reason can be given; but I believe in Parliamentary Process, nothing is necessary that is not material.

Sir *W. Thomson*. MY Lords we humbly apprehend that the Exception taken in Arrest of Judgment has no Foundation in Law or Reason.

As to the Law, we must refer to the Forms of

Proceedings in the Court of Parliament, which is the Law of Parliament, and which must be owned to be Part of the Law of the Land. It has been mentioned already to your Lordships, that the Precedents in Impeachments are not so nice and precise in Form as in the inferior Courts; and we presume your Lordships will be governed by the Forms of your own Court, (especially Forms that are not essential to Justice) as the Courts below are by theirs; which Courts differ one from the other in many Respects as to their Forms of Proceedings, and the Practice of each Court is esteemed as the Law of that Court.

As to the Reasons alledged to support the Exception, they will receive a plain Answer.

'Tis said, that 'tis necessary to alledge a certain Day in an Impeachment when the Fact was committed, that the Defendant may be able to make his Defence, that he may produce Witnesses to give an Account where he was at the time he is accused to have been guilty. And one of the learned Council was pleased to say, that this is requisite in Indictments for the smallest Offences, and ought to be much more so in capital Cases, and in Impeachments for so high a Crime as Treason. My Lords, that Gentleman knows very well, that the Day which is mention'd in an Indictment is not material to the Purpose of making a Defence as to that Time only, for that the Defendant must come prepared to give an Account of his Innocence all the Time between the Day alledged and the Indictment found. And in this Case there is no Hardship on the Noble Lord at the Bar. Here is one of the Treasons alledged to be within the Compass of Five Days (*viz.* the seizing of *Preston*, levying War there, and engaging the King's Troops.) if he could have given an Account of himself to have been elsewhere at those times, it might have been of Service to him: But that happened very unfortunately for him to be otherwise; and your Lordships have found him guilty of those Facts on or about those Five Days: Which has created a second Reason to be offered to your Lordships, that the Time alledged is not sufficiently certain (*viz.*) To what Day shall the Forfeiture of the Defendant's Estate relate? If 'tis taken the most favourably for the Defendant, the Conviction shall operate so as to make the Forfeiture only from the last of these Days, and I don't apprehend any other Inconvenience. But to infer that, for that Reason, no Judgment at all shall be given upon this Conviction, where the material, the substantial Part of the Issue is found, seems not to be right Consequence.

My Lords, we conceive for these Reasons, and what has been mention'd before, this Exception has no Weight in it, and hope your Lordships will over rule it.

L. H. Steward. Gentlemen of the House of Commons, I suppose you don't oppose the Council's replying to you; afterwards, if you have any thing to offer you may be heard to it.

Att. Gen. My Lords, we don't object to it, if the Commons have the Liberty of speaking afterwards and closing, which they insist upon as their Right.

L. H. Steward. Gentlemen, you may reply.

Sir C. Phipps. Is it your Lordships Pleasure that we reply?

L. H. Steward. You may reply.

Sir C. Phipps. **I**F your Lordships please, we do not, with great Submission, apprehend they have answer'd our Objection; but before I take notice of the Answers, I beg leave to set the learned Gentleman that spoke last right in one thing, wherein he did misapprehend me: He was pleas'd to suggest that I said the Day laid in an Indictment was material. I don't remember I said so, for I never thought the Day so material, that there was a Necessity to prove the Treason to be committed upon that very Day; I did say there ought a certain Day to be alledged in Indictments, and that there always is; but how material that Day is, when alledged, is another Consideration; but I conceive the Day laid in an Indictment, ought to be very near the time, if not upon the very Day the Treason is supposed to be committed, for the Reasons I have before offered; and I take constant Practice to be so. I perceive all the Gentlemen who have spoke in Answer to me have been pleas'd to admit, that in Indictments for Treason and other capital Offences, there is a certain Day always alledged. The honourable Gentleman that spoke first, was pleas'd to make a Difference between an Indictment and an Impeachment: That an Impeachment is a Parliamentary Proceeding, and that the Parliament in their Proceedings are not tyed up to such strict Forms as the Courts below. I have already spoken fully to this Point, and therefore shall not trouble your Lordships with any Repetition, but submit to your Lordships Judgment, whether an Impeachment, by which a Noble Peer is to be attainted, ought not to be as certain as an Indictment, by which a Commoner is to be attainted, and whether by the *Lex Parliamentaria* as much Certainty is not required in one Case as in the other. The same Gentleman was pleas'd to observe, that the Impeachment in my Lord *Stafford's* Case was more general than this, for there it was charged, that for many Years last past there had been a Conspiracy to alter and subvert the Government, &c. In answer to which I beg leave to take Notice, that the Impeachment of that Lord begins with an Account of the Plot in general, and in that Case there is no doubt but such a general Allegation was sufficient. But whether the particular Part, which my Lord *Stafford* had in that Plot, be not more certainly alledged; I must beg leave to refer to the Trial, for I cannot take it upon my Memory to say one way or other. But whether it was so or no, I think is not material? for that honourable Person admits, that no Objection was made to that Impeachment for the Uncertainty of the Charge: If such Objection had been made and over-ruled, it would have been a full Answer to us; but since no Notice was taken of it, our Objection is as strong and of the same Force as if that Case had never happened.

A learned Gentleman of great Eminence in the Law was pleas'd to observe, that frequently in Indictments for Treason, the Offence is laid to be committed, *diversis aliis diebus & vicibus*, which is true; but then in all such Cases there is a particular Day first charged in the Indictment; and I believe that learned Gentleman, or any other of the long Robe, will not say that an Indictment conceived in such general Terms, without alledging a particular Day, would be good. As to that Part of the Impeachment which re-

lates to the taking of *Preston*, tho' that seems more certain than any other Overt-Act; yet I have shewed that the Words *or about*, leave at large, and render it uncertain.

My Lords, this is what we humbly offer by way of Reply; and humbly submit to your Lordships Judgment, whether our Objections are not good, notwithstanding what has been said in Answer to them.

Mr. *Williams*. **M**Y Lords, I must submit it to your Lordships, whether the learned Managers have answer'd the Objection which we have humbly laid before your Lordships in Arrest of Judgment.

The Managers are pleas'd to object, that we are attempting to quash an Impeachment of the Honourable House of Commons for High-Treason, and that this has not been known.

But, my Lords, with great Submission, we are not endeavouring to quash this Impeachment. We are so far from it, that we must admit that the Courts of *King's-Bench* will not quash Indictments for Treason, nor Indictments for Felony, nor even Indictments for any gross Misdemeanours, but will put the Party to plead to such Indictments; but in the present Case, where the Matter in Issue has been try'd, and the unhappy Lord is convicted; if this Impeachment be defective, as I humbly hope and insist it is, then what other Way, what other Method has this unfortunate Lord at the Bar to take Advantage of this Defect, but by offering it to your Lordships in Arrest of Judgment, which on my Lord's Behalf we now humbly do?

It seems admitted, as I apprehend, that had the present Question been upon an Indictment, instead of an Impeachment, that then the Exception might have prevailed: But the Managers are pleas'd to insist, that the Law and Course of Parliaments justify this Omission in Case of Impeachments; and for this an Honourable Manager has been pleas'd to cite the late Lord *Stafford's* Case; and that the Impeachment of that Lord was more uncertain, as to the Time laid for the committing the Treason, than the Impeachment now before your Lordships.

My Lords, I must confess I am very unfit to answer an Objection of this Nature, and which concerns the Course of Parliaments: But wou'd beg leave, with the greatest Submission, to observe, that only one Precedent (I beg Pardon if I mistake, I mean that of the late Lord *Stafford*) has been cited against us: It must be submitted to your Lordships, how far that one single Precedent will of it self be taken as a Proof, that this is the Course and Custom of Parliamentary Impeachments, especially when it appears that the Objection now made, was not made in that Case. It must be submitted to your Lordships, whether repeated and iterated Acts are not requisite to prove this, as well as all other Customs; and that if this were *Lex & Consuetudo Parliamenti*, whether it wou'd not be an easy Matter to cite many Instances in that Behalf, and whether it is not the more necessary in this Case to cite farther Precedents, in regard the single Case of the Lord *Stafford* may seem, as to this Point, to have lost some Part of its Force, by the later Precedent of Doctor *Sacheverell's* Case, when even in Case of a Misdemeanour, a certain Day is laid in the Impeachment when the Misdemeanour is charged to have been committed.

It has been also objected by the learned Managers, that in Indictments of High-Treason, it is usually charg'd, that the Party committed the Treason *diversis diebus & vicibus*, which is as uncertain as the present Impeachment.

My Lords, It is very true that these Words (*diversis diebus & vicibus*) are as uncertain as the Words in the present Impeachment; and that these Words are usually put into Indictments: But with Submission, it is as true, that in all Indictments for Treason, over and besides these Words, there is a certain Day laid when the Treason is said to be committed; and I would beg leave to know, whether if in Case of an Indictment, the Treason were laid to be committed *diversis diebus & vicibus*, without any further Certainty as to the Day, whether this wou'd not be ill for the Uncertainty: And this Case, with Submission, seems to come nearest to the present Case; and as to the Words *diversis diebus & vicibus*, tho' they are frequently mentioned in an Indictment, yet they are only Surplufage, and the Indictment good, whether with 'em, or without 'em.

It is likewise objected, that if a certain Day for the committing this Treason had been mentioned in this Impeachment, or in an Indictment, yet it had not been material; because if the Treason had been proved to have been committed on any other Day, the Party must have been found guilty; and therefore, if the Day be immaterial, the omitting of it must be also immaterial.

My Lords, I must admit that the Day, as to the Party indicted, is not in this respect so far material, but that if it shou'd be prov'd that the Party committed the Treason on a different Day, than that laid in the Indictment, yet the Party must be found guilty: And that it might put too great a difficulty on such Prosecution, to hold, that if the Treason be not proved to be committed on the precise Day laid in the Indictment, that therefore the Party, who appears still guilty of the Treason, shou'd upon the nicety of the time be found not guilty; but what I humbly insist on is, that 'tis the constant Course to mention a Day certain in the Indictment; and that the Day thus mention'd in the Indictment is, as I believe, generally the very Day on which the Treason is insisted on to be committed; and to know this, is, with Submission, of great use to the Party indicted or impeached, and may very much assist him in his Defence. And I farther humbly insist, that the mentioning of a Day certain in the Impeachment or Indictment for the committing the Treason, is manifestly for the Advantage, and the omitting it, is to the Prejudice, of the Crown; in regard, as between the Party impeached or indicted, and the Crown, the Forfeiture of the Land to the King shall relate to that Day which is laid in the Impeachment or Indictment.

My Lords, from hence, with the greatest Deference to your Lordships, I beg leave to infer;

That the mentioning of a Day certain in the Impeachment, is material:

That by Consequence the Omission of it is also material;

That therefore in respect of this Omission, the Impeachment is defective;

And in regard of this Defect I humbly pray that your Lordships wou'd be pleas'd to arrest the Judgment.

Mr. *Attorney General.* MY Lords, for preserving the Rights of the Commons of *Great-Britain*, I shall trouble your Lordships with a Word or two.

I think the learned Gentlemen have left it now where they left it on their first Speech: They now agree that the particular Day in an Indictment is but Form, and that the Fact may be proved any Day before or after, and so the Law is in the inferior Courts.

I only add this, that the Prisoner loses no Benefit nor gets any, by having a Day charged or omitted; for since it is of no use, he must provide for his Defence as if no Day was laid; and since it is immaterial in Indictments, it must be so in Impeachments. We are justified by the Forms and Precedents of Parliament. As to the Answer given to my Lord *Stafford's* Case, that this Objection was not made there, but that it past *sub silentio*: If that Impeachment had not been thought good, we know he had the Assistance of learned Council, who were well able to advise him, and who certainly would have taken the Exception. There is no uncertainty in it that can be to the Prejudice of the Prisoner, we insist it is according to the Forms of Parliament, he has pleaded to it, and your Lordships have found him guilty.

L. H. Steward. My Lord *Wintoun*, your Council have been heard, hath your Lordship any thing more to offer in Arrest of Judgment?

L. Wintoun. If your Lordship will be pleas'd to ask the Council, they will tell you what they have to object.

L. H. Steward. My Lord, you have been told again and again upon this Occasion, that the Point you would have your Council speak to must be first stated and propos'd by your self; you have had a sufficient Opportunity to inform your self.

L. Wintoun. Since your Lordship won't allow my Council, I don't know nothing.

Lord *Stamford* moved to adjourn.

L. H. Steward. I once more acquaint your Lordship, that as your Council have been allowed to speak; so the Question yet is, whether you have any other Point or Matter for them to speak to; the Lords are ready to hear: Have you any thing else to propose?

L. Wintoun. If you will allow my Council to answer, he will answer.

L. H. Steward. My Lords! Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

Then the House was adjourn'd about three of the Clock, and about five returned again, and Proclamation was made for Silence as usual.

L. H. Steward. **G**George Earl of *Wintoun*, I have already acquainted you, that your Peers have found you Guilty, (*i. e.*) in the Terms of the Law, convicted you of the High-Treason whereof you stand impeached.

After, your Lordship has moved in Arrest of Judgment, and the Lords have disallow'd that Motion; their next Step is to proceed to Judgment.

The melancholy Part I am to bear in pronouncing that Judgment upon you, since it is his Majesty's Pleasure to appoint me to that Office, I dutifully submit to it; far, very far, from taking any Satisfaction in it.

'Till Conviction, your Lordship has been spoke to without the least Prejudice, or Supposition of your Guilt; but now it must be taken for granted, that your Lordship is guilty of the High-Treason whereof you stand impeached.

My Lord, this your Crime is the greatest known to the Law of this Kingdom, or of any other Country whatsoever: And it is of the blackest and most odious Species of that Crime; a Conspiracy and Attempt, manifested by an open Rebellion, to depose and murder that sacred Person, who sustains and is the Majesty of the whole; and from whom, as from a Fountain of Warmth and Glory, are dispersed all the Honours, all the Dignities of the State, indeed the lasting and operative Life and Vigour of the Laws, which plainly subsist by a due Administration of the executive Power.

So that attempting this precious Life, is really striking at the most noble Part, the Seat of Life and Spring of all Motion in this Government; and may therefore properly be called a Design to murder, not only the King, but also the Body-Politic of the Kingdom.

And this is most evidently true in your Lordship's Case; considering that Success in your Treason must infallibly have establish'd Popery; and that never fails to bring with it a Civil, as well as Ecclesiastical Tyranny; which is quite another Sort of Constitution than that of this Kingdom, and cannot take Place, 'till the present is annihilated.

This your Crime (so I must now call it) is the more aggravated, in that when it proceeds so far, as to take Arms openly, and to make an Offensive War against lawful Authority, 'tis generally (as in your Case) complicated with the horrid and crying Sin of murdering many, who are not only innocent but meritorious.

And if Pity be due (as I admit it is, in some Degree) to such as suffer for their own Crimes; it must be admitted, a much greater Share of Compassion is owing to them, who have lost their Lives merely by the Crimes of other Men.

As many as have so done in the late Rebellion, so many Murders have they to answer for who promoted it; and your Lordship, in examining your Conscience, will be under a great Delusion, if you look on those who fell at *Preston*, *Dumblain*, or elsewhere, on the Side of the Laws, and in Defence of settled Order and Government, as slain in lawful War; even judging of this Matter by the Law of Nations.

Alas! my Lord, your Crime of High-Treason is made yet redder, by shedding a great deal of the best Blood in the Kingdom: I include in this Expression the brave Common Soldiers, as well as those Gallant and Heroic Officers, who continued faithful to Death, in Defence of the Laws; for sure but little Blood can be better than that, which is shed while it is warm in the Cause of the true Religion, and the Liberties of its native Country.

Believe it, notwithstanding the unfair Arts and Industry used, to stir up a pernicious Excess of Commiseration, towards such as have fallen by the Sword of Justice, (few, if compar'd with the

Numbers of good Subjects murdered from Doors and Windows at *Preston* only) the Life of one honest loyal Subject is more precious, in the Eye of God, and all considering Men, than the Lives of many Rebels and Parricides.

This puts me in mind to observe to your Lordship, that

There is another Malignity in your Lordship's Crime (open Rebellion) which consists in this; that it is always sure of doing Hurt to a Government in one Respect, though it be defeated; (I will not say it does so on the whole Matter.)

For the Offence is too notorious to be let pass unobserved, by any Connivance: Then is a Government reduced to this Dilemma; if it be not punished, the State is endanger'd, by suffering Examples to appear, that it may be attack'd with Impunity; if it be punished, they who are publicly or privately Favourers of the Treason (and perhaps some out of mere Folly) raise undeserved Clamours of Cruelty against those in Power; or the lowest their Malice flies, is, to make unseasonable, unlimited, and injudicious Encomiums upon Mercy and Forgiveness (Things rightly used, certainly of the greatest Excellence.)

And this Proceeding, it must be admitted, does some Harm, with silly undistinguishing People.

So that Rebels have the Satisfaction of thinking they hurt the Government a little, even by their Fall.

The only, but true Consolation every wise Government has in such a Case (after it has temper'd Justice with Mercy in such proportion as sound Discretion directs, having always a Care of the Public Safety above all Things) is this;

That such like Seeds of unreasonable Discontents, take Root on very shallow Soil only; and that therefore, after they have made a weak Shoot, they soon wither and come to nothing.

It is well your Lordship has given an Opportunity of doing the Government right, on the Subject of your Surrender at *Preston*.

How confidently had it been given out by the Faction, that the Surrender was made on Assurances, at least Hopes insinuated of Pardon: Whereas the Truth appears to be, that Fear was the only Motive to it; the evil Day was deferred; and the Rebels rightly depended, fewer would die at last by the Measures they elected, than if they had stood an Assault: They were aw'd by the experienced Courage, Discipline, and Steadiness of the King's Troops; and by the superior Genius and Spirit of his Majesty's Commanders, over those of the Rebels; so that in truth they were never flatter'd with any other Terms, than to surrender, as Rebels and as Traitors; their Lives only to be spar'd till his Majesty's Pleasure should be known.

It was indeed a Debt due to those brave Commanders and Soldiers (to whom their King and Country owe more than can be well expressed) that their Victory should be vindicated to the present and future Ages from untrue Detraction, and kept from being sullied by the Tongues of Rebels and their Accomplices, when their Arms could no longer hinder it.

'Tis hard to leave this Subject without shortly observing, that this Engine which sets the World on fire, a lying Tongue, has been of prodigious use to the Party of the Rebels, not only since

and during the Rebellion, but before, while it was forming, and the Rebels preparing for it.

Falſe Facts, falſe Hopes, and falſe Characters, have been the greater half of the Scheme they ſet out with, and yet ſeem to depend upon.

It has been rightly obſerved, your Lordſhip's Anſwer does not ſo much as inſiſt, with any Clearneſs, on that, which only could excuſe your being taken in open Rebellion; That you was forc'd into it, remain'd ſo under a Force, and would have eſcaped from it but could not.

If you had ſo inſiſted, it has been clearly prov'd, that had not been true; for your Lordſhip was active and forward in many Inſtances, and ſo conſiderable in a Military Capacity among your Fellow-Soldiers, as to command a Squadron.

Theſe and other Particulars have been obſerved by the Managers of the Houſe of Commons, and therefore I ſhall not purſue them farther;

But conclude this Introduction to the Sentence, by exhorting your Lordſhip, with perfect Charity, and much Earneſtneſs, to conſider, that now the Time is come when the Veil of Partiality ſhould be taken from your Eyes (it muſt be ſo when you come to die) and that your Lordſhip ſhould henceforward think with Clearneſs and Indifference (if poſſible) which muſt produce in you a hearty Detestation of the High Crime you have committed, and being a Proteſtant, be very likely to make you a ſincere Penitent, for your having engaged in a Deſign, that muſt have deſtroyed the Holy Religion you profeſs, had it taken Effect.

Nothing now remains; but that I pronounce upon you that Sentence which the Law ordains, and which ſufficiently ſhews, what Thoughts our Anceſtors had, of the Crime of which your Lordſhip is now convicted: *viz.*

“ That you *George Earl of Wintoun* return to
“ the Priſon of the *Tower* from whence you
“ came; from thence you muſt be drawn
“ to the Place of Execution; when you
“ come there, you muſt be hang'd by the
“ Neck, but not till you be Dead; for you
“ muſt be cut down alive, then your Bowels
“ muſt be taken out, and burnt before your
“ Face; then your Head muſt be ſever'd
“ from your Body, and your Body divided
“ into four Quarters; and theſe muſt be at
“ the King's diſpoſal.

And God Almighty be merciful to your Soul!

Serjeant at Arms. O Yes! Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Imprisonment.

Then the Lord High Steward ſtood up uncover'd, and declaring there was nothing more to be done by vertue of the preſent Commiſſion, broke the Staff, and pronounc'd it diſſolv'd: And then leaving the Chair, came down to the Woolpack, and ſaid, Is it your Lordſhips Pleaſure to adjourn to the Houſe of Lords?

Lords. Ay, ay.

And then the Houſe adjourn'd to the Chamber of Parliament, and the Lords and others returned in the ſame Order they came down.

The Earl of *Wintoun* was carried back to the *Tower*, from whence he afterwards made his Eſcape.



CLXXXVII. *The Trial of Francis Francia a Jew at the Old-Bailey, for High-Treason, Jan. 22. 1716, 3 GEO. I.*

FRANCIS *Francia* having been formerly arraigned upon the Indictment found againſt him for *High-Treason*, and having pleaded *Not Guilty*, was on *Tuesday* the 22d of *January* brought to the Bar to receive his Trial.

Clerk of Arraignments. You the Priſoner at the Bar, theſe Men that you ſhall hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Trial of your Life and Death. If therefore you will challenge them, or any of them, your Time is to challenge them as they come to the Book to be ſworn, and before they be ſworn.

Cl. of Arr. Sir *Dennis Dutry*, Bart.

Priſoner. Are you a Freeholder in this City?

Sir *Dennis Dutry.* Yes.

Sir *J. Fekyll.* My Lord, we that are Council for the King, deſire, that thoſe who are called may be aſked that Queſtion; Whether they have Freehold (or Copyhold) of Ten Pounds *per Annum*, or

not; before they are ſworn in Chief?

Mr. Att. Gen. We ſuppoſe Sir *Edward Northey*, the Priſoner will aſk that Queſtion; and therefore we deſire that it may be aſk'd of every one as they come to the Book.

Mr. Ward. It is a Challenge on both Sides.

L. C. Baron. They ought to be Sir *Thomas Bury*, ſworn whether they have a Freehold or not, if they would excuſe themſelves.

Mr. Hungerford. I have nothing to offer againſt it. In caſe the King's Council think fit to proceed in that Method, we concur in it. I ſhould have mov'd it myſelf, if they had not.

Mr. Att. Gen. It was in the Trial of the Rebels.

Priſoner. He has had a Quarrel with me; and there was a Suit depending between us about ſeven Years ago: And I challenge him for Cauſe.

Mr. Att. Gen. He may challenge him peremptorily, if he will. But if he challenges him for Cauſe he muſt prove it.

Priſoner. Sir *Dennis* will not deny it.

L. C.

L. C. Baron. If you challenge him, you must prove your Challenge. Do you challenge him for Cause, or peremptorily?

Prisoner. For Cause.

L. C. Baron. That which you assign is no Cause.

Then Sir Dennis was sworn upon a Voir Dire, with respect to his Freehold; as all the others were, before they were either challenged, or sworn in Chief.

Sir J. Fekyll. Sir, have you a Freehold in this City?

Sir D. Dutry. Yes.

Sir J. Fekyll. To what Value?

Sir D. Dutry. About Ten Pounds a Year.

Prisoner. My Lords, there has been a Suit depending between us.

Mr. Att. Gen. If they talk of a Suit, they must prove it by Record.

Prisoner. His Name is *Dennis*; and they have given me a Pannel with barbarous *Latin*. In my Copy of the Pannel, he is return'd by the Name of *Dionysius*; that is not the same Name.

Mr. Ward. The Prisoner observes, that in the Pannel he is return'd by the Name of *Dionysius*, when his Name is *Dennis*.

Sir J. Fekyll. He is to have a Copy of the Pannel; but it is not to be put into *English* for him.

Mr. Ward. But we say, that is not *Latin* for *Dennis*.

Sir J. Fekyll. Sure no one will argue, but that *Dionysius* is the proper *Latin* Name for *Dennis*.

L. C. Baron. You offer no Cause of Challenge.

Prisoner. I hope I prove his Name is return'd in the Pannel *Dionysius*.

L. C. Baron. It is so; and that is *Latin* for *Dennis*.

Prisoner. No, it is not. *Dennis* is a Saint in *France*, and *Dionysius* is a Saint in *Italy*. They are two different Names, and of different Countries.

L. C. Baron. *Dionysius* is *Latin* for *Dennis*. If they don't challenge him peremptorily, he must be sworn.

Prisoner. I alledge, that we fell out about seven Years ago: And that his Name is not *Dionysius*, as it is wrote in the Pannel. And in my former Pannel he was put down *Knight*, and in this *Baronet*.

L. C. Baron. These Things are nothing, except the Suit; and that you must prove.

Mr. Hungerford. As to the Distinction of the two Saints, I do not meddle in it. But I suppose *Sir Dennis* can tell whether he is a Knight or a Baronet. But as to the Saints, whether the Nominal ones Abroad, or the Pretended ones at Home, I let them alone.

Prisoner. You allowed this Challenge the last Time.

Mr. Att. Gen. You challeng'd him peremptorily.

Mr. Ward. He was stiled Knight in the last Pannel.

L. C. Baron. That don't appear to us. You must either challenge him peremptorily, or he must be sworn.

Prisoner. I must do what you order; but I think it very hard. Then I challenge him.

Cl. of Arr. Sir John Scott, Knt.

Prisoner. I challenge him.

Cl. of Arr. Sir Daniel Wray, Knt.

Prisoner. I don't except against him.

Then he was sworn.

V O L. VI.

Cl. of Arr. Sir W. Chapman, Kt.

Prisoner. I challenge him.

Cl. of Arr. Joseph Webb.

Prisoner. I challenge him.

Cl. of Arr. Robert Adams.

Prisoner. Was you upon the Grand Jury, that found the Indictment against me?

Mr. Adams. No.

Prisoner. I challenge him.

Cl. of Arr. Robert Ashurst.

Prisoner. I challenge him.

Cl. of Arr. Joseph Bishop.

Prisoner. I challenge him.

Cl. of Arr. Thomas Boucher.

Prisoner. I challenge him.

Cl. of Arr. Joseph Brooksbank.

Prisoner. I challenge him.

Cl. of Arr. Nicholas Benoit.

Prisoner. I challenge him.

Cl. of Arr. John Child.

Prisoner. I challenge him.

Cl. of Arr. Joseph Chamberlain.

He was sworn.

Cl. of Arr. John Casebert.

Prisoner. He was upon the Grand Jury that found the Bill against me; and I challenge him for that Cause.

Cl. of Arr. Robert Wood.

Prisoner. I challenge him.

Cl. of Arr. Isaac Cailovell.

Prisoner. He don't write his Name as it is in the Pannel. I could never find this Gentleman out by all the Enquiry I could make.

L. C. Baron. What is the Mistake?

Prisoner. It is wrote in the Pannel *v* Consonant, and he spells his Name with a *w*. And it is in the Pannel a single *l*, and he writes it with double *ll*.

Then Mr. Cailovel being ask'd, said he wrote his Name with a v Consonant, as in the Pannel; but with a double ll.

L. C. Baron. That don't alter the Pronunciation. It is the same Name.

Prisoner. I challenge him.

Cl. of Arr. Thomas Davis. He was sworn.

Cl. of Arr. John Dodson, Esq;

Prisoner. I challenge him.

Cl. of Arr. William Dewick.

Prisoner. I challenge him.

Cl. of Arr. William Dell.

Prisoner. I challenge him.

Cl. of Arr. John Davis. He was sworn.

Cl. of Arr. Joseph Emmes. He was sworn.

Cl. of Arr. John Farr. He was sworn.

Cl. of Arr. Thomas Gouge.

Prisoner. I challenge him.

Cl. of Arr. Thomas Geering.

Prisoner. I challenge him.

Cl. of Arr. Joseph Goddard.

Prisoner. I challenge him.

Cl. of Arr. Robert Gill.

Prisoner. I challenge him.

Cl. of Arr. Henry Greenway.

Prisoner. I challenge him for Cause. He is returned upon the Pannel *Greenway*, and his Name is *Greenaway*: That is a different Name.

Sir J. Fekyll. How are you usually called; *Greenway*, or *Greenaway*?

Mr. Greenaway. I am most commonly called *Greenaway*.

Then he was set aside.

Cl. of Arr. John Glasbrook. He was sworn.

Cl. of Arr. John Goodlad.

I 2

Prisoner.

Prisoner. I challenge him.
 Cl. of Arr. *John Gore*.
 Prisoner. I challenge him.
 Cl. of Arr. *Henry Ankey*.
 Prisoner. I challenge him.
 Cl. of Arr. *Lawrence Hatsell*.
 Prisoner. I challenge him.
 Cl. of Arr. *Robert Hackshaw*.
 Prisoner. I challenge him.
 Cl. of Arr. *Benjamin Hooper*.
 Prisoner. I challenge him.
 Cl. of Arr. *Jonathan Hicks*.
 Prisoner. I challenge him.
 Cl. of Arr. *Jeremiah Fennings*.
 Prisoner. I challenge him.
 Cl. of Arr. *Thomas Jordan*.
 Prisoner. I challenge him.
 Cl. of Arr. *William Kent*. He was sworn.
 Cl. of Arr. *Richard Levitt*, Esq;
 Prisoner. I don't except to him.
 Sir *J. Fekyll*. I challenge him for the King.
 Cl. of Arr. *James Lamb*.
 Prisoner. I challenge him.
 Cl. of Arr. *Thomas Lingard*. He was sworn.
 Cl. of Arr. *Stephen Lee*. He was sworn.
 Cl. of Arr. *John Lane*, Esq;
 Prisoner. I challenge him.
 Cl. of Arr. *John Lane*.
 Prisoner. I challenge him.
 Cl. of Arr. *Richard Lindsey*.
 Prisoner. I don't except to him.
 Sir *J. Fekyll*. I challenge him for the King.
 Cl. of Arr. *John Mabew*. He was sworn.
 Cl. of Arr. *Henry Mallett*. He was sworn.
 Then they were counted; and the Twelve sworn
 were Jurors.

Sir <i>Daniel Wray</i> , K ^t .	<i>John Glasbrook</i> .
<i>Joseph Chamberlain</i> ,	<i>William Kent</i> .
<i>Thomas Davis</i> ,	<i>Thomas Lingard</i> .
<i>John Davis</i> ,	<i>Stephen Lee</i> .
<i>Joseph Emmes</i> ,	<i>John Mabew</i> .
<i>John Farr</i> .	<i>Henry Mallett</i> .

Then Proclamation was made, as is usual in those cases.

Prisoner. I pray that *George Flint*, a Prisoner in *Newgate*, may be sent for; and may be near me during my Trial.

L. C. Baron. What is he in *Newgate* for?

Prisoner. For a Fine.

L. C. Baron. Then he may be sent for.

Which was done accordingly.

Cl. of Arr. *Francis Francia*, hold up your Hand.

Which he did.

Gentlemen, you that are sworn, look upon the Prisoner, and hearken to his Cause.

HE stands indicted by the Name of *Francis Francia*, of *London*, Merchant: For that he being a Subject of our most Serene Lord *GEORGE* King of Great Britain, France and Ireland, Defender of the Faith, &c. not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance; but being moved and seduced by the Instigation of the Devil, as a false Traitor against our said Lord the King, his supreme, true, natural, lawful, and undoubted Lord; withdrawing that cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our said Lord the King towards him ought to bear; and designing and traiterously intending, the Government of these King-

doms, under our said Lord the King duly and happily established, to change and subvert; and our said Lord the King from the Title, Honour, Royal Estate, Empire and Government of these Kingdoms to depose; and our said Lord the King to Death and final Destruction to bring; and the Person in the Life of King *James the Second*, pretended to be Prince of Wales, and after the Death of the said late King pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of *James the Third*, to the Crown, Royal Estate, and Dignity of King, and to the Government of this Kingdom to advance: The First Day of September in the Second Year of the Reign of our said Lord the King, and at several Days and Times as well before as after, falsely, maliciously, devilishly, and traiterously did compass, imagine and intend, our said Lord the King, now and then his supreme, true, natural, lawful and undoubted Lord, from the Title, Honour, Royal Estate, Empire and Government of these Kingdoms, to depose and to Death and to final Destruction to put and bring; and the said Person, in the Life of the said King *James the Second*, pretended to be Prince of Wales, and since the Death of the said late King pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of *James the Third*, to the Crown, Royal Estate and Dignity of King, and to the Empire and Government of this Kingdom, to exalt. And that he the said *Francia*, to accomplish and bring about the said Treason, and traiterous and devilish Intention, did traiterously meet, propose, consult, conspire, and agree with divers other Traitors, to the Jurors unknown, to raise Insurrection, Rebellion and War within this Kingdom, against our said Lord the King, and in Favour of the said Person, in the Life of the said King *James the Second*, pretended to be Prince of Wales, and since the Death of the said late King taking upon himself the Stile and Title of King of England, by the Name of *James the Third*. And that he the said *Francis Francia*, for the more effectual compleating and perfecting the said Treason and Traiterous Intention, did propose, consult, conspire and agree with divers other Traitors, to the Jurors unknown, to require, solicit and procure, from divers Foreigners, and others, in the Kingdom of France, Arms, Ammunition and Money, to assist and help in the said War. And that he the said *Francis Francia* did traiterously compose and write, and caused to be composed and written, several traiterous Letters, notifying the Intentions and Resolutions of him the said *Francis Francia*, and the said other Traitors, to move and levy the said War; and requiring Aid in the said War, of the said Foreigners, and other Persons then in France. And the said Letters so composed and written, and caused to be composed and written, did traiterously send, and caused to be sent to Parts beyond the Seas, to be delivered to the said Foreigners, and other Persons in France, and caused and procured them to be delivered accordingly; against the Duty of his Allegiance, against the Peace of our said Lord the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided.

Upon this Indictment he hath been Arraigned and hath thereunto pleaded *Not Guilty*: And for his Trial hath put himself upon God and his Country; which Country you are. Your Charge is to enquire, whether he be guilty of this High-Treason whereof he stands indicted, or not guilty? If you find that he is guilty, you are to enquire what Goods or Chattels, Lands or Tenements, he had

at the Time of the High-Treason committed, or at any Time since. If you find him *Not Guilty*, you are to enquire whether he fled for it. If you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him guilty: If you find him not guilty, nor that he did fly for it, you are to say so, and no more; and hear your Evidence.

Mr. *Cowper*, Jun. **M**AY it please your Lordship, and you Gentlemen that are sworn: The Prisoner at the Bar, *Francis Francia*, stands indicted of High-Treason; in intending to alter and subvert the Government of these Realms, happily establish'd under his Majesty King *GEORGE*; to depose his Majesty, to bring him to Death, and to place the *Pretender* upon his Throne.

The Indictment sets forth, that for this Purpose the Prisoner, the First of *September*, in the Second Year of the Reign of his present Majesty, and at several other Days and Times, at *London* in your County, traiterously compassed and imagined, to depose and kill his most Sacred Majesty, and to place the *Pretender* on his Throne.

And that for the more effectual performing such his Intentions, he did meet, propose, consult and agree with several other Traitors, to raise Rebellion and War within this Kingdom, against his Majesty, and in favour of the *Pretender*. And that he did solicit Men, Arms and Ammunition, from certain Foreigners and others in *France*, to assist him in that Rebellion. And that he did write and cause to be written several Letters, intimating this Resolution, and requesting the Assistance of such Foreigners and others.

The Indictment charges further, that he wrote and composed such Letters, and caused them to be wrote and composed; and procured them to be sent and deliver'd for that Purpose. And this, Gentlemen, is laid to have been by him done, contrary to the duty of his Allegiance, against the Peace of our Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in that Case provided.

Gentlemen, to this Indictment the Defendant has pleaded that he is Not Guilty. If upon calling our Evidence for the King, we shall prove this Case upon him; it will become your Duty to find him guilty of the Charge.

Sir *J. Jekyll*. **M**AY it please your Lordship, and you Gentlemen of the Jury, I am of Council with his Majesty: And, Gentlemen, it is my Part to open to you the Substance of the Charge against the Prisoner at the Bar; and the Nature of the Evidence we shall offer to prove that Charge.

The Prisoner stands indicted of the first Species of High-Treason, mentioned in that antient Statute 25 *Edw.* III. that is, compassing and imagining the Death of the King.

The Overt-Acts alledged in the Indictment, to manifest that traiterous Design of the Prisoner, are three:

He is charged with consulting and conspiring, with other Traitors, to levy War against the King, in favour of the *Pretender* to his Majesty's Crown:

With conspiring and agreeing to solicit and procure Assistance, from Foreigners and others in *France*, to carry on that War:

And further, with writing traiterous Letters, notifying his and his Accomplices Resolution to Levy that War; and requiring the before-mentioned Assistance; and sending those Letters into foreign Parts for that Purpose.

These are undoubted Overt-Acts of the High-Treason charged upon him.

To make good this Charge, we shall shew, that about three or four Years since, there was a Correspondence begun between the Prisoner and Abbot *Butler*, an Ecclesiastic of *Cambray*. That Correspondence began on the Occasion of a Law-Suit in *England*; wherein one Mrs. *Butler*, a Relation of that Abbot, was concerned; which was recommended to the Prisoner's Care. But some Time after (a Gentleman, whose Name it will be necessary to mention in the Prosecution of this Cause) Mr. *Harvey* of *Combe* took upon him to make use of that Correspondence, in order to transmitt and receive Letters to and from that Abbot; and also to the Duke *D'Aumont*, by the means of the Prisoner.

Mr. *Harvey*, for some time, made use of the Prisoner only to convey those Letters forward and backward, under the Prisoner's Cover, directed to one *D'Aulmay*, alias *Payen*; who had married a near Relation of the late Duke of *Ormond*; to be communicated by *D'Aulmay* to the Abbot, or the Duke *D'Aumont*. But it seems, the Prisoner having gained a Knowledge of the Tendency of Mr. *Harvey*'s Correspondence, (which was a treasonable one) he himself soon after came to partake of the Guilt.

As it was at first a Correspondence between the Prisoner and the Abbot, and afterwards between Mr. *Harvey* and the Abbot, under Covers; so afterwards, Mr. *Harvey* made use of the Prisoner himself, to correspond with *D'Aulmay*. And in those Letters you will find, that the Prisoner does not enter into the Correspondence as a Matter that he was transacting as only for Mr. *Harvey*, but shews a great Concern in it himself: He is importunate for Assistance to the late Rebellion from *France*; Impatient for its Coming, and Anxious for the Success.

The Evidence we shall offer to you, to shew that this Correspondence was thus carried on, will be this.

Informations being given to a Noble Lord, (then Secretary of State) of a treasonable Correspondence being carry'd on by Mr. *Harvey*, by means of the Prisoner; there was a Warrant issued to take the Prisoner, and seize his Papers. And upon the Execution of that Warrant, Letters directed to the Prisoner, and his Copy-Book of the Letters wrote by himself, and an Original Letter of Mr. *Harvey*'s, were found in the Prisoner's Custody, and will be produc'd to you; and these were own'd and admitted by the Prisoner.

The Letters themselves plainly speak the Nature and traiterous Effect of this Correspondence begun by Mr. *Harvey*, and carried on with the participation of the Prisoner. And Gentlemen, my Lords the Judges will tell you, that it is not couching such a Correspondence in the Cant of a Law-Suit, (as in the present Case) or otherwise, that will screen an Offender from Public Justice, in case a traiterous Correspondence can be made manifest. If that would evade the Justice of the Law, it would be impossible for Traitors to be brought to Punishment. But that which puts this out of all doubt, is, that the Sense which is
put

put on these Letters by us, and by the Indictment; that very Sense, or Construction, has been put upon them by the Prisoner himself. For we shall lay before you the Examination of the Prisoner before the Secretary of State. In that he admits, that the Subject-Matter of the Letters wrote by *D'Aulmay* to him, to be communicated to Mr. *Harvey*, was the Design of the *Pretender's* Invading the Dominions of his Majesty. And those Letters being one Side of the Correspondence, (I mean that which came from Abroad) serves to evince or demonstrate the other Part or Side of the Correspondence, which came from hence.

I shall not enter into the Particulars of the Letters; or state and reason upon Matters in writing, without having them first read, whereby to lay a Foundation for Observing upon them. But the Letters will be read to you: And we who are the King's Council, don't desire you to put any forc'd or strain'd Construction upon them. Nay, we desire you to put no other Construction upon them, than what the Prisoner himself has done already.

I shall say nothing to you, Gentlemen, to aggravate the Nature of the Offence. I rather chuse to appeal to your Judgments, than to excite your Passions.

All that is desired of you, is, to give your best Attention to the Evidence; and to do Justice, and discharge your Consciences.

Mr. *Att. Gen.* **M**AY it please your Lordships, and you the Gentlemen of this Jury; I am also of Council against the Prisoner at the Bar. The Indictment has been at large opened and explained by Mr. Serjeant *Fekyll*. The Prisoner is charged with High-Treason, in compassing and imagining the Death of his Majesty, in order to set the *Pretender* on the Throne. The Overt-Acts laid, are conspiring to levy that War and Rebellion that broke out lately; and in applying to *Aliens*, and others in *France*, for Men and Money for carrying it on.

It is notorious, that Preparations were making many Months for the Rebellion that broke out in *Scotland*, *September*, 1715. under the Earl of *Marr*; and in *Northumberland* in *October* after, under Mr. *Foster*; and the like were design'd at *Oxford*, *Bath*, &c. in *October*, 1715. And Men were list'd and sent down for those Purposes; as hath appear'd on the Trials of the Persons who have suffer'd for those Treasons.

The Conspiracy was carry'd on with great Secrecy: And tho' it had been long in agitation in favour of the *Pretender*; yet was not publicly known, till his Majesty (upon the 20th of *July* 1715) was pleas'd to acquaint his Parliament, that he had certain Notice of the *Pretender's* Design to Invade this Kingdom; and that at the same time there were great Preparations here to assist that intended Invasion.

The Defendant lives in *Plow-Yard* in *Fetter-Lane*, and goes for a few. When the Duke *D'Aumont*, as Ambassador from the *French King*, in the Year 1713. was here, the Prisoner came acquainted with the Abbot *Butler*, called the *Vidame* of *Cambray*, and from that time he corresponded with him. The Abbot had a Relation of his Name, *Barbara Butler*, who had a Suit at Law depending here, which he recommended to the Care of the Prisoner; and that I believe might

be the beginning of the Correspondence between them. There is a Gentleman that has been named, Mr. *Harvey* of *Combe*; he also then contracted an Acquaintance and Familiarity with the Duke *D'Aumont*, and Abbot *Butler*, and corresponded with both. These Correspondencies first began in the Queen's Time, and appear to have been carried on with great Secrecy and Caution, which induce a Belief they were then Criminal; but I don't mention this, as if what was done in the Queen's Time would affect the Prisoner upon this Indictment, for it is laid only for Treason committed against the King. These Correspondencies were carried on, from the going away of the Duke *D'Aumont*, till the Prisoner was seized, which was occasioned in this Manner.

My Lord *Townshend*, then Secretary of State, was diligent in his Enquiries, and on the 16th of *September*, 1715. had a private Information given him, that Letters constantly came by the Post from *France*, to *Francia*, and Mr. *Harvey*; from the Duke *D'Aumont*, and Abbot *Butler*, and one *Payen* alias *D'Aulmay de Coulange*; and that the Subject of the Letters related to the *Pretender*, and that intended Invasion.

His Lord was cautious, and did not immediately seize the Prisoner, but staid the coming in of two Posts from *France*, and gave Orders for stopping all Letters directed to the Prisoner, to see what further Discovery they would make, and having received further Information by those Letters, on the 19th of *September*, 1715. his Lordship made his Warrant to *Joseph Smith*, one of the Messengers, to apprehend *Francia*, and seize his Papers. He having received the Warrant, went, together with *Wilcox* another Messenger, (who is since dead) to the Defendant's House, and there seized his Person, and at the same time his Copy-Book of Letters. And it is extraordinary to find therein entred the Copies of any Letters relating to a Matter of this Nature. When they seized that Book, he told them there was nothing in it, and that it was only his Copy-Book of his Letters to his Correspondents. They seized also several Original Letters, wrote from *France* to him by *D'Aulmay* alias *Payen*, which will be read to you. They then seized also in his Custody an Original Letter of Mr. *Harvey's* to Abbot *Butler*, dated *January* 9. 1714. which was sent to *Francia* to be transmitted beyond Sea; but it seems *Francia* opened it out of Curiosity, or by Accident, and kept it. In it were Figures for Names and Things, which he well understood. The Prisoner was on *September*, 22, 1715. examined before both Secretaries of State, and the Copy-Book of Letters was shewn him, and he owned it to be his Book, wherein he entred the Letters of his Correspondency, and that the Entries were made by himself or his Son. *D'Aulmay's* Letters were also shewed to him, and he owned that they were those that he received, and were found in his Custody.

He at first seem'd to be open and ingenuous, and the Secretaries of State then thought him to be so. He told them in particular when the Correspondence began, how long carried on by covering Mr. *Harvey's* Letters; and when altered, and the Correspondence carried on only by *Francia*; and that the Subject of the Letters wrote to him by *Payen*, was, the Design of the *Pretender* to invade his Majesty's Dominions; and he named Persons, who were intended in them by initial Letters of their Names or Titles. That *M. H.* was

was Mr. *Harvey*. My *DD* the Duke of *Ormond*; *M B.* Lord *Bolinbrooke*; *Dd.* the Duke *D'Aumont*. He also explained Mr. *Harvey's* Letter, and the Figures therein. That 22 was the Duke *D'Aumont*; 6 the late *French* King; 17 the *Tories*; 8 the *Pretender*; and 9 his Majesty King *George*; and signed his Examination, and was sent back in the Messenger's Custody. But it appearing after, on further perusing of the Letters, that he had not been ingenuous, but had concealed a great Part of what he knew, he was further examined, and then changed his Note, and thereupon was committed to *Newgate*.

He was here twice before, in Order to be tried; the first Time he was advised by his Council, (and he was in the Right to follow it, and take all the Advantages the Law allowed him) to insist, that in the Copy of the Indictment delivered to him, there was a Mistake of an *I* for an *A*, and therefore he had not had a true Copy of his Indictment; and thereupon the Trial was put off. The next Time he came, he made use of another Privilege the Law allows him, and challenged so many of the Jurors, that there did not appear besides enough to make a Jury. There were Accidents afterwards, which occasioned the putting off the Trial twice by the King's Council, some of the Witnesses being abroad on his Majesty's Service.

The Indictment charges the Prisoner with compassing and imagining the Death of the King. And its plain, a Conspiracy to levy War, to dethrone or to deprive the King of his Liberty, is an Evidence of imagining his Death; for the War necessarily tends to that End. That this Transaction which he was concerned in, was a Design to have a Rebellion raised here, and to bring in the *Pretender*, we don't doubt but we shall give you Satisfaction of, when we produce the Letters, and you will observe that the Prisoner hath so explained them: And if he had not, every Body must so understand them.

The Correspondence began in the Year 1713, and continued to the Time he was taken, which was on *September* 19, 1715. And so far we may read the Letters in the Queen's Time, to shew the Nature and Beginning of it. At first he carried on the Correspondence, only as a Correspondence between Mr. *Harvey* and *Butler*, by covering Mr. *Harvey's* Letters, and having the Answers sent under Cover to him; what he wrote in the Covers, he has enter'd in his Book; for Mr. *Harvey* was cautious not to let his Letters go openly to and from him. And so for a good while Mr. *Harvey's* Letters were brought to *Francia*, which he covered and directed to *Butler* or to *D'Aulmay*, sometimes by that Name, and sometimes by the Name of *Payen*, and sometimes by the Name of *Coulange*, which is a way used by many in *France*, to take the Name of the Place where they live instead of their Surname. While the Correspondence was carried on by covering Letters, *Francia* in his Covers wrote those Matters that demonstrate he was privy to the Correspondence, and you will understand it by Mr. *Harvey's* Original Letter.

Mr. *Harvey* is not before the Court, and therefore we shall not meddle with him more than is necessary, to shew that while the Correspondence was carried on under *Francia's* Covers, *Francia* well knew the Subject Matter of the Correspondence, and many Times gave Cautions to have

to do with discreet Persons, and to make use of People that do not babble.

The Correspondence was carried on thus till about *June*, 1715. and then the way of Corresponding was changed. For Mr. *Harvey* was advised to be more careful, and not to write himself; but whatever was wrote, it was agreed should be wrote to and by *Francia*. And so the Correspondence was carried on between *D'Aulmay* and him, to the Time of the Prisoner's being apprehended. We have Entries of Letters of his for a considerable Time in his Copy-Book; and it is surprizing to me, and will be so to every Man, that a Man should enter Copies of Letters that carry such an Evidence of Crimes in the Writer. In one of the Letters enter'd in the Copy-Book, he writes to *D'Aulmay*, dated *April* 7, 1715. "to be cautious, to avoid giving Umbrage to those in Power; and says, when I have any thing particular to write to you, I will do it by a strange Hand, and will sign *Jacques Chretien*. Take notice of this, and provided you let me know you received this Letter without its having been opened, I shall be easy.

From that Time there is no Entry of *Francia's* Letters in the Book; but we have a Chain of Letters from that Time wrote by *D'Aulmay* to *Francia*, in Answer to Letters written by *Francia* to him, wherein *D'Aulmay* takes notice, "That *Francia* in his Letters had complained that the Invasion was delay'd; and reproach'd those in *France* with Backwardness, Neglect and Indolence; and the Cause he knew of, would be undone for want of Care.

In the reading the Letters, we shall first produce that of Mr. *Harvey*, dated *January* 9, 17 $\frac{1}{4}$, to Abbot *Butler*; which was found in *Francia's* Custody, with his Explanation of it; by which it will appear, he was fully acquainted with the Subject of the Correspondence, while he cover'd Mr. *Harvey's* Letters: And after that we shall produce the Letters from and to *Francia*, in the Order of Time they were written.

It is remarkable, that the Correspondence was so close, that scarce a Post passed without Letters from the one or the other.

The first of Mr. *Francia's* Letters that we shall produce, is dated *March* $\frac{1}{4}$, 17 $\frac{1}{4}$. He writes to *D'Aulmay*; "and desires to know what was in the Story of the Marriage between the *Pretender*, and one of the *Arch-Dutchesses*. For "it is essential to the Interest of your Wife," She was a *Butler*.

D'Aulmay answers that, *March* 20, 1715. and writes, "that no mention was made of late of the Marriage of the *Pretender*: And that he was of Opinion, that would not be a sure Way to bring his Affairs to a happy Issue. But that a Party-War (that is, among ourselves) would be much more to his Advantage.

March 10. *Francia* writes, "That there was a Letter from the Duke *D'Aumont*, which 'tis wished may succeed better than the former; which have not been answer'd, tho' entirely for the Affairs. Besides I am (by the way) to tell you, that Persons of 50 or 60 Thousand Crowns a Year, can't with Prudence run the Hazard of losing such Estates, unless more Encouragement be given them. And that the Misfortunes of a certain Person are more owing to their being neglected on your Side of the Water, than to the Party that is against him; So that

" if

“ if this continue, your Wife must lose all Hopes.” This demonstrates, that the Matter solicited for was criminal, for which the Persons concerned might forfeit their Estates; and is plainly a soliciting for Succours.

April 2. 1715. *D'Aulmay*, in Answer to this, writes, “ He had communicated the Complaints in *Francia's* last Letter to the Duke *D'Aumont*; and was assured all should be mended.

March 17. 17 $\frac{1}{5}$. *Francia* writes to *D'Aulmay*, “ He should be glad if he could find means to satisfy Mr. *Harvey* — That to deal with him as has been done, is no good Policy.

April 8. 1715. *Francia* writes to *D'Aulmay*, in Answer to his of the 20th; and tells him, “ He is satisfied; and consequently we are now to expect every thing from your Side the Water.

April 18. He writes again to *D'Aulmay*, “ That Affairs are here in such a Situation, that great Precaution must be used, to avoid giving Umbrage to those who are in Power. When I have any thing particular to write to you, I will do it by a strange Hand, and will sign *Jaques Chrétien*. Take notice of this: And provided you let me know you received this Letter, without its having been open'd, I shall be easy.

April 24. 1715. *D'Aulmay* writes to *Francia*, “ That his Letter came safe to Hand; and bids him be easy. If Mr. *Harvey*, in these troublesome Times, should think fit to make use of Mr. *Chrétien*, he may.

These Letters of *Francia's* are entered in his Copy-Book: But from this Time there are no Entries in the Copy-Book: Which is not to be wondered at; but rather that they were entered so long. But we have many Original Letters from *D'Aulmay* (alias *Payen*) to *Francia*; which appear to be Answers to Letters written by him: And by what of them is repeated in the Answers, it appears in his Letters, great Solicitations were for the Pretender's Coming, and great Uneasiness expressed at the Delay. And therefore, to quiet the Conspirators in *England*, *D'Aulmay* gives frequent Assurances that all Things were preparing.

August 7. 1715. Which was after his Majesty had notice of the Invasion designed, and had acquainted the Parliament with it; *D'Aulmay* writes to *Francia*: “ You are in the Right to inveigh against the Indolence you reproach us with; but be persuaded, 'tis only so in Appearance. I even hope, that by this time you have convincing Proofs of it; and that suitable Returns are made to the good Dispositions on your Side: And that at last God, blessing the just Cause of our Friend, will let him gain his Suit: At least, Assistance and powerful Solicitations shall not be wanting.

This needs no Explanation. The Suit of their Friend, appears plainly to be the Invasion of the Pretender.

August 10. 1715. *D'Aulmay*, under the Name of *Payen*, acquaints *Francia*, that he received his of the 5th Instant. Says he, “ Pray be easy; before it be long you will be contented. The Chief of the Name of our Friend the Abbot arrived here on *Tuesday-Night* in good Health. He is very well pleased; and has Reason to be so. He is preparing to return Home with all

“ Expedition; and to take his Friends with him, to pass the Vacation there. I am this Moment going to wait on him; and design to make One in the Voyage with him, or to be with him soon after his Departure.

August 21. *D'Aulmay* writes again to *Francia*, in Answer to two of his, of the 12th and 15th Instant; “ Our Friend's Cause will soon be ready (God willing) to be tried: All Preparations are making for it. The Friend who is related to my Wife has read your two Letters, and is mightily pleased with them.

August 24. He writes again, “ pressing him not to let a Post go, without letting him know all that passes relating to the Cause of our Common Friend. And he takes notice, that he had been so busy, that he had not had time to write to *Treacher*, but would do it suddenly.

This shews the difference between *D'Aulmay's* own Suit against *Treacher*, and the Pretender's Design, which he calls the Cause of their Common Friend.

August 28. *D'Aulmay*, under the Name of *Payen*, writes to *Francia*, acknowledging the Receipt of his of the 22d Instant; and saith, “ If I could venture to acquaint you with the Particulars of all that passes on the Affair which you know of, you would be more quiet than you appear to me to be, and would accuse us of Negligence less than you do. I know there are favourable Moments, which 'tis dangerous to let slip. But will you not grant too, that 'tis the Part of Prudence to foresee all Inconveniencies; and to take proper and sufficient Measures to enable us to surmount them all? This is what we are doing: Be satisfied of it: and that your Friends are more earnest and ardent than ever, to procure you all the Satisfaction you can wish. Have Patience therefore yet awhile.

September 3. *Payen* to *Francia*. “ I received this instant yours of the 29th past. We have at last the Misfortune to lose the greatest of Kings. The German Journey might be very proper; I wish it may be perform'd; the rather, because for the Reasons that you know of. Our Preparations have been a little suspended, but not at all broken; Things going on always better and better. My (a) *DD* and (b) *MD* are in a House within half a League of this Town, which a private Person has lent them; where they receive all their Friends, with whom they go to dine and sup every Day. They are both in perfect Health; and think quite differently from what they are reported to think: That is to say, they are what they ought to be; you may assure your Friends of this.

Septemb. 6. *D'Aulmay* writes to *Francia*; “ I have just now received your Letter of the second Instant. I desire you to continue to write to me directly; and if you had some trusty Hand, other than your own, and that of your Son, you would do well to employ it. I believe also, that a Cypher for the principal Names, (which you might send me, and a Copy whereof you might keep to make use of yourself) would be very necessary: For I'll avow to you frankly, that this Precaution seems to me to be very necessary.

(a) Duke of Ormond.

(b) Lord Bolingbroke.

Sept. 14. *D'Aulmay*, under the Name of *Payen*, writes to *Francia*; "The Contents of your last without a Date were very agreeable to me, as well as to all our Friends, who give you Thanks for it. We knew already Part of what you tell us about the Cause of our Friend; which will soon end (please God) to his Satisfaction, or all Appearances would deceive. As to my own Cause, I can't help telling you that my Fate is very unhappy, to have to do with so dishonest a Man.

Here again he distinguishes between his own Cause, and the Cause of their Friend the *Pretender*.

There cannot be any Doubt of the Subject of this Correspondence: Every Body that hears or reads these Letters, must understand them to relate to the intended Invasion; and if there were any Doubt, (as there is not) Mr. *Francia's* Confession sufficiently explains them.

It cannot be expected we can produce Mr. *Francia's* Letters, to which the last are Answers, they being sent away by him to *France*; but we insist that the Answers to them take notice of his, and of the Contents of them, with their being taken in his Custody, and owned by him on his Examination, to be those he received; and that he knew the Design of them to be, the Design of the *Pretender* to invade his Majesty's Dominions; is a full and sufficient Evidence to prove the treasonable Correspondence charged in the Indictment.

The Secretary of State did right, in stopping the Letters at the *Post-Office*, which were directed to the Prisoner; but those Letters having never been in the Prisoner's Custody, we shall not offer them in Evidence.

In one of them *D'Aulmay* complains, that the Correspondence was interrupted; and afterwards in another to *Francia's* Son, he bewails his Father's Misfortunes.

It can't be pretended that *Francia* was only a Hand to convey Letters from one to another; and that the Correspondence was only Mr. *Harvey's*; and that *Francia* is only guilty of Misprision of Treason, in concealing the other's Treason; for while he covered Mr. *Harvey's* Letters, he also wrote in the Cover those Things that demonstrate he was acquainted with the Subject of the Correspondence, and assented to, and assisted in the Treason: And the Law is plain in Case of High-Treason, that he that knoweth it before it be done, and assenteth to it, is *Particeps Criminis*, and guilty of the Treason.

What he did was not in the dark, but knowingly and openly, and he expresses himself concerned that the Business went on no better: That is making himself a Party and a Principal.

The Method of our Evidence will be this. These Letters and Copy-Book were seized by the Messenger, who brought them to Mr. *Walpole*, Under-Secretary to my Lord *Townshend*: They were laid before the Prisoner, in the Presence of both Secretaries of State: He owned the Book to be his Copy-Book of his Letters to his Correspondents; and the Letters shewn him, to be those he received, and that were taken in his Custody; and that that Correspondence continued till the Time of his being taken into Custody; and that the Subject whereof was the Design of the *Pretender* to invade his Majesty's Dominions. We shall for the better understanding of them, first read his Confession, and then the Letters; and when we have done this, we do not doubt but

you will be satisfied, we shall have fully proved the Charge laid in the Indictment against him.

My Lord, we will call our Witnesses. Set up Mr. *Smith*.

John Fortescue
Aland, Esq;

Then *Joseph Smith* was sworn.

Mr. *Soll. Gen.* You was sent, I think, as a Messenger to *Francia's* House: Pray give an Account of every Thing that passed there.

Mr. *Smith*. My Lord, I have the Honour to serve his Majesty as one of his Messengers: I was appointed to attend the Secretaries Office that Day, being my Day of waiting, which was September 19, 1715. I had a Warrant delivered to me against Mr. *Francia*, but it being late I did not go to execute it that Night. The next Day I went to his House, in *Plow-Yard* in *Fetter-Lane*; Mr. *Wilcox*, another Messenger, went with me, and went into the House first; he went up one Pair of Stairs, and I staid below, and after he had been up a little Time, he called me up, and told me there was the Prisoner: He was then in Bed, and there was a Woman with him he called Wife: We told him, we had a Warrant against him for High-Treason, and bad him get up. I asked him if he had any Closet? And looking about, I saw one by the Fire-Place: I opened it, and the first Thing I observed over-against the Closet-Door, upon a Shelf, was a Parcel of Letters lying open in *Folio*; I saw they were in *French*, and directed to the Prisoner, and upon the Desk there lay a Paper-Book.

Mr. *Soll. Gen.* Look upon this Book; is this the Book?

Mr. *Smith*. This is the Book; it lay upon the Desk, and I looked into it, and observed this Writing at the one End of it: He said it was his Son's Writing, and then I shut it again. I open'd the Desk, and looked over the Papers; I found there several other Papers and Letters folded up: I took them out, and laid them upon the Desk by the others. Then I search'd the other Parts of the Closet, and laid all the Papers by the other Letters. I desired then to go up Stairs, and I did so: And a Person I saw just now in Court, his Son, went with me; and I searched the Rooms and Boxes, and found several other Papers, and brought them down into the Chamber where the Prisoner was, with Mr. *Wilcox*; I put up all the Papers together, and said I had taken all Things that I thought necessary, and desired to be going. The Prisoner desired to stay and drink some Coffee; we did so, and then brought him down to a House at *Westminster*. We carried the Papers to the Office, and deliver'd them to Mr. *Horatio Walpole*. When I was in the Chamber with him, he seemed to be under a Concern when I put up the Book; and I asked him what that Book was? He said it was the Book of his Correspondence abroad.

Mr. *Att. Gen.* Is this the Book?

Mr. *Smith*. Yes.

Mr. *Att. Gen.* You say you saw several Letters there, did you look into them?

Mr. *Smith*. I saw they were directed to *Francia*: There was a Parcel lay open in *Folio*; and others that lay folded up in the Desk.

Mr. *Att. Gen.* What became of the Book and Papers after you had them?

Mr. *Smith*. We went with them and the Prisoner, and deliver'd the Prisoner into a House at

Westminster; and then went to the Office, and staid till Mr. *Walpole* came, and then delivered the Book and Papers to him.

Mr. *Att. Gen.* Did you deliver any Papers to him but what were seized there?

Mr. *Smith.* No.

Mr. *Att. Gen.* What is become of Mr. *Wilcox*?

Mr. *Smith.* He is dead.

Mr. *Cowper.* What was it that the Prisoner said about the Book?

Mr. *Smith.* He said, that is my Copy-Book of my Correspondence abroad, it signifies nothing. I afterwards observed some more Concern than ordinary in him; and he said to me again, the Copy-Book of my Letters signifies nothing.

Mr. *Ward.* How long had you the Book and Letters in your Custody?

Mr. *Smith.* I received them about Six or Seven o'Clock, and I deliver'd them the same Day to Mr. *Horatio Walpole*.

Mr. *Hungerford.* How can you be sure this is the Book?

Mr. *Smith.* Because I never parted with it.

Mr. *Hungerford.* Was it not out of your Possession when you delivered it into the Office?

Mr. *Smith.* Yes, then it was.

Mr. *Hungerford.* Did you set any Mark upon the Book?

Mr. *Smith.* No.

Mr. *Hungerford.* Did he say that which was wrote in it, was wrote in it by him?

Mr. *Smith.* He said, this is my Copy-Book of my Letters to my Correspondents abroad.

Mr. *Hungerford.* But how can you be sure this is the same Book?

Mr. *Smith.* I made a Remark of this * Writing as he sat dressing himself.

Prisoner. Who was it that carried the Book and Papers to the Office, you or *Wilcox*?

Mr. *Smith.* I myself.

Prisoner. I know that to be false. How soon did you go out of Town after you had lodged me?

Mr. *Smith.* In a Day or two.

Prisoner. Did you not go that Moment?

Mr. *Smith.* No; not that Day.

Prisoner. To whom did you deliver them?

Mr. *Smith.* To Mr. *Horatio Walpole*.

Prisoner. Did you take no more Books?

Mr. *Smith.* There were several Books in your House, but I don't remember that I carried any of them away but this.

Mr. *Hungerford.* Did the Prisoner own to you, that the Letters wrote in that Book were wrote by him?

Mr. *Smith.* He said, that is the Copy-Book of my Letters to my Correspondents abroad.

Then Mr. *Horatio Walpole* was sworn.

Sir *J. Jekyll.* Pray Sir, will you give the Court and the Jury an Account of this Book and those Letters; and how, and when they were brought to you?

Mr. *Walpole.* I remember the Warrant for seizing the Prisoner was dated the 19th of *September*, and that the Day after Mr. *Smith* and Mr. *Wilcox* came into my Room, and deliver'd to me a Copy-Book and a Parcel of Letters, which they said they took at *Francia's* House. I took them and kept them by themselves, to be produced when my Lord *Townshend* should call for them.

I remember that Night Mr. *Buckley* came into my Room, and I desir'd him to sit down and look them over with me, and accordingly he and I look'd into them. The next Day my Lord *Townshend* sent for the Prisoner, and I carried in the same Book and Letters, and laid them upon the Table, and particularly the Letters, they were laid open, and my Lord examin'd the Prisoner about them. They were wrote in *French*, and directed to the Prisoner. My Lord ask'd him whether he knew the Hand of those Letters, and turn'd them all over, and shew'd him the Directions, saying, are these directed to you? He own'd it. He own'd that he received them. My Lord ask'd him again, is this your Book? He answer'd, it is; some of the Letters are enter'd by me, and some by my Son.

Sir *J. Jekyll.* Were they all the same Letters that were brought to you by Mr. *Smith*?

Mr. *Walpole.* The same.

Sir *J. Jekyll.* Pray look upon this Book; is this the same Book?

Mr. *Walpole.* I am sure this is the Book: This is the same Book that *Smith* deliver'd to me, and said he took it at *Francia's* House.

Then several Letters were shewn to Mr. *Walpole*.

Mr. *Walpole.* I remember all these Letters to be the same that I received from *Smith*.

Mr. *Att. Gen.* After the Prisoner had been examin'd, what became of the Letters?

Mr. *Walpole.* I took them back again. I kept them under Lock and Key, till my Lord *Townshend* had occasion to use them, which was the same Night that my Lord examin'd the Prisoner; then I took them back, and I constantly kept them till I went to *Holland* for the *Dutch* Troops, and then I deliver'd them to Mr. *Buckley*.

Prisoner. And you can swear these are the same Letters that were deliver'd to you. By what Mark? You swear very home. What mark did you put upon those Letters, that you can swear to them?

Mr. *Ward.* Pray Sir, when they were in your Custody, are you sure they were never deliver'd out?

Mr. *Walpole.* I am sure.

Mr. *Ward.* Do you remember one *Jones* the Gun-maker on the other Side the Water, when he was under Examination? Are you sure they were not deliver'd out by Mistake to him?

Mr. *Walpole.* I don't know that they were.

Mr. *Hungerford.* Did you put any Mark on those Letters?

Mr. *Walpole.* No, I put no Mark on them.

Mr. *Hungerford.* Then how can you know them to be the same?

Mr. *Walpole.* I perus'd them several times. I remember the Hand, and Dates, and Directions.

Mr. *Hungerford.* Then probably you remember the Number too?

Mr. *Walpole.* No, I don't remember the Number.

Mr. *Ward.* Are you sure these are all the Letters that were brought to you?

Mr. *Walpole.* No, there are not all the Letters.

Mr. *Att. Gen.* We shall now call Mr. *Buckley*.

Then Mr. *Buckley* was sworn.

Mr. *Att. Gen.* Pray Mr. *Buckley* look upon this Book and these Letters, and acquaint the Court what you know of them.

* *George Francia's* Name in large Church Text, at the End of the Book.

Mr. *Buckley*. My Lord, the Day the Prisoner was seiz'd, I came into Mr. *Walpole's* Room. He told me he had received that Book and those Letters that were seiz'd at the Prisoner's House, and desired me to sit down and read them with him. I did so. Afterwards, when Mr. *Walpole* went to fetch the *Dutch* Troops, he delivered this Book and these Letters into my Hand. Afterwards my Lord *Townshend* directed me to look into them, and see which contain'd Passages most Criminal, and to extract such Passages, which I did accordingly out of several of them. I will look over them again, and then I can tell you whether they are the same.

Prisoner. By what Mark?

Mr. *Buckley*. I can tell you by that which is stronger than any Mark, I copy'd Passages out of several of them.

Then he looked over the Letters one by one. I had every one of these Letters from Mr. *Walpole*, and I know it certainly; for that from every one of these I extracted some Passages.

Mr. *Cowper*. Was you present at any time when the Prisoner was examin'd?

Mr. *Buckley*. I was.

Mr. *Cowper*. Were this Book and these Letters produced to him at the time of his Examination?

Mr. *Buckley*. He was examined by my Lord *Townshend* and Mr. Secretary *Stanhope*, and I was call'd in to take his Examination in Writing, accordingly I did.

Mr. *Cowper*. Were the Book and Letters at the time of his Examination produc'd to him?

Mr. *Buckley*. I can't say that, for I was intent on my Paper, writing the Examination, and looking upon the Prisoner, and hearing what he said. When I had written down what is in my Hand, [holding out the original Examination.] I read it over to him distinctly and audibly; and he being ask'd whether he was willing to swear to it, and answering, Yes, I offer'd him his Oath: And I offer'd him a *New Testament* to swear on. He said he could not swear on that Book. But he took another Book out of his Pocket, and I swore him on that. I asked him whether this was true: He said it was. Then he sign'd it; and afterwards my Lord *Townshend* sign'd it.

Mr. *Cowper*. Is the Subscription of his Handwriting?

Mr. *Buckley*. It is.

Prisoner. You say I took an Oath? on what Book was it?

Mr. *Buckley*. Indeed I don't know, I believe it was an *Hebrew* Book; Mr. Secretary *Stanhope* look'd upon it.

Mr. *Denton*. Was he examin'd at any time after?

Mr. *Buckley*. Yes.

Mr. *Denton*. Was you present then?

Mr. *Buckley*. No.

Mr. *Ward*. How long were they in your Custody?

Mr. *Buckley*. From the time that Mr. *Walpole* went abroad, till he came back again, and then I delivered them back to him.

Mr. *Ward*. Were they in your Custody when Mr. *Jones* was under Examination?

Mr. *Buckley*. I can't tell; but I never did shew them to him.

Mr. *Ward*. Were they not delivered out on that Occasion?

Mr. *Buckley*. No, they were not delivered out by me.

Mr. *Ward*. You say you read the Examination to him. Did not he desire to read it himself?

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

Mr. *Ward*. Was he not refused to read it?

Mr. *Buckley*. No, upon my Soul.

Mr. *Ward*. Was you with the Prisoner in *Newgate*?

Mr. *Buckley*. I was with him at his own Desire; otherwise I had not gone to him.

Mr. *Ward*. Do you remember the Days?

Mr. *Buckley*. No.

Mr. *Ward*. How often was you with him there?

Mr. *Buckley*. Twice.

Mr. *Hungerford*. Were there any Offers made by you to him?

Mr. *Buckley*. I desire you would explain yourself.

Mr. *Hungerford*. Did you make him any Offers, that upon his signing any Paper, he should have his Liberty?

Mr. *Buckley*. No.

Mr. *Hungerford*. Did you not mention to him his giving Evidence against any other Person?

Mr. *Buckley*. No, upon my Soul.

Mr. *Att. Gen.* These Questions ought not to be asked. It is an Iniquity to tamper with any Man; and therefore such Questions ought not to be put. If you have any Witnesses, you may examine them.

Mr. *Hungerford*. Then we will examine to it.

Prisoner. Is that the Book I swore upon? [shewing a Book he had in his Hand.]

Mr. *Buckley*. I don't know indeed; it was such a sort of Book.

Mr. *Att. Gen.* I don't take that to be material, if it were the *Alchoran*. He had it in his Pocket. But it is not his Oath, but his Confession that is material.

Mr. *Hungerford*. Taking the Book into his Hands. I understand a little *Hebrew*. This is a Book to pray by, not swear by. It is a Collection of some *Jewish* Prayers and Rituals; I believe taken out of *Maimonides*. You had best send it the learned *Monfalcon* in *Paris*, he is compiling some critical Observations upon the *Eastern* Languages.

Mr. *Ward*. Did you put any Mark on any of those Letters?

Mr. *Buckley*. I did on some of them.

Mr. *Hungerford*. Where are the Extracts you made out of them?

Mr. *Buckley*. I have some of them here. [Holding out some Papers.]

Mr. *Hungerford*. What did you do with the Letters, after you had made those Extracts?

Mr. *Just. Pratt*. He tells you that he kept them till Mr. *Walpole* came back again, and then delivered them to him.

Mr. *Buckley*. Here is my Name on some of them. The two initial Letters of my Name.

Prisoner. When was that Mark made upon them?

Mr. *Buckley*. I don't justly remember.

Prisoner. That might be done yesterday, or since they were delivered out of his Custody.

Mr. *Buckley*. I did it while they were in my Possession, and before I deliver'd them back again to Mr. *Walpole*.

Then the Lord *Townshend* was sworn.

Sir *J. Fekyll*. We must desire your Lordship to inform the Court, what your Lordship knows in relation to the Prisoner at the Bar, as to the issuing out the Warrant against him, and what happened afterwards.

Lord *Townshend*. My Lord, having received Information that there was a treasonable Correspondence carry'd on between the late Duke of *Ormond*, Duke *D'Aumont*, *Coulange* and Mr. *Harvey*, in which the Prisoner was concerned, and was the Channel in which the Correspondence was convey'd; and that the Pretence of it was a Law-Suit, but that the Design of it was in Favour of the Pretender; and that when they talk'd of the Party, the Pretender was meant; and that they expected him to be soon here. Having reason to rely on this Information, I drew a Warrant to seize the Prisoner and his Papers. I had indeed before sent an Order to stop all Letters that came from *France*, directed to *Francia*, by which I receiv'd a Confirmation of the Intelligence which had been before given me. Upon the issuing out the Warrant, the Prisoner was seiz'd, and his Letters was brought to Mr. *Walpole*.

The next Day I sent for the Prisoner to be examin'd, and order'd Mr. *Walpole* to bring me the Papers, and sent for the Prisoner in. The Letters that Mr. *Walpole* brought in, were laid open upon the Table, and the Book lay by them. I ask'd him whether he knew the Hand, and whether those Letters were not for him? He own'd the Letters, but said he could not help what was in those Letters, and that what others wrote to him could not make him guilty. As for what I have wrote (said he) I appeal to my Book. That is my Book, I appeal to that for my Innocency. He did not appear obstinate, and I remanded him; and at Night I sent for him again, and Mr. Secretary *Stanhope* was with me; I had in that time look'd into more of the Letters, I saw several initial Letters of Peoples Names, I ask'd him the meaning of them; and he gave me the Account contain'd in this * Examination. He seem'd in a Disposition to tell me all he knew; he gave me an Account how this Correspondence began, and was carry'd on; and then he came to explain the initial Letters that were in those Letters that were taken upon him, and in several other Letters that I had intercepted. I remanded him again that Night, having taken his Examination in my Hand.

A second Examination was taken upon Mr. *Harvey's* Letter; (*which Examination and the Letter thereto annex'd was shewn to his Lordship.*)

This is the very Letter on which I examin'd him; he own'd to me how he came to stop the Letter, and not to forward it, and explain'd all those Figures to me very distinctly. He protested that he knew no more, and made solemn Protestations that he had said all he knew, and I was almost convinc'd he had; but in the Consequence, I had reason to think he had not. But these two Examinations were taken before me, one I sign'd alone, and the other Mr. Secretary *Stanhope* sign'd with me. As to the First, I believe Mr. Secretary *Stanhope* was gone out of the Room before it was sign'd.

Sir *J. Jekyll*. I desire to ask your Lordship whether all the Letters that were brought by Mr. *Walpole* were laid upon the Table at the time of the Prisoner's Examination?

Lord *Townshend*. All that Mr. *Walpole* brought me were laid there, and I saw him take them back again.

Mr. *Ward*. I desire to ask your Lordship whe-

ther you heard that Declaration read over to him?

Lord *Townshend*. I dare say I did.

Mr. *Ward*. Did he not endeavour to excuse himself from signing it, 'till he had read it himself?

Lord *Townshend*. I don't remember that, I don't know that he made any Difficulty of signing it; but I am sure it could not be because he was refus'd to read it.

Prisoner. Was not there any Reluctancy in me to sign it?

Lord *Townshend*. What do you mean? Have not I answer'd that already?

Prisoner. Did not you offer me some Money to sign it?

Lord *Townshend*. I hope you can't say a thing of so much Infamy. After he had been examin'd, he complain'd to me of the Misery he was reduc'd to, that his Wife and Family must starve, and represented himself as if he were at a loss for a Supper: I told him he had nothing to hope for, or any room to expect any Favour, but by making a clear Confession. He went on begging, and said that his Wife was starving; I do not certainly know whether it was the very Night that he sign'd his Confession or not; but I am sure it was not for that, but in pure Alms, and because he begg'd so hard, I put my Hand in my Pocket, and gave him three, four, or five Guineas, I know not which, in Charity; and it was what I never could refuse any Man that apply'd to me in that manner, and begg'd so hard. He said his Brother would not look upon him, because he was taken up for High-Treason, and he desired me to give him something in Charity, which I did.

Prisoner. I desire to ask you, whether you ever bestow'd on any body else the like Charity? Pray my Lord, name the Man under your Examination, you ever gave five Guineas to before? [*At which there being a Laugh round the Court.*]

Prisoner. I must not be laugh'd out of my Life; you did not answer me.

Lord *Ch. Baron*. Propose your Question to the Court?

Prisoner. I desire to know who he ever gave five Guineas to besides me?

L. *Ch. Baron*. My Lord says it was out of Charity.

Prisoner. And that he never refus'd any Body under his Examination the Sum of five Guineas?

L. *Ch. Baron*. He don't say so; he says, he never could refuse his Charity to People that begg'd as you did.

Prisoner. I had less need to beg than some others.

Mr. *Ward*. I have but one Question more to trouble your Lordship with, which my Instructions lead me to; and that is, whether at the time when this Examination was sign'd by the Prisoner, he was not told of its being for some particular Purpose, but that it should not be binding to him?

Lord *Townshend*. He did desire that it might not be made use of against him; I told him that depended on his Behaviour, if he was ingenuous, if he dealt frankly and fairly, and declar'd all the Truth, I would do all in my Power that he should have Mercy; I don't know whether it is proper to give my Reasons why I am convinc'd he did not deal candidly; but on the perusal of the Letters, I found he was not a bare Conveyer of them, or came by Chance to the Knowledge of what he explain'd in them, but that he was wrote to, as

* Referring to the Original Examination.

one of the Managers : On that I sent to him again, and told him plainly, he must know more of it. He stood it out that he did not, and then I sent him to *Newgate* : Soon after he was committed, his Wife came, as Mr. *Buckley* inform'd me, and acquainted him that she was persuaded, if she could see her Husband, that she could prevail with him to discover the whole : On that I gave Directions to put him into the Messenger's Hands again, which was done ; about a Morning or two after, one *Curtis*, who was in the same Messenger's House, brought a Letter to the Office, which he had found drop'd by his Man's Bed-side. It was directed to his Wife, and the Subject was to bid her not afflict herself, for he found better Company in *Newgate* than he expected, that the better half of them were in upon the Government Account ; that he had said nothing of Mr. *Harvey* that could hurt him, nor could he ; that the Government had nothing against Mr. *Hurvey*, but a general Suspicion that he was against the Government, which three Parts in four of the Nation were ; and that he himself laugh'd at any thing the Government could do against him the Prisoner : When I found a Man write in his Style, I could not but think he had not dealt ingenuously.

Mr. *Hungerford*. I would propose to the Judgment of the Court, whether it is proper to give Evidence of the Substance of a Letter without offering the Letter itself.

Mr. *Just. Pratt*. This comes in Answer to Mr. *Ward's* Question. He ask'd my Lord *Townshend*, whether there was not some Promise that this Confession should not be made use of against the Prisoner ? His Lordship gives this Account, and justifies himself, how he came to make use of it, and gives this as the Reason.

Mr. *Hungerford*. But to give an Account of the Substance of a Letter without producing it, I apprehend, is not according to the Rules of Evidence.

Sir *F. Jekyll*. If the Council for the Prisoner desire the Letter to be read, it shall be read.

Mr. *Att. Gen.* Do you insist upon the reading of it ?

Mr. *Ward*. If you will read it in the proper time you may.

Mr. *Hungerford*. If in the Course of the Evidence the Letter is not read, I don't press it.

Then Mr. *Horat. Walpole* was call'd again, and the Letter was shew'd to him.

Mr. *Att. Gen.* Pray, Sir, will you give an Account what you know of this Letter, and how it came to your Hands ?

Mr. *Walpole*. This Letter *Curtis* brought to me, and I made this * Mark on it : He told me it was found in *Francia's* Chamber near his Bed-side, and this is the Letter.

Mr. *Ward*. There is nothing prov'd yet of its being the Prisoner's Hand, its being found by his Bed-side will not affect him.

Then Mr. *Buckley* was call'd again, and the Letter was shew'd to him.

Mr. *Soll. Gen.* Pray look upon this Paper, and tell us whose Hand-writing you take it to be ?

Mr. *Buckley*. I never did see the Prisoner write but once, and that was upon my being sent to him to take a Confession he seem'd willing to make, and then I sat by him while he was writing.

Mr. *Soll. Gen.* How long did he write then ?

Mr. *Buckley*. About an Hour, and I read it over.

Mr. *Soll. Gen.* Do you believe this to be his Hand-writing ?

Mr. *Buckley*. I not only saw him write then, but I have read a great deal in this Book, which Mr. *Walpole* told me was taken at the Prisoner's House ; therefore being used to the Writing in this Book, and to what I saw him write, for those Reasons, and no other, I believe this Paper to be his Writing.

Mr. *Denton*. Are not the Letters of your Name on this Letter ?

Mr. *Buckley*. Yes : When Mr. *Walpole* put into my Hands all the Letters, my Lord bid me single out those that were fit to be extracted, and I did mark them that were extracted, and I always kept them in my Hands till Mr. *Walpole* return'd, and then I delivered them to him : Those Letters that I extracted, I mark'd ; some other Letters that were intercepted by my Lord *Townshend*, I did not mark, because they came to me at other times.

Mr. *Denton*. Did you mark that Letter ?

Mr. *Buckley*. Yes.

Mr. *Ward*. Can you be positive that it is the Prisoner's Hand ?

Mr. *Buckley*. No.

Mr. *Ward*. Do you rely on the Writing in the Book ?

Mr. *Buckley*. By that, and by what I did see him write, from thence it is that I conclude this to be his Hand.

Mr. *Hungerford*. He attempts to prove his Hand by two Inducements, one that he saw him write, and the other is the Book ; therefore let him fix on those Parts of the Book, that he takes to be the Prisoner's Hand, and to be like this Letter.

L. *Ch. Baron*. The Book is not material ; it is enough for a Man to say, that he saw another write for an Hour together, and then that he believes this to be his Hand.

Mr. *Hungerford*. If that was the single Foundation, it was something ; but he makes another Foundation also.

Mr. *Just. Pratt*. We are going out of the way, the Question is, Whether this shall be read ? In order to that, the Method is to prove, that the Witness is acquainted with the Prisoner's Hand-writing, and believes this to be his Writing. He tells you he saw him write for an Hour. He gives you a further Reason, that it is like some Letters in the Book. If that were laid out of the Case, the other would be sufficient without it.

Mr. *Hungerford*. A Man makes two Things the Foundation of his Judgment, his seeing him write, and the Similitude of Hands in the Book, the most conclusive Evidence would be, the Similitude of the Hand in the Book, which others may judge of as well as himself.

L. *C. Baron*. That is no Evidence at all ; Similitude of Hands is no Evidence.

Mr. *Hungerford*. I am far from thinking it is, or that there is as yet any Evidence at all. Do you believe this to be his Hand, only from your having seen him write, or from what you have observ'd in the Book also ?

Mr. *Buckley*. I say that from my having seen him write, and my having seen the Entries in the Book, I believe this to be his Hand.

Mr. *Just. Pratt*. If you had never seen the Book, but had seen him write for an Hour ; could you collect from thence that this was his Hand ?

* Showing a Mark upon the Letter.

Mr. *Buckley*. No, I would not affirm it.

Mr. *Hungerford*. Then it is with us, and makes it necessary to look into the Book.

Mr. *Att. Gen.* How come you to apprehend any one Part of the Book to be *Francia's* Writing more than the other?

Mr. *Buckley*. By my Eye-sight, and comparing it with this Letter.

Mr. *Att. Gen.* Is it from your Knowledge of seeing him write?

Mr. *Buckley*. Yes, and this Writing being like this Book.

Sir. *J. Jekyll*. I desire this Matter may be considered how it stands, my Lord *Townshend* is examin'd touching the Confession of the Prisoner, and was asked, whether there was not Hopes of Mercy given him? My Lord said there were, upon his making a frank Discovery; but he tells you the Prisoner was not entitled to Mercy, because he had not made such a Discovery, and then gives an Account of this Letter: I thought the Council for the Prisoner appeal'd to that Letter, and would have had it produc'd, to check the Evidence given by my Lord.

Mr. *J. Pratt*. Since it is gone thus far, I think it would be proper to clear this matter.

Prisoner. I desire to know where Mr. *Buckley* saw me write for an Hour together?

Mr. *Buckley*. It was in the Messenger's House.

Mr. *J. Tracy*. My Lord *Townshend* was giving an Account in Answer to a Question propos'd by the Prisoner's Council, and gave his Reason why he did not think the Prisoner was frank. I did not think so (says he) because of a Letter which was found by his Bed-side. Says Mr. *Hungerford*, then that Letter ought to be produced.

Mr. *Hungerford*. If the Account is no more than that my Lord observed so upon that Letter, there is no great Harm in reading it: But I am still in your Judgment, whether, when the Contents of a Letter is insisted upon, and repeated, and that upon Memory only, the Letter itself ought not to be produced?

Then — *Curtis* was sworn.

Mr. *Soll. Gen.* Look upon that Letter, whose Hand-writing is it?

Curtis. I believe it is Mr. *Francia's*.

Mr. *Soll. Gen.* Have you seen him write?

Curtis. Yes.

Mr. *Soll. Gen.* And do you believe it to be his Writing?

Curtis. Yes.

Mr. *Ward*. How long have you been acquainted with the Prisoner?

Curtis. While he was in the Messenger's Hands.

Mr. *Ward*. How often did you see him write?

Curtis. Several times.

Mr. *Ward*. Was you in Custody at the same time when he was?

Curtis. Yes.

Mr. *Soll. Gen.* Where did you find this Letter?

Curtis. In his Chamber by his Bed-side.

Mr. *Hungerford*. I don't hear that he gives an Account, whether he is so well acquainted with his Writing, that he can distinguish it from any others?

Curtis. He told me it was a Letter that he had wrote to his Wife.

Mr. *Att. Gen.* The Letter is in *French*; we have a Translation of it; we must desire that the Interpreters who translated it may be sworn.

Then Mr. *Bowyer* and Mr. *Ozell* were both sworn,

Mr. *Cowper*. Did you translate the Letter?

Mr. *Bowyer*. I did, and afterwards I compared it with Mr. *Ozell*.

Mr. *Cowper*. Is that a true Translation of the Original Letter?

Mr. *Bowyer*. I did make a true genuine Translation of it, allowing for the Difference of Language and Stile.

Mr. *Cowper*. Was it the best and most exact Translation you was able to make?

Mr. *Bowyer*. Yes.

Mr. *Cowper*. Mr. *Ozell*, have you compared this Translation with the Original?

Mr. *Ozell*. Yes, and I believe it to be a true Translation.

Note. That the Original Letter was deliver'd into the Prisoner's Hand, during the Time that the Translation was reading; and Mr. *Flint*, who was permitted to stand in the Bar near the Prisoner, assisted him in comparing the Original with the Translation. The like Method was observed, when the Translations of the Letters received by the Prisoner were read; and when the Letters wrote by him were read out of the Copy-Book, the Copy-Book was shewn to him.

[Clerk reads.]

My Dear,

ALL I exhort you to, is, to make yourself as easy as you can. I do the same, and am well, having slept well last Night; and the Company here is much better than I expected; they are all Tories, and the major Part for the Government, that is sent hither for being so, according to their Informations. Although all should fail, and my Lord Townshend should do nothing, the Business will be at an End in less than a Fortnight. You know upon what Account I am here, which cannot disgrace me. Be therefore comforted, and do not grieve. God will assist us. I neither know, nor have said any thing against Mr. Harvey, nor can they do any thing to him, unless he has other Affairs which I know not of; therefore you may assure that Frenchman, that's false, for I know nothing against that Gentleman, which is not intirely regular. He may only be suspected of being a Friend to the Pretender; but that was well known before; and if all who are so were to be punish'd, above three fourths of the Nation would suffer. Therefore I laugh at any thing they can do to me, all my Sorrow is not to be with you; and I would not see you in this wretched Place, in which you can but grieve both me and yourself. Adieu.

Mr. *Hungerford*. Pray let me have the Letter; I have a little *French*, and I would willingly see how they render the Word *Tories*.

Mr. *J. Pratt*. When did you find this Letter?

Curtis. Upon the 27th Day of *November*.

Mr. *Soll. Gen.* My Lord *Townshend*, pray be pleased to give an Account of the Occasion that this Confession was not sign'd by both the Secretaries?

Lord *Townshend*. I suppose Mr. Secretary *Stanhope* might be gone out of the Room.

Mr. *Hungerford*. I would not willingly trouble my Lord *Townshend* at any other Time, and therefore would take this Opportunity: I think your Lordship said, that the Letters that were stopp'd at the *Post-Office* were laid on the Table with

with the other Letters, when the Prisoner was examined?

Lord *Townshend*. I did not say that. The Letters that were intercepted, I did first lay them before the King, and then put them into the same Hands with the other Letters.

Then Mr. Secretary *Stanhope* was sworn.

Mr. *Att. Gen.* Mr. Secretary *Stanhope*, we must desire you to inform the Jury what you know about the Examinations of the Prisoner, and the Confession he made.

Mr. Sec. *Stanhope*. I have here two Examinations, one sign'd by my Lord *Townshend*, the 21st of *Sept.* and the other dated the 22^d of *Sept.* sign'd by my Lord *Townshend* and myself. I was present at both the Examinations: There has been an Account given of the first, which is perfectly agreeable to what pass'd there, and my Name is to the second.

There is annex'd to this second a Letter, which we take to be Mr. *Harvey's*: I remember the Letter; the Hand is particular, and there are Figures by way of Cyphers. I remember very well this Letter. It has been before the Cabinet Council. It was shewn to Mr. *Harvey* at the Council-Table; he did not deny it, but shew'd the utmost Consternation when it was shewn to him; and desir'd that he might withdraw, and have the Liberty to speak to one particular Lord. The manner of his Behaviour was such, as to induce the Lords of the Council to be of Opinion, that he was inclin'd to confess what he knew; therefore they thought fit to let him withdraw, and go to the Messenger's House; but his Agonies were such, that he stabb'd himself that Night, or the next Morning.

I believe at twice we spent about two Hours in the Examination of the Prisoner, and these Examinations were taken from his own Mouth; and I can be positive there is not a Passage in them, that he did not repeat more than once or twice. The Reason why my Name is to one, and not to the other, may be, because the Room where he was examined was next to the Room where the Council used to meet; and I believe I might be going in and out between the two Rooms, and might not be there when he sign'd it; and therefore I might not think it proper to set my Name to what I did not see sign'd: But I saw him sign that to which my Hand is set; and I don't remember that he had any Reluctancy to sign it. I read the first Examination more than once or twice to him, and did myself examine him to all the Particulars of it.

After the first Night's Examination, it is certain he behav'd himself like a Man not worth a Groat, intimating as if he did not know how to get a Supper: He represented himself in a pitiful Condition, and it was at his going out of the Room, that my Lord put his Hand in his Pocket, and gave him something, what it was I don't know, but it was after he had sign'd his Examination; for, after it, there was a good deal of Conversation pass'd between him and me. I ask'd him several Questions, as to his being in *France*, and about the Countries he came from; and ask'd him as to several *Spanish* Letters that were in the Book, and other Things of that Nature.

Mr. *Ward*. Did he not desire to read over the Examinations before he sign'd them?

Mr. Sec. *Stanhope*. I don't remember that he did; but they were read over to him, and he was

ask'd to every Particular by myself, some one Particular might slip; but I did examine him, I think, to every Particular, in order to have it alter'd, if he objected to it, and he did not express the least Reluctancy. I saw him set his Hand to one of them; as to the other, I can't say, because the Room was next to the Room where the Council was sitting, and I don't know but that I might be there.

Mr. *Ward*. Do you remember any thing particular that was said to him, that those Examinations should only be laid before his Majesty, and no other Use made of them.

Mr. Sec. *Stanhope*. I don't remember any such thing.

Sir *J. Jekyll*. If he had desired to have read these Examinations, would you have refused it?

Mr. Sec. *Stanhope*. It never was denied to any Man to read his Examination before he sign'd it, where I was present.

Sir *J. Jekyll*. Nor you would not have refus'd him, if he had desired it?

Mr. Sec. *Stanhope*. No, God forbid.

Mr. *Hungerford*. I am informed that the Prisoner wrote some Letters to my Lord *Townshend*, complaining of some other Use being made of his Examinations, than was design'd?

Mr. Sec. *Stanhope*. I received some Letters from the Prisoner, but none that I thought were of any sort of avail.

Mr. *Hungerford*. Did he complain of his not being suffer'd to read them?

Mr. Sec. *Stanhope*. I don't remember it; but I am sure it was not so. If he did complain, it was without any Ground.

Prisoner. I desire a Sight of the Original Letter, which *Curtis* said Which was shewn him accordingly. I own'd. I never wrote one Word of it; it is forged since: Any Body will say it; it is not like my Hand.

Mr. *Cowper*. Before the Examinations are read, I desire the Gentlemen of the Jury would take an Account in Writing of the initial Letters and Figures they will hear read, and then will observe who are the Persons meant and intended by them, according to the Prisoner's Explanation, when he was examin'd. Gentlemen, it is necessary you should understand, who are the Persons that are intended by the Letters and Numbers. If you take them down, all the Letters will read to the Purpose.

L. C. Baron. Gentlemen, the desire you will take Notice of the Letters and Numbers that are explain'd in this Examination, because you will the better understand the Letters that will be read to you: That is what they desire, and it will be for your Satisfaction.

The Examination upon Oath of Francis Francia of London, Merchant.

Clerk reads. **T**HIS Examinant saith, That about two Years ago he became acquainted with the Abbot *Butler*, otherwise call'd, the *Vidame of Cambray*, at the Time when the Duke *D'Aumont* was here; and afterwards, *viz.* soon after the Duke *D'Aumont* left *England*, this Examinant receiv'd a Letter from the said *Butler*, then in *France*, recommending to this Examinant's Care a Law-Suit, in which one *Barbara Butler*, a Kinswoman of the said Abbot's,

Abbot's, was concerned; that this occasion'd a Correspondence between this Examinant and the said Abbot *Butler*, which from a little before the late Queen's Death, hath lasted till within these few Days past; during which Correspondence with the said Abbot, this Examinant received from the said Abbot several Letters directed to Mr. *Edward Harvey* of *Combe*, and convey'd back several Letters from the said Mr. *Edward Harvey* to the said Abbot, which Letters to the said Abbot, from the said Mr. *Harvey*, were sometimes brought to this Examinant by the said Mr. *Harvey* himself, and at other Times sent by Mr. *Harvey* to this Examinant.

This Examinant further saith, That at such Times during the said Correspondence, as the Abbot *Butler* was at *Cambray*, the said Mr. *Harvey* usually brought or sent to this Examinant two Letters, one directed to the said Abbot at *Cambray*, and the other, either directed by Mr. *Harvey* himself, to the Duke *D'Aumont* at the *French* Court; or the said Mr. *Harvey* desired this Examinant to direct the same to the Duke *D'Aumont*, the said Mr. *Harvey* telling this Examinant, that he did not send the said Letters himself to *France* openly, because he would not expose himself to be reflected on for having Friends in *France*, not that he car'd a Pin if it were known, because we were in Peace with *France*, or Words to that Effect.

This Examinant further saith, that the Letters so delivered, or sent to him by the said *Harvey*, for the said Abbot, or for the Duke *D'Aumont*, were by this Examinant sent over to *France* under a Cover directed to Monsieur *D'Aulmay*, alias *Payen* at *Paris*, but about two Months ago that Method of Correspondence was changed; for the said *Payen*, instead of inclosing his Answers to the said Mr. *Harvey* in Letters or Covers directed to this Examinant, wrote only to this Examinant, but order'd him to shew to Mr. *Harvey*, or to deliver to him, what he so wrote to this Examinant, which this Examinant did accordingly.

This Examinant further saith, that whereas in some of the Letters lately written to him by Monsieur *Payen*, to be communicated to the said Mr. *Harvey*, and which were communicated to the said Mr. *Harvey* accordingly, and which being taken in this Examinant's Custody, were shewn to him; there are the Letters *M. H.* and my *D. D.* and *M. B.* which seem to be the initial Letters of Men's Names; he, this Examinant, understood that the said Letters *M. H.* stand for the aforesaid Mr. *Harvey*, and my *D. D.* for the Duke of *Ormond*, and *M. B.* for the Lord *Bolbroke*; and this Examinant verily believes that the Subject of the said Letters written to him by *Payen* to be communicated to Mr. *Harvey* aforesaid, is the Design of the Pretender to invade his Majesty's Dominions.

Francis Francia.

*Capt. Die 21.
Sept. 1715.*

per TOWNSHEND.

The further Examination of Francis Francia

THIS Examinant being sworn, says, That a Letter shewn to him, and mark'd by him, which is hereto annexed, and is dated the 9th of

January, 1714. and writ by Mr. *Edward Harvey*'s own Hand, was sent to him, this Examinant, by the said Mr. *Harvey*, under a Cover, in order to be forwarded to the Abbot *Butler* in *France*: And that this Examinant in opening the Cover, accidentally broke the Seal of the said inclosed Letter, which made him detain the said Letter, and not forward it, lest it should be imagined that he had opened the said Letter, out of a Curiosity to read it. And this Examinant further saith, that he verily believes that by N^o (22) mentioned in the second Line in the said Letter, is understood the Duke *D'Aumont*; and that N^o (6) mentioned in the thirteenth Line in the said Letter, and where-ever the said N^o (6) is mentioned in the said Letter, he, this Examinant, verily believes it signifies and is meant to stand for the late *French* King: And that by N^o (17) mentioned in the said Letter, is to be understood the Word *Tories*; and that where-ever (22) is mentioned in the said Letter, the Duke *D'Aumont* is meant. And this Examinant further saith, he verily believes that by (8) is to be understood the Pretender; and by (9) mentioned in the said Letter, is to be understood his Majesty; but that this Examinant doth not well know what 24000, mentioned in the said Letter, stands for; neither can he tell what (14) stands for, mentioned in the said Letter.

Francis Francia.

*Jur. 22 Die Sept. 1715.
Coram nobis.*

TOWNSHEND.
JAMES STANHOPE.

Sir *J. Jekyll*. Now we will read Mr. *Harvey*'s Letter.

Mr. *Ward*. You cannot read that Letter against the Prisoner.

Sir *J. Jekyll*. He hath made it Part of his Examination.

[*Clerk reads.*] The 9th of *January, 1715.*

Dear Sir,

WITH great Satisfaction I receiv'd yovrs of the 12 yovr Stile, and the next time I write vnto ^a 22 I will be svre to write on yovr behalf, just as yov mention, and I wish it may have the Effect yov propose; but I remember very well the Advice yov formerly have given me, that your great ones are good at words and fair promises, but slow at performing, if Ever; therefore as I take yov to be my Friend, I shall lay out no more Money till I am repaid what ^b 22 was pleased to promise me long agoe should be rymitted me if the Fau—en had not done it, on notice I meane the 130: 4—0 so long due, itt being about halfe I have bin ovt of Pocket, and for my good will am sufficiently scandalised as a friend to ^c 22, and Pentionar to ^d (6) nay and yov from tyme to tyme have affvred me it should be done, and still itt is the same, and so is like if you see itt not done.

Now if you please only to remind ^e 22 to send me a Bill if he pleases for the 130: 4—I shall be obliged very mvch to yov, or otherwise I see it is lost, and yov only doe give me faire words, which realy is not like a trew Friend, for I am sure I have not, or ever will omitt any one thing

^a Duke D'Aumont.

^b Duke D'Aumont.

^c Duke D'Aumont.

^d The French King.

^e Duke D'Aumont.

to serve^f (6) ²² nor yov pay'd or not, itt shall not trovble so I have^h ²² Esteem; wee are now in a hurrey on chosing of Parliament Men, and how those things will goe, God above best dos knows; but this I will affirme ware those that are to chvfe leste to them selves to chvfe no Money from Corte threats, nor any other indirect means vfed, all would be ovt of feght on theⁱ ¹⁷ side; and as it is, I hope all will doe well if^k (6 and^l ²² sticks to theire trew Friends, and on no accompt forgett them and all theire good intentions. I desire you to lett^m ²² know, if my Life lay att stake, I cannot get 30 such Hovnds as I dare send to his Friend the Co—t of To—ovs he desires; but by *March* I hope I may, my good Friend Mr. *B—ne* that yov mention in yovr Directions, has given me two of his best Bitches; they are fovre Years Hunting, and they shall be in Whelp a're I take them: and one young one I daily will look ovt, tho' it is a Thing quite ovt of my way, *but to serve*ⁿ ⁶ or^o ²² I will do any thing tho' to the hazard of my Life, and all I have.

I have got for^p ²² two as fine and good Gray-hovnd Bitches as can run, and as handsome; the red and white one is three years olde, the other black and white, and but two; and one Covple of Stagg-hovnds, the Bitch is entired, the other bvt 11 Months old, large enough, and of the Queen's Hovnds breed; I have also a very fine Hovnd of Blood-kind, fit for a Harbering-Hovnd, and would rvn vp to any Hovnds; he is but 9 Months old, and if^q ²² sends any one over with yovr Ambafadore all shall be given him, or by any Token, I will send them to *Dover* on notice: As to Horfes, here is a Stone-horse I think will please; he is a Bay, with a Blace down his Face, bvt by any till liked I dare not, so that mvst depend on^r ²² Pleasvre, and if any I have, or can gett, or here of, I will, and I will also freely send in my own Charge, one to helpe by as many as^s ⁶ or^t ²² shall please to command me; bvt this, as things

pray order things
so as not to give
offence to " 22.

now Stands, must be done with Cavtion; why would you mention byeing of Stvffs to^w ²², he will fancy I have some self Interest in mind; I told ¹⁴ at dyner, that^x ²² was his humble Servant; he assured me he was his real Friend, I mean^y ²² and wovld write to him and wovld remind him of you; I dyne with him to morrow; pres^z ²² to think of his Friends, it will be of Service I am svre to^a (6) all looks well for^b (8) and in my Heart I think better than ever^c (9) every day loses himselfe, and for the 24,000 it makes for^d (8) and^e 6. I am.

Mr. *Att. General*. We will now show the Nature of this Correspondence, by their sending Letters to and again, and shew when he came into it himself.

Mr. *Ward*. Are you going to offer any Letters?

Mr. *Att. Gen*. Yes, out of his own Book.

Mr. *Ward*. We must humbly submit it to your Lordship's Judgment, whether they can offer any of these Letters in Evidence, the Charge of the Overt-Act is general, that he wrote several treasonable Letters: Now a Confession that there were several treasonable Letters past, might support that Allegation, or they may give Evidence in general, that he did write such Letters. But we must be in your Lordship's Judgment, whether they can produce any particular Letters, which are every one of them Overt-Acts themselves, and are not laid in the Indictment.

We think the Law has guarded the Life of a Man by the Stat. 25 *Edw. III.* That tho' the Intention is the Crime, yet that must be declared by Overt-Act or Deed, which must be charged in the Indictment. And the late Laws since the Revolution says nothing shall be given in Evidence, but what is expressly laid in the Indictment. Now if this be allowed of under such a general Charge, to prove such a number of Facts, which are not charged particularly in the Indictment, then all the Security of that Law will be eluded, and a Man will be no more able to make a Defence, than if it had been laid in general, that he conspired the Death of the King; or it had been laid, that in order thereto, he had been guilty of several treasonable Practices.

We insist that they can't under this Allegation give any Evidence but what is correspondent to it, as any Confession or Proof in general; but they can't enter into any distinct Overt-Act, which ought to be laid, and can't be given in Evidence unless expressly laid in the Indictment. If that Act has any meaning, it is to avoid any such Artifice as this; and it obliges them that are concerned for the King to specify in the Indictment the Overt-Act they will go upon:

Mr. *Hungerford*. My Lord, I think we have an Objection to the reading these Letters that cannot be got over. The Law hath in all Ages guarded the Life of the Subject against Prosecutions for High-Treason, and with a great deal of Reason: The Offence is great; the Prosecutions supported with great Power and Influence, and the Consequence great to the Party concerned; for it is not only the Loss of his Life, but the Ruin of his Family and Estate; his Family must be infamous and his Estate forfeited; therefore the Law hath guarded the Life of the Subject in a more particular manner, against these Prosecutions, than against any other capital Offences.

Before that happy Law, 25 *Edw. III.* the Prosecutions in Cases of High-Treason were such, that no Man could be safe against them. There was scarce any thing a Subject could do, even any thing that did but give the Umbrage of Offence, but might be drawn into the compass of High-Treason. In Truth, the Definition or Description of High-Treason before this Act is so loose that it gave a colour for this Proceeding. It was among other things, *Si quis aliquid egerit vel agi procuraverit ad seditionem domini Regis vel exercitus sui, &c.* And in pursuance of this Notion of High-Treason, imprisoning an Officer of Justice, and Officers cheating Soldiers of their Pay, killing a Person going to List himself, &c. were before this Act

^f The French King. ^g Duke D'Aumont. ^h Duke D'Aumont. ⁱ Tories. ^k The French King. ^l Duke D'Aumont.
^m Duke D'Aumont. ⁿ The French King. ^o Duke D'Aumont. ^p Duke D'Aumont. ^q Duke D'Aumont.
^r Duke D'Aumont. ^s French King. ^t Duke D'Aumont. ^u Duke D'Aumont. ^w Duke D'Aumont.
^x Duke D'Aumont. ^y Duke D'Aumont. ^z Duke D'Aumont. ^a The French King. ^b The Pretender.
^c King George. ^d The Pretender. ^e The French King.

adjudged High-Treason. And I can shew that some of those hard Cases happen'd the Circuit before the Act. And therefore the Legislature thought fit to ascertain what Offences should be Treason for the future. And our Historians remark, that from the Time of this Law, the Sword that before hung by a slender Thread over the Heads of the Subjects, was then removed; and for this Reason likewise the Parliament is called *Benedictum*.

It is true, that the bare Compassing, or imagining the Death of the King is Treason, and it ought to be so; for in that precious Life the Common Weale, the Happiness of all the Subjects, is eminently concerned. But this Act of Parliament hath provided, that such Compassing, &c. shall be proved by Overt-Act, that is, not by Inferences, strained Constructions, or rhetorical Aggravations, and the like, but by plain Proof of Matter of Fact. And I am bold to say, the Intent of this Law was perverted for some Ages, by laying the Charges of High-Treason, so loose, that the Party could not tell how to apply his Defence: And of this, and other Kinds, there had been several irregular Prosecutions; such as those of Col. *Sidney*, my Lord *Russel*, &c. And for these Reasons the late Act for regulating Trials, &c. hath provided, that no Evidence of an Overt-Act, shall be given but what is specially laid in the Indictment: And such a Certainty was intended, that the Party might know certainly and exactly to what Points to apply his Defence.

If it should be admitted that what is done in this Indictment is sufficient to answer this Act, the Intent of it will be eluded: For the Intent is, that the Criminal shall know how to apply his Defence. The Offence in this Case is supposed to be in the Letters; must not therefore the Letters, or the Substance be set forth? For my Part I think they must, or they cannot be given in Evidence. I can produce very ancient Authorities to this purpose: And as to the Modern ones, besides that in Dr. *Sacheverell's* Case, I have one in my Eye, which is Mr. *Attorney's* own Authority (for which I shall always have a great Regard) in the Indictment against *Gregg**, which was a Prosecution of Mr. *Attorney's*; there the Letter was set out at length.

Mr. *Att. Gen.* That was not in my Time; I was not Attorney then.

Mr. *Hungerford*. I beg Mr. *Attorney's* Pardon; but he has been in and out so often, that I may have been easily led into a Mistake.

I have another very great Authority, and that was in the Case of Dr. *Sacheverell*: The Question was put to all the Judges for their Solution, whether in all Informations and Indictments, for Offences in Speaking and Writing, the Words ought not to be particularly mentioned? This was the Question proposed, and it was answered, that it ought so to be: Your Lordship's Answer was, That you was of the same Opinion with your Brethren. You, my Lord, Mr. Justice *Tracy*, agreed in the same Opinion, and so did the Eleven Judges then present; which was, that the Words supposed to be criminal, whether written or spoken, must be expressly specified in the Indictment or Information. This I am sure is the greatest Authority that can be in any Case: It is the Authority of all the then Judges of *England*, who were but Eleven, the Lord Chief Justice *Holt* being then lately dead;

so, my Lords, to justify this Objection, we have the Precedents on our Side, particularly of *Coleman*, *Fitzbarris*, *Gregg* and *Sidney*; in all which Cases the Papers supposed to be Criminal, or the Substance of them, are inserted in the Indictment. We have the Authorities for us, Ancient and Modern, and we have the Reason of the Thing for us. It being the highest Reason and Justice, that as the Prisoner is now to have some Days before his Trial the Names of his Judges, viz. the Panel of the Jury, so he should be apprized of his Charge with so much Certainty, as to know how to apply his Defence; and we don't doubt therefore but we shall have your Lordship's Opinion in favour of our Objection.

Sir *J. Jekyll*. We may offer this Book and these Letters, notwithstanding this Objection. Mr. *Ward* did not go so far as Mr. *Hungerford*, that it is necessary to set them forth *Verbatim*. As to that, I believe it was never done in any Case: And as to *Coleman's* Case, those Letters are not set forth; but it is alledged, that they were wrote to procure the Aid and Assistance of the *French* King, as it is here said, that the Prisoner's Letters were to desire Assistance from *France* to the Rebellion here. If it be necessary to set forth the Words in the Case of a Misdemeanour for a Libel in the ordinary Courts of Justice, it is because the Libel is the Crime; but in the Case of a treasonable Correspondence it is otherwise; for there the Letters are not the Crime, but the Overt-Act of the Treason, which is the Manifestation of the Crime. Besides, let it be consider'd what Evidence are we going to offer; we offer the Letters sent to him in answer to the Letters wrote by him, and to require us to set them out in the Indictment is impossible; when we make it part of the Charge that the Letters were sent to *France*, it is to mock us to call upon us to produce those Letters themselves.

Mr. *Ward* seemed to admit, that the Clause mentioned by him in the Statute 7 *Will.* was grounded upon the 25 *Edw. III.* For that old Statute doth require, that a Man be attainted by Overt-Act; and what doth 7 *Will.* do in that Case? No more than to make plain what the Law was before: For the Words are, that no Evidence shall be given of an Overt-Act that is not expressly laid in the Indictment; and from thence the Prisoner's Council would infer, that no Letters ought to be given in Evidence that is not laid in the Indictment: No, the Act requires only that the Overt-Act be expressly laid in the Indictment. Not that the Evidence shall be expressly laid in the Indictment. All that the Court is to consider as to this Matter is, whether the Overt-Act is not sufficiently laid in the Indictment; it will not be doubted, but that writing Letters to excite Rebellion is an Overt-Act. Then the Question is, whether this Indictment doth not expressly alledge this Overt-Act. The Words in the Indictment are these; *Quodque prædictus Franciscus Francia, ad diem Prædicon' & Diabolic' & Proditor' Intencon' & proposi' præd' ulterius perimplend' perficiend' & ad effectum redigend' postea scil' eodem primo Die Septembris, Anno supradicto nec non diversis al' diebus & vicibus tam antea quam postea apud London' præd' in parochia & Ward' præd' malitiose, diabolice & proditorie composuit & scripsit & componi & scribi causavit separales proditorias Epistolas notifican' intention' & resolution' ipsius Francisci Francia & præd' al',*

* Jan. 19. 170 $\frac{7}{8}$. at the Old Bailey, when Sir Simon Harcourt was Attorney-General.

proditor' Fur' præd' ad huc ignot' ad bellum præd' contra dictum Dominum Regem nunc movend, &c.
This is surely an express laying the Overt-Act of which these Letters are the Evidence.

Trial 146. I have been looking upon the Case of my Lord *Preston*; which though it was before the Statute of 7 *Will.* yet my Lord *Preston* was not without the Assistance of Council, though he was not allowed them in Court. It is there laid, that he wrote several Letters to inform the *French King* what the Forces of the Kingdom were; and the Indictment goes on to shew the Purport of those Letters. But in that Case the Letters are not particularly set forth: And yet that was never made an Objection at his Trial, or before Judgment. In that Indictment is charged his writing Letters, and they are described, and that we have done. This we think is sufficient, that is, that we are bound to lay the Overt-Act expressly, but not the Evidence of that Overt-Act.

Mr. *Attorney-General.* This is a surprizing Objection; we admit there must be an Overt-Act laid in the Indictment, and that is all that the Law requires; we must set it out so that we may apply our Evidence to it: And the Meaning of the Statute is, that when you lay one Overt-Act, you must not prove another.

The Instance that is given by the Serjeants is very strong, and every Body remembers *Coleman's* Case, the writing Letters is an Overt-Act; but it is not necessary to set them out, that being the Evidence of the Overt-Act. In *Gregg's* Case there was but one single Letter which was set out, and that was stopp'd at the Post-House.

In the Case of Libels they must be set out; and that was the Opinion of the Judges in Dr. *Sacheverell's* Case in Proceedings at Law: But the Course of Parliament was held by the Lords to be otherwise. We have charged that he agreed to write Letters; that he did write them, and send them; and now they would have us to set out those Letters that are sent beyond Sea: And if that were Law, it would be impossible to convict any Man of a Correspondence Abroad, because the Letters are sent Abroad.

If it was charged in the Indictment, that he wrote to a great Numbers of Men, it would not be necessary to set out the Names of those Men; this is a Matter we don't need to labour much; for this last Statute has not alter'd the Law, as to the laying the Overt-Act, but only as to the Proof: that when you lay one Overt-Act, you can't prove another. I don't know that it could have been done before; so that that Act, as to this Matter, was only a Declaration of what the Law was before.

Mr. *Soll. Gen.* We think none of the Cases instanced prove what is insisted upon in this Case. That Case of *Coleman* is mistaken, for the Letters in that Case are not set forth particularly, only the Subject-Matter and Nature of them, as is here done.

They can instance no Case where the Indictment is for writing treasonable Letters, importing a treasonable Correspondence, that ever they were set out in the Indictment; and to what a length would such an Indictment be carried, if it should be done in this Case.

Col. *Sidney's* Case is against them; for there was a whole Volume wrote by him, and there was nothing put into the Indictment but the Sub-

stance of a very little Part; and that was Col. *Sidney's* own Objection: Says he, *Am I to be found guilty for a little Part that is cull'd out of the rest; when if the whole was put in, by comparing the whole together, it might not be possible to collect any Treason from it?*

As to Dr. *Sacheverell's* Case, that is quite different from this; for that was in the Case of a Libel, where the Offence properly consists in the Expression. But even in the Case of Libels. I must beg leave to deny that the particular Words must be set out in the Indictment; for a Libel may be so out in *Latin*, which is the better and safer way; and then if you set out the Substance, it is sufficient. And if you may set it out in *Latin*, it can't be true that you are bound down to the particular Words, for *Latin* Words and the *English* Words can't be the same.

The Act of Treasons say, No Evidence is to be given but of the Overt-Act laid in the Indictment. Now what is that Overt-Act here? It is writing Letters, which is specially express'd, and the Substance of them set out, which shews them to be treasonable. The Inconvenience objected is nothing, unless it shall be suppos'd, that the Prisoner may have wrote so many treasonable Letters that he can't recollect them all.

Besides, it is to be considered, that all these Letters import a Correspondence, and so are to be consider'd as many, but as one Overt-Act, it is entire, and it is unreasonable as well as unnecessary, that the whole Correspondence should be set out. Therefore we think we have done what is sufficient, and that they can't give one Instance of a Case where the Treason consisted in writing many Letters of Correspondence, that the Letters themselves were set out. For the Design of the Law before-mentioned was no more, than that it should not be lawful to lay one Overt-Act, and give Evidence of another.

The Treason is, the Prisoner has imagin'd the Death of the King; and the Overt-Act is, he has wrote several Letters, that is expressly and specially laid; and then to distinguish these Letters from all others, the Substance of those Letters are set out, notifying his Intentions to raise a Rebellion in this Kingdom, and inciting those in foreign Parts, to aid, assist, and join with him.

But this Objection may receive another Answer, and that is, that there are two other Overt-Acts, besides his writing of treasonable Letters, which are conspiring, consulting, and agreeing to raise a Rebellion and Insurrection in this Kingdom, and soliciting Aid and Assistance from *France*: And these Letters are very good Evidence to prove those Overt-Acts; for I believe it will not be denied, but that these Letters are Evidence of a Conspiracy, and therefore if they could not be read in Evidence to prove the writing Letters, because they are not set out in the Indictment, yet they may be read as Evidence to prove a Conspiracy.

Therefore we insist that we are right both in Point of Reason and of Precedent.

Mr. *Ward.* My Lord, I beg a Word or two by way of Reply: They say we have not mentioned one Case where the Treason is grounded upon Letters, where they have been set out in the Indictment: I believe they can't shew one Case where it has been otherwise; we insist upon the Case of Colonel *Sidney* and of *Fitzbarris*.

Colonel *Sidney's* Objection was, That they had not set forth the whole Book; but they had set forth entire Paragraphs, and that is what I insist they should have done in this Case.

They would have it believ'd, that the Act of Parliament, 7 *Will.* is nothing, and that the Law stands as it was upon 25 *Edw.* III. It was taken to be a great Point gained when that latter Act was pass'd, and I am sorry it is like to have so little Effect. But we insist that what is now offer'd hath all the ill Effects that were before the making of the Act. It is not that a Man must be suppos'd to have wrote so many treasonable Letters, that he can't remember them; but he don't know which of his Letters may be called so. And it was open'd that these Letters were of such a Nature, that they could not be understood without producing them. Therefore they ought to be set out, that so a Man may know which of them to defend himself against.

There is one Case like this, which is the Case of the good Name of a Man: Every Witness that is produced may be examin'd to his Credit; but you will not suffer particular Facts to be prov'd upon him, because he can't be prepar'd to maintain every Action of his Life. And that was intended in this Case; that a Man might be certain what he was to defend himself against, especially in the Prosecutions from the Crown, which usually come with a greater Weight than other Prosecutions. Agreeable to this have all the Precedents been when any thing have been founded upon Letters.

Mr. *Attorney* says, that the Letters are sent into *France*: So that they can't be produced. I did not object that they ought to be produced. But they are going to produce a Copy-Book to prove, that there were such Letters, and by that they had the same Opportunity to set them out, as if they had the Letters themselves.

There is no Inconvenience to the Crown by this Method, but the greatest Inconvenience to the Subject by omitting it; for he may have all the Letters he ever wrote brought against him, and he must off-hand give an Account of them.

[Mr. *Ward*, who had an Hoarseness upon him, clos'd with saying, that his Voice fail'd him, and that he could go no farther.]

Mr. *Hungerford*. The Gentleman who is join'd with me in the Defence of the Prisoner complains that his Voice fails him; (God be thanked) I have no Defect of that sort, for I can speak pretty audibly, but I have a greater, for I had my Instructions late last Night.

Mr. *Solicitor* observes, that we are not entitled to have those Letters set out either by Reason or by Precedent; as to the Reason of the Thing, I appeal to your Lordship, whether all the Laws relating to Trials of Treasons, and some others, which are to take Effect three Years after his Majesty's Accession to the Throne, and the Death of the Pretender, have not been grounded on this great Reason, to guard the Subject against Prosecutions that have been sometimes carried on with too much Severity. And as to what relates to the present Case, that the Overt-Act should be so particularly laid, as to describe the Offence with so much Certainty as to enable the Prisoner to apply his Defence.

What is the Intent of laying an Overt-Act at all, but that the Defendant may suit his Defence to it. If it is intended only that you shall not

give Evidence of a different Overt-Act, as the King's-Council would expound it, that will be of little avail to the Prisoner. It is of late grown to be the Practice to lay the Treason, to be in conspiring the King's Death, and the Overt-Act, to be conspiring to levy War, though by the way, that is making one Article of the Statute of 25 *Edw.* III. redundant and useles; for if every Intention of levying War doth imply an Intention to kill the King, there was no need of making levying of War a distinct Species of Treason at all, for at that rate it was comprehended in the former. And as to what is said, that laying the Overt-Act is a sufficient Certainty of the Charge, I think not; suppose the Overt-Act laid, be levying of War, or an Intention so to do; there are several Instances of levying War, one way may be by mustering Men, another by seizing some of the King's Ships: These are so different, that upon a general Charge of levying War, one perhaps may prepare to defend himself at Sea, and may be attack'd at Land; and so *vice versa*; and by the general Charge he don't know what to defend himself against. Therefore the Intent of that Act must be to give a Man such a Notice of the Matter laid to his Charge that he may know how to apply himself to his Defence.

I did not insist that the Letters at large ought to be set out, but the Substance of them, or the Paragraphs in them, containing the Words suppos'd to be criminal, so that a Man may know how to apply to his Defence.

As to my Lord *Preston's* Case, though he might have Council to advise him, yet in his Time he could not (as the Judges had determin'd the Matter) have a Copy of his Indictment; so that he was outed of any Observations that could be made upon it. Therefore if that Indictment is in the same manner with this, it will be no Authority, for it might be irregular, as we insist this is, and yet there could be no Opportunity to observe it so to be.

As to what Mr. *Solicitor* insists, that to insert the Letters at large, would make the Indictment long and tedious: For God's Sake, my Lord, is there any Competition betwixt the Charge of two or three Skins of Parchment, and a Man's Life?

As for the Precedents, I have here *Coleman's* Case, where the Date and Substance of the Letter is mentioned; and in Colonel *Sidney's* Case, the Title of the Book, and the Paragraphs insisted on are set out: In *Fitzbarris's* Case, the Letter is set out *Verbatim*. As to what is said of Dr. *Sacheverell's* Case, that it was only for a Misdemeanour, I am bold to say, the Question was ask'd in general, whether in all Indictments or Informations, the Words or Writing suppos'd to be criminal, should not be set out. And surely if in a Case of Misdemeanour, where only Fine or Imprisonment is the Punishment, so much Certainty is required, much more Certainty ought to be requisite in a Charge of High-Treason, where Loss of Life, Estate, and Posterity are the Consequence of the Conviction. So that as I observ'd before, we have both Reason and Precedent with us, and they have neither of their Side, and those Precedents that are of their Side, were before the late Act of Parliament.

L. C. *Baron*. The Objection made by the Council for the Prisoner, is, that tho' here is an Overt-Act laid, yet it is not laid so expressly as it ought

ought to be. The Overt-Act is, That he wrote several Letters to Foreigners, to move and excite a War, and sent them to Foreigners beyond Sea for that purpose. I think this is a sufficient Description of the Overt-Act, and that is as much as is required by the Act of Parliament. That Act says, That no Evidence shall be given of any Overt-Act, that is not expressly laid in the Indictment. None can say that here is not an Overt-Act expressly laid. If it is expressly laid, and sufficiently described, sure it is not necessary to mention all the Evidence that is to prove the Overt-Act, the Intent of the Law is no more, than that the Overt-Act should be sufficiently described and charged in the Indictment. It is here so charged and described, the Design and Intention of the Letters is set forth, and they go to prove that such Letters, manifesting such Design and Intention, were written, and that they have laid that he wrote several Letters to move this War, then they go to produce the Letters. I am of Opinion, that they need not be more particularly described, and it would be endless to set out all the Letters.

As to what Mr. *Hungerford* insisted on in Dr. *Sacheverell's* Case (which made a great Noise formerly, and has made some Noise now) the Question there put to the Judges, was concerning Crimes and Misdemeanours, by Writing or Speaking. As the Crime of a Libel consists only in the Words, and therefore they must be laid in the Indictment, he might as well have mentioned an Action upon the Case for Words. There the Words must be expressly laid, and they must be prov'd as they are laid.

But here the Crime is compassing and imagining the Death of the King, and the writing and sending of Letters to Foreigners to excite a War is the Overt-Act, and that Act is expressly laid in this Indictment, which is sufficient, without setting forth the Words of the Letters.

If it be laid, that a Man did consult and agree to levy War, a Time and Place must be laid, but all the Times and Places when and where he met and consulted, and all the Persons Names with whom he met and consulted, need not be mentioned in the Indictment, neither need the very Words of the Consultation be set forth. Therefore I think this Overt-Act is sufficiently laid, and, as Mr. *Solicitor* observes, if there was no other Act laid, but consenting and agreeing to levy War, they might prove it by Letters, although no Letters had been mentioned; but here the Overt-Act is more particularly described, that he wrote Letters for that Purpose. Those Letters are now offer'd to be read, and I think they ought to be read.

Mr. *Just. Tracy*. I am of the same Opinion; I think they have sufficiently set out the Nature of the Overt-Act, writing Letters, praying Aid of Foreigners to assist in a Rebellion. Some of those Letters are sent by the Prisoner beyond Sea, and they can't be set out; and whatever is alledged as certainly as the Nature of the Thing will bear, is certain enough.

But it is objected, you have the Copy-Book, and you might set them out by that. But they don't go on that only, but also on several Letters wrote to and receiv'd by the Prisoner; and to set forth all those Letters in an Indictment, is against Reason. But this is not the Matter now, for Mr. *Ward's* Objection was against reading the

Letters, which were offered to prove the writing and sending the Letters as charg'd in the Indictment; but instead of shewing they are not Evidence, you have run into Exceptions against the Indictment itself; for Uncertainty is not setting out the Letters particularly, which is not the Question now.

Mr. *Just. Pratt*. I am of the same Opinion; many Things have been said of the great Care of the Laws to preserve the Life of the Subject. I hope we shall always take a due Care to put those Laws in Execution; but we must take Care of that precious Life, as Mr. *Hungerford* calls it, not to hazard it, by making it too difficult to convict any Man of such a Correspondence. And if we should make such a Construction of the Act, as they contend for, it would be impracticable to convict any Man in any Case.

The Act says, the Overt-Act shall be express'd, and is it not so here? It is writing Letters, and with an Intent to levy War against the King; so that it is mentioned that there were Letters, and the Purport of those Letters is set forth. And whatever has been said of that Case that was in the House of Lords, none of you can say, but that it is sufficient in Informations for Libels, if they are set forth in *Latin*, to set out the Substance of the Words. If a Man sets it out *Verbatim*, he is tied up to the very Words, and by a Letter or Syllable mistaken, he may be gone: Therefore the best way is to set out the Substance only. Now what would you be the better, if you had what you ask, if there are several Letters to the same purpose? It would only be setting out the same thing over and over again. This satisfies the Meaning of the Act as fully as if they had been set out at large. But to say that a Man shall be bound to set out the Letter itself, when it is gone from him, when it is gone beyond Seas, how can he come at it? If that were to be the Case, a Man might carry on a Correspondence, and you could never convict him.

I think this is sufficient to answer the Intent of the Act. They offer you Letters that correspond with the Indictment, and if they offer any that do not, they will not be proper to be read.

Mr. *Att. Gen.* We will read our Letters as they are in Time and shew the Nature of the Correspondence.

Mr. *Ward*. I am informed there are different Hands in that Book: Now whether your Lordship will admit them to read it under a general Proof of his owning it to be his Copy-Book, or whether you will not expect that that which is his Writing shou'd be prov'd, and what is wrote by any other, to be wrote by his Direction, or Privity; for a small Variance in the Expression may turn a Man out of his Life.

Mr. *Hungerford*. All that the Witnesses said was, that the Prisoner said it was his Copy-Book. Now whether he is to be affected by every Word in that Volume, is what we must submit to your Lordship; and whether they ought not to single out which were wrote by him, and which not; for his saying that is his Book, that is, the Volume is his, the Cover is his, and the Paper is his, but it will not imply that he is the Author of all those Letters.

Sir *J. Fekyll*. My Lord, when they objected to our reading the Copy-Book, they ought to have made all their Objections together; but this being

being in the Case of Life, I won't stand upon that.

It is plain, it ought to be read; for you observe the Letters, of which these are Copies, are suppos'd to be sent to *France*; and it is impossible to have them; then what Certainties have we touching these Letters? We have the taking the Book in the Custody of the Prisoner, and if there had been no more than its being found in his Custody, I apprehend we might have been let in to read them. But it goes a great way farther; for several of the Witnesses swear that he own'd it was his Copy-Book of his Letters.

Let's consider how this Evidence would have been, if it had been given to every Letter in particular. If we had produ'd one single Copy of a Letter, and he own'd that was a Copy of a Letter wrote by him, will any one doubt but that it might be read? Now the Evidence say that he own'd this to be the Copy-Book of his Letters.

Mr. *Just. Tracy*. Where the Court is in no doubt, we must not spend our Time in arguing Points that have nothing in them.

L. C. Baron. It is no matter whether any of them are of his Hand-writing or not, I think they may be read.

Then the Original Letters and the Translations were shewn to Mr. *Bowyer*, and to Mr. *Ozell*, who prov'd them to be true Translations.

[*Clerk read.*] This is directed to *Francis Francia*, and dated *Paris Feb. 26, 1715*.

Sir *J. Jekyll*. This is dated at *Paris, Feb. 1715*, but that is in our Style 1714.

[*Clerk reads.*]

SIR,

THE base Dealings of the Sieurs *Treacher* and *Robinson* with me, made me always believe that you would not otherwise bring them to Reason, than by pressing them without Mercy. Since you have taken the Trouble to begin, be pleased to continue to the last the same Attention to my Concerns which you have had hitherto, and never consent to any Accommodation till they have remitted not only my Disbursements, as you tell me by your last of the 18th Instant, but also the whole of what may come to my Share, either in Money or Wine, supposing there remains any unfold, which I cannot believe. As for the fourth Share I have in the fifty odd Hampers, which I bought for them of my Friend, the Count *de Silbery*, if, in order to enter upon an Accommodation, you should content yourself with their consigning into the Hands of Mr. *Harvey* the 2500 and odd Livres disburs'd, be persuaded, Sir, that to get the Remainder, you'll find yourself under the Necessity to begin anew, to give yourself the same Trouble which you have taken hitherto. Therefore while you hold them, I beg the Favour of you to make an End of the Matter with them at once, and in order thereto, not to give them any Quarter. They have render'd themselves unworthy of it upon all Accounts. If in this Matter you think the Interest of the Chevalier (*Sir Thomas Hanmer*, Speaker of the last Parliament, may be useful to you; he does me the Honour to be one of my Friends: Visit him from me; and I flatter myself he will readily grant you his Assistance,

when you have inform'd him how the Case stands, and of the unfair Dealing of those Merchants towards me. I am so sensible of Mr. *Harvey's* Favours, that I would do any thing to shew him my Gratitude. Acquaint me therefore with the true State of his Affair with the *D. D.* and write to me about it in such a manner that your Letter may warrant my Speaking; after which I shall do my best to procure him the Satisfaction he desires; be pleas'd to assure him of it from me. I hope that ere it be long you will acquaint me with the Conclusion of my Affair; in the mean time, I still assure you that 'tis not possible for any one to be more perfectly than myself, Sir, your most humble and obedient Servant,

D'Aulmay.

Sir *J. Jekyll*. We read this only for the sake of the Postscript, which we will read presently.

Prisoner. This is not a true Translation.

L. C. Baron. What is your Objection to the Translation?

Prisoner. There is not one Word true in it.

L. C. Baron. Who do you depend on to translate it for you?

Prisoner. Upon Mr. *Flint*.

L. C. Baron. Tells us your Objection to the Translation; tell us in any one material Part wherein the Translation don't agree with the Original.

Mr. *Flint*. One can't carry it in one's Head.

Prisoner. I hope you will not take it for a true Translation when it is false.

L. C. Baron. We shall if you don't shew wherein it is false.

Sir *J. Jekyll*. We will read the Postscript, let them shew any Mistake in that.

[*Clerk reads.*]

As I have Reasons of private Concern to know what passes in the Country you live in, you will sensibly oblige me in informing me of it now and then. Be persuaded of my Discretion, and that the State is no ways concern'd in my Curiosity; nothing raised it but the Concerns of my Wife and her Family, who is Irish.

Prisoner. That is wrong translated.

L. C. Baron. How do you translate it?

Flint. You will oblige me sensibly to inform me of the same. Be persuaded of my Discretion, and that the State has nothing in my Curiosity: The Interest of my Wife, who is Irish excites me.

Sir *J. Jekyll*. That is to the same Effect as we read it. We will now read a Letter from the Prisoner to *D'Aulmay*, out of his Copy-Book.

[*Clerk reads.*]

Paris. Mr. *D'Aulmay de Coulange*.

London, March 1³/₄, 1714.

I Received the Honour of yours of the 26th past. I shall no ways spare the Sieur *Treacher*, but prosecute him to a final Judgment, which cannot be 'till July. He makes an Apothecary's Bill sets down the Wines that are sold, for the most part, at half a Crown per Bottle, but I shall prove him the contrary. I am very sorry this Business should go so far, but it is according to the Laws of this Country, where we have no need of Sollicitations; without which he will, within that Time, be certainly adjudged to pay. You must in the mean time transmit hither the Ori-

ginal Paper you have of your Partnership in the Wine; and without flattering you, a Letter of Attorney; for a Letter of Order will not be sufficient. You may leave a Blank for the Name of your Attorney, which Mr. *Harvey* shall cause to be fill'd up as he shall think fit: But if you come to this Town before the Trial, as you told me, you may avoid all this. I shall take the Care I have promised you without any question. As for the Business of Mr. *Harvey*, with the ^a D. D. the Matter is, that he has disburs'd about 200*l.* Sterling: And that altho' the ^b D. D. had sent to pay him what he had advanced, it happens that the Person whom he intrusted with it did not do it: Therefore, if there were Means to give the said ^c D. D. to understand, without hinting that it comes from hence, that 'tis not just Mr. *Harvey* should be so long out of Pocket, that would undoubtedly have the desired Effect; for which I would, in particular, be very much obliged to you, &c. As for News from this Country, I learn sometimes more in the *Paris Gazette* than here, where the greatest Part of the House murmurs to see the *Low-Church* flourish. The latter are very eager for a War, but they want the Emperor and Money. 'Tis strongly reported, that a Match is very forward between the Prince who is at Lorraine, and one of the Arch-Dutchesses: Let me know what's in it, since that's essential to your Wife's Interest. If, as I doubt not, an Ambassador comes hither, I desire you to send me, by one of his Domesticks, 20 Ells of fine *Ras—de—St. Maur*, very black, and at the cheapest Rate, and order the Bearer to receive the Account, or acquaint me with it, that I may remit it to you. Forgive, I beseech you, this Trouble, and believe me with a great deal of Devotion.

Prisoner. He that commits a Fault in any essential Matter, may do so in the rest. They have opened all my Letters at the Post, and they have made this Book for me; there is not one Word of my writing.

[*Clerk reads.*] This is directed to *Francis Francia*. and dated

SIR, Paris, March 20, 1715.

I Received yesterday the Honour of your Letter, dated the 14th Instant; I confess to you that it is a very melancholy thing for me to be obliged to give you so much Importunity upon the account of a Knave, from what you wrote to me in your former. I hoped a speedier Conclusion of my Affair. Notwithstanding which, you tell me we must still wait till the Month of *July*. This is a very long Delay: But if there be an absolute Necessity for it, we must e'en submit. Be that as it will, I beg the Favour of you, Sir, not to give any Quarter to such People who deserve none, for their Dishonesty which they shew in its full Latitude. As for the Papers I have, I shall send you such as will be necessary for you, as soon as you shall write to me for them. But as for a Letter of Attorney, I have signed a general and very extensive one, on the 7th of *August* last, which is as particular and as strong as possible; there is a blank for the Name, and it was sent to Mr. *Arthur* at *London*, by Mr. the *Chev Cantillon* of *Paris*. The said Mr. *Arthur* having made no use of

it, you may get it out of his Hands and use it in your Name, or in the Name of such a Person which you and Mr. *Harvey* shall think fit to pitch upon. I believe it may be sufficient, and that the said Mr. *Arthur* will make no difficulty to deliver it to you when you shew him this Letter. However, I would cause Mr. *Cantillon* to write to him if it were necessary.

You may assure Mr. *Harvey*, that I shall do my utmost to procure him Satisfaction in the Matter you write to me about, without exposing him to any Inconveniencies. I have followed the Court too long to be ignorant how to deal with our Grandees.

Flint. It is how to deal with our Lords.

[*Clerk reads.*] I shall endeavour to know precisely the time of the Departure of the Marquis *d'Allegre*, who is to go Ambassador to *London*; and I shall charge some Body in his Retinue with the 20 Ells of black *Ras de St. Maur*, which you ask of me; if there be any thing else for your turn, let me know it. As you tell me you learn the News of *England* in the *Paris Gazette*; so I^d

you that I learn from you the Marriage of the Chevalier de *St. George* with the Arch-Dutchess.

Prisoner. Is it Chevalier de *St. George* there? It is not so in the Original.

Cl. of Arr. It is *Cb— de St. G—*.

Mr. Att. Gen. That is Chevalier de *St. George*.

Mr. Ward. That is no part of the Key that was given by the Prisoner.

Sir J. Jekyll. Read it as it is.

Mr. Hungerford. Let it be read then without a Comment.

Mr. Ward. I wish the Jury take sufficient Notice, that some of these Letters are not wrote by the Prisoner, but only directed to him.

[*Cl. reads.*] I learn from you the Marriage of the *Cb— de St. G—* with the Arch-Dutchess. 'Tis true, there was some talk of it when the Peace was made with the Emperor, but since that Time no mention has been made of it. That in my Opinion would be no proper way to bring his Affairs to a happy Issue. A Party War would best suit with his Affairs. God is above all; but I hope still, neither do I believe my Hopes altogether ill grounded. I shall be glad in the mean time to see what Turn Affairs will take before I cross the Sea. Wherefore I still desire you to inform me. I assure you, Sir, that I am more than any Body else in the World,

Your most humble and

most obedient Servant,

D'AULMAY.

Sir J. Jekyll. The former Letter from *Francia* desires to know what there is in the report of the Marriage of the Prince at *Lorraine*, with the Arch-Dutchess. This Letter in Answer says, it is true, there was some mention of it about the time of the Peace with the Emperor; but he is of Opinion, that a Party-War would be more advantageous.

[*Clerk reads.*] Paris, Mr. D'Aulmay de Coulange.

SIR, London, March $\frac{10}{11}$. 1715.

BY my last of the $\frac{3}{14}$ Instant, I gave you an Account of my Proceedings against the *Sieur Treacher*, which I again hereby confirm to you;

^a Duke D'Aumont.

^b Duke D'Aumont.

^c Duke D'Aumont.

^d Torn in the Original.

and that I shall get you ^b between this and July, or he shall fly his Country. Here is a Letter for Mr. le ^c D. D. which, 'tis wish'd, may succeed better than the former, which have not been answered, though entirely for the Affairs: Besides which, I must needs tell you by the Bye, that Persons of 50 or 60 Thousand Crowns a Year cannot with Prudence run the hazard of losing such Estates, unless more Encouragement be given them. You will be perfectly understood if you say this to some Person familiar with that Lord, or to himself: And I add from my self, that the Misfortunes of a certain Person are more owing to Neglect on your side of the Water, than to the Party that's against him. So if this continues, your Wife must lose all Hopes.

Prisoner. If this had not been translated wrong on purpose, and with design to take away my Life, there could not have been such a Mistake made. There is a scratch at the bottom of the S to make it an L. It was *Ses Affaires, His Affairs*, and it is made, *Les Affaires, The Affairs*.

Whereupon the Original was shewn to the Interpreter, and viewed by the Court, and appear'd to be a very plain L, and not alter'd from an S.

[Clerk reads.] This is directed to *Francis Francia*, and dated

SIR, Paris, April 2, 1715.
I Have deliver'd to M. le ^d D. D. the last Letter you directed to me for him; and when I insinuated that there was in it a Complaint for not having receiv'd an Answer to the former, I was particularly assured, that an Answer had been written, and even in relation to what is due to Mr. ^e H. That the same express'd a Sorrow for not having clear'd with him sooner; that some Misunderstandings had been the Occasion of it: But that however he was desired to mention the exact Amount of his Disbursements, as well for the private Account, as for that of Count *de Thoulouse*, and that the whole would be immediately put into the Hands of the Chevalier *Cantillon*, to be paid in London to Mr. ^f H. This, Sir, is what I was told Yesterday, and which I desire you to repeat to Mr. ^g H. assuring him, that if he thinks me proper to serve him in something else, he will do me a real Pleasure in employing me.

The Marquis *d'Allegre* does not seem yet very forward to set out for London; therefore if you are in haste for the black *Ras de St. Maur*, which you have wrote to me for, let me know which way you desire I should send it to you, and I shall do it immediately; you may depend upon it.

I shall add nothing to the last Letter I writ to you concerning the Rogues our Merchants; but I shall continue still to desire you to rid me of that Affair as soon as you can.

We have nothing new here; the Works of the Canal of *Mardyke* are, by Orders from Court, redoubled. I know not what Success Mr. *Cadogan's* Journey to *Vienna* has had; but we seem not to be very much uneasy at it: I have spoken, as you desired me, to the Person for whom you sent that Letter which you directed to me, and who has made me the fairest Promises in the World; pray acquaint me with what passes in relation to Mr. *Prior*, since

his return to London; and believe me still most perfectly,

SIR,

Your most humble,
and most obliged Servant,
D'AULMAY.

Paris, Mr. D'Aulmay de Coulanges.

London, March $\frac{17}{8}$. 1715.

I Receiv'd the Honour of yours of the 20th Instant: I can assure you had the King himself to do with the *Sieur Treacher*, it would not be in his Power to get him adjudged to pay before the Month of July, and even in case the said (*Treacher*) do not appeal to the Chancery, which 'tis not probable he will do, because in such a Case a Merchant entirely loses his Credit, and besides he should be obliged to deposit 300 Pounds, for which I formerly arrested him, which would not at all suit with him: Therefore, Sir, be assured that I shall do all that can be done, notwithstanding all his Threats against me, for having been, says he, so bold as to sue him. I am only sorry, not to have begun sooner, and to have shewn him any Civility. Mr. Harvey and I shall be very much obliged to you, if you can find an opportunity to have Justice done him. I am persuaded, that to deal with him in this manner is no good Policy, and if ever I have the Honour to confer with you, I shall convince you, how by neglects (which however are not usual with Men of your Nation) most serious Affairs have miserably miscarried. As for News, we hear nothing but an approaching War. 'Tis even pretended that the Emperor is coming again into our Measures, but I do not believe it: Nor do I see any possibility of raising Funds for a new War, at a time when People are at their Wits ends to pay the bare Interests of the Debts contracted in the last. I am very much obliged to you for your intention to send me 20 Ells of Cloth of *St. Maur*, by the opportunity of the Marquis *d'Allegre*, or otherwise by any other that may offer: I likewise offer you whatever there is in this Country, and if it were a thing of small bulk, we have often opportunities of Friends who go over into *France*. Our Parliament will begin their Session very soon, they meet this Day to choose a Speaker: We are going to see what will be the upshot of all the Threats. I kiss your Hands, and am—

You may desire Mr. *Cantillon* to write to Mr. *Arthur*, to deliver to Mr. *George Francia* the Letter of *Attorney* he has in his Custody; for I have reasons not to demand it my self of the said *Arthur*.

Paris, Mr. D'Aulmay de Coulanges.

London, $\frac{\text{March 28th,}}{\text{April 8th,}}$ 1715.

I Have the Honour to tell you that yours of the 2d Instant is come to my hands, and that I have given ^a Mr. H. an account of the Subject Matter of your Negotiation. He is, as well as my self, the more obliged to you for it, in that we believe we still have occasion for the Continuation of your good Offices with the ^b D. D. What you say at the end of your Letter, of your having spoken conformably to what I had desired of you, is sufficient, and therefore every thing ought now to be expected

^b A word is here wanting in the Original.

^f Mr. Harvey.

^a The Duke D'Aumont.

^g Mr. Harvey.

^d The Duke D'Aumont.

^c Mr. Harvey.

from your Side of the Water, that is to say Explanations, &c. I was advised in order to prevent the *Sieur Treacher's* removing the Law-Suit to Chancery himself, in which Case he would become Plaintiff, to call him before that Court, that he may answer the Interrogatives I shall put to him; which I have done, and he must answer the same within a Month at farthest, and I shall pursue him close: 'Tis the most able Lawyer in this Country, who does me the Favour to give me this Advice, which will hinder him from Appealing, in case he should have a mind to it, which might have kept you in Play several Years.

We see by the King's Speech to his Parliament, that there are yet no Alliances made; and by the Addressès of the Lords and Commons, we perceive plainly that they have an itching towards a War; but at the same time they give to understand, that they know not which way to go about it: And besides the Party of the *Pacifick* is far more numerous than the others, altho' the others have at present the majority of Votes in the Parliament; of which three Parts in four of the House are highly incensed, and yet more to see they pretend to impeach certain Persons of the last Ministry, which will infallibly make a great Noise: And if the Whigs would follow my Advice, and I were willing to give them a good one, they should lie still. Mr. *Prior* is one of these pretended Victims; his Papers are looked over with malicious Eagerness; he is taxed with having received great Presents in *France*; particularly a great sett of Silvergilt Plate; I believe that if it be so, he is so much the richer for it. This is all that occurs at present, and that I am without reserve.

Paris, Mr. *D'Aulmay de Coulanges*.

London, April $\frac{2}{7}$ 1715.

I Am ordered to tell you from Mr. *Harvey*, that you will oblige him in desiring Mr. *Le^a D. D.* from him, to send hither some Body to fetch the Horses and Dogs which he has had so long, or else to give order to some Body to take them. Things are here in such a Posture, that great Caution ought to be used, not to give Umbrage to those in Power, who may put a wrong Construction upon the least Trifles, especially since the departure of my Lord *Bolingbroke*, who is looked upon here as innocent, and People do not see how he could be any ways hurt, notwithstanding the Superiority of the Low Party in Parliament, which however is divided into two, who terribly cross each other, one of which Parties will at last join with the Tories, if the latter are willing: We may draw Consequences: The Dutchess of *Portsmouth*, who is at present here, gives a great deal of Offence, as I am informed, by pretending to prove that the late King *James* had poison'd his Brother *Charles*; it was not expected, that after so many Years Retirement into *France*, she should come hither to revive that vulgar Report, which at so critical a Time cannot be for any good Purpose.

I have nothing to add to the Affair of your Merchants, but what I have already acquainted you with. On the other hand, I confirm to you all that I have recommended to you to tell the Person I wrote to last. Kissing your Hands, I remain —

We expect here shortly the Marquiss *d'Allegre*,

^a Duke *D'Aumont*.

for our Ambassador at your Court has Orders to take a Character upon him. I hope you will find means to charge some Body in the Retinue of the former with the 20 Ells of *Ras de St. Maur*, and 20 Ells of *Taffety*, with blue and white Stripes, for a Woman's Summer Suit; less than 20 Ells would do, if it be broader than half Ell, and if it be possible, to send at the same Time a Scarf made of a good black Silk pinked, for a Woman of a moderate Size, and slender, you will oblige me, and when you shall acquaint me with the Price of the whole, I shall either pay it to the Person who shall be charged with it, or shall remit it at your Choice, &c. As for the Scarves, they are sold ready made at the Palace —

Since what's above written, the Honour of yours of the 12th Instant is come to my Hands. I shall cause your Letter of Attorney to be got out of Mr. *Arthur's* Hands. There are at present great Debates in the Parliament: There was a Member of the High Party, who had the boldness to suggest, that this present Parliament was illegally assembled, since the King in his Proclamation gave the People to understand, that it would be a great Satisfaction to him if they chose Whigs, which he said is against the Fundamental Laws of the Kingdom; whereupon there arose high Debates, and by the Majority of Votes, to the great Surprize of the Public, who expected that that Member should be sent to the Tower, it was carried by a hundred Voices, that the said Proclamation should be examined; which 'tis thought will cause great Divisions. *When I have any thing particular to impart, I shall do it by a strange Hand, and subscribe James Chrétien, which you must take notice of, and provided you acquaint me that you have received this present Letter, without being opened, I shall be easy.*

Directed to Francis *Francia*, and dated

S I R,

Paris, April 24, 1715.

I Have received your two Letters of the 8th and 18th Instant. I am very much obliged to you for having removed to the Chancery the Law-Suit I have with *Treacher*, since you think it the most expeditious way to make an end of it: I still beg of you the continuation of your Care, in order to compass the same; as also to acquaint me how that Affair stands at present. I reckon that Mr. *Arthur* has by this time delivered to you my general Letter of Attorney, according to the Order he has for it from the Chevalier *Cantillon*, of which you will also be pleas'd to inform me.

The Time of the Marquiss *d'Allegre's* departure for *London* is not yet known here. I shall not then fail to desire some Body in his Retinue to charge himself with the *Ras de St. Maur*, Lute-string and Scarf which you have desired of me.

Your last was delivered to me very safe yesterday in the Evening: Be easy as to that Matter, as well as to whatever Mr. *James Chrétien* may write to me; pray desire him when he does me the pleasure to write to me, to be very particular as to Facts, and to be well informed before hand: In all which I rely on your Prudence. If during these troublesome Times Mr. ^b *H.* should think fit to make use of Mr. *J. Chrétien*, he may: But his Letters should be directed to my self, and I should afterwards make what use of them he should think fit. Assure him still

^b M. *Harvey*.

of my readines to serve him, and that I should be very glad to give him Marks of my Gratitude, for the Trouble he takes, as well as your self, in my Affair with *Treacher*.

When the Character of the Dutchess, who is lately gone to *London*, shall be well known, People will not be surprized at the Part she actually plays there; but I hope it will produce a different Effect from what she expects, and that we shall come at last to a happy Unravelling. ^a Mr. *le D. D.* was to send about a Fortnight ago one of his Men to *London*, to bring him his Horses and Dogs. If he is not yet gone, I shall not fail pressing for that Matter.

Pray let us hear from you as often as possible, and still believe me most perfectly,

S I R,

*Your most humble,**and most obedient Servant,*

D'AULMAY.

*My Lord Stairs has not yet taken any Character.*This is directed to *Francis Francia*, and dated,

S I R,

Paris, May 1, 1715.

I Have received yours of the 25th past, with that of Mr. ^b *H.* for the ^c *D. D.* which I have sent to him into the Country, where he is at present. At his return, I shall not fail telling him what you tell me about what is due to the said Mr. ^d *H.*—, and in what manner he desires the same to be remitted to him. Assure him that in this, and every thing else, I shall ever do my utmost to do him Service.

By your Letter of the 8th of *April* last, you acquainted me with the Care you had taken to remove to the Chancery my Law-suit with *Treacher*, by which means he would be obliged to answer within a Month, and therefore I hope that in a short Time you will acquaint me with the Conclusion of that Affair, for which I shall be very much obliged to you: I little know how Justice is administer'd in such a Case in *England*: But this I know, that in *France*, that honest Fellow would long before now have been brought to Reason; however, we must wait with Patience to the End.

Pray assure Mr. ^f *Ch.* that I am, and shall be very much obliged to him for what he shall write to me: He may likewise depend upon it, that I shall make good use of it; therefore let him continue to let me hear from him the ofteneft he can; but above all let his News be certain, and very particular.

There's yet no Talk here of the Earl of *Stairs* being near taking his Character. I must also add, that 'tis not yet known, when the Marquis *d'Allegre* will set out, but what's believed as certain is, that they will out of hand work upon the Fortification of *Mardyke*: Draw your Conjectures upon it.

*I am very impatient to know what passes relating to the Prosecution of the late Ministry, particularly concerning the Duke of Ormond, whose Name my Wife bears, and is his near Relation, her Name is Butler of Kilcom: That Family may not be unknown to Mr. ^e *H.*— however the Ch. (Sir*

Thomas) Hammer knows it perfectly well.

We have at present no important News in this Country, unless it be considerable Bankrupcies among those called *Agioteurs* (or Stock-Jobbers) of which there are daily a great Number, and such a Scarcity of Money, as passes all that can be expressed. I am still,

S I R,

*Your most humble,**And most obedient Servant.*Letter from *Francis Francia*.*Paris, Mr. D'Aulmay de Coulanges.**London, ^{May 30th,}
^{June 10th,} 1715.*

MY last to you was of the Instant; this is to tell you, that without loss of Time you must send another Letter of Attorney, with a Blank for the Name; for Mr. *Arthur*, after having kept us long at a Bay, saying he would look for it, now says it is lost: Be that as it will, you must revoke that Letter of Attorney, for we are here in Danger, if *Treacher* should be-think himself of asking by what Authority he is Prosecuted, lest, not being able to produce any Letter of Attorney, this Suit should be dismiss'd with Cost; you therefore see the Consequence: As for the rest, the Affair is on a good Foot, and I believe he'll not stay till he's cast. Yesterday in the Evening, being the Anniversary of the Restauration of King *Charles II.* there were here great Riots; nothing was heard among the People but Curfes against the present Ministry, and long live *James the Third*, and the Duke of *Ormond*. This being so public, that it cannot fail reaching your Parts, I acquaint you with it, and assure you that,

I am, &c.

Mr. Harvey salutes you, and bid me tell you, that when there is any thing New, if he cannot write to you himself, he will cause the Sieur J. C. to do it for him.

This is directed to *Francia*, and dated,

S I R,

Paris, August 7. 1715.

AT this very Instant I receive your last of the first Instant. I will not cease returning you Thanks for the Care you are willing to take of my Affair, desiring you still to continue to the End.

You have Reason to be angry at the Indolence (or Supineness) you expostulate about, but be persuaded, 'tis only so in Appearance. I even hope that by this Time you have convincing Proofs of it, and that suitable Returns are made to the good Dispositions; so that with God's Blessing upon our Friend's good Cause, he will at last cast his Adversary, at least no Succours, or powerful Sollicitations shall be wanting. Let me hear, I beseech you, about it as often as you can; and depend upon it, that by so doing you will oblige Persons, who in a proper Time and Place will be thankful to you for it. The Post (going off) presses me, therefore I con-

^a *The Duke D'Aumont.*^b *Mr. Harvey.*^c *The Duke D'Aumont*^d *Mr. Harvey.*^e *Mr. Harvey.*

clude, assuring you still, that no Man can be more truly than I am,

S I R,

Your most humble,

And most obedient Servant,

D'AULMAY.

Prisoner. That is wrong translated. In the *French* it is *Gagner sa Cause*, which is *gain his Suit*; and they have translated it, *cast his Adversary*.

Mr. Cowper. He talks of powerful Sollicitations on our Side, that is in *France*; and what could that be to a Law-Suit here?

[Clerk reads.]

This is directed to *Francis Francia*, and dated,

S I R,

Paris, August 10. 1715.

LAST Night I receiv'd your last of the fifth Instant; pray be easy, and e're it be long you'll be satisfied.

The Chief of the Name of our Friend the Abbot, arrived here on Tuesday Night in good Health. He is very well pleased, and has Reason to be so. He prepares to return Home with all Speed, and will carry thither his Friends to spend the Vacation Time. This very Moment I'm going to wait upon him; I reckon to attend him in his Journey, or to be with him soon after his Departure. Pray continue informing me the ofteneft you can, of your Health, and of that of our Friends: You know how dear they are to me, and what Concern I have in them; therefore do not deny me that Favour, nor that of believing me perfectly as I am,

S I R,

Your most humble,

And most obedient Servant,

PAYEN.

Mr. Cowper. Though this Letter is sign'd Payen, yet it comes from *D'Aulmay*; he says the Chief of the Family is arrived here; that is, the Duke of *Ormond*. And that he was to return from thence, and keep his Vacation in *England*. Hitherto the Correspondence was with the Duke *D'Aumont*, but from this Time it is with the Duke of *Ormond*.

[Clerk reads.]

This is directed to *Francis Francia*, and dated,

S I R,

Paris, August 21. 1715.

THIS is in Answer to your two Letters of the 12th and 15th Instant. I should have sooner answered the first, had it not been delivered to me after the Departure of the last Post. Our Friend's Law-Suit will shortly, God willing, be ready for Trial, every Thing is preparing for it. The Friend, my Wife's Relation, has read your two Letters, with which he is very well satisfied. He desires you, as well as myself, to let us hear from you as often as you can. Since his Arrival he has had two Fits of a tertian Ague, of which the Bark has rid him. He was purged Yesterday Morning, and in the Afternoon went to take the Air,

so that he is now in perfect Health, and in a Condition to attend his Affairs with full Liberty. I have not heard from Mr. ^a H. and I do not believe he has chang'd his Habitation; at least it is not come to my Knowledge. The King has been indisposed for some Days past, but without Appearance of any ill Consequence. Thanks be to God, who will preserve him to us a long Time in his Mercy.

Half a dozen Souls of *Lower Normandy*, and as many of *Mans*, must needs possess the Body of *Treacher*, and inspire him with all the Chicanes he plays me. I shall write to him by the next Post, in the Stile you advise me, and agreeably to my own Thoughts; for I swear to you, there's nothing I shall leave undone to get my Right of so great a Knave; I hope you will second me, and that you'll give him no Quarter. Pray acquaint me with what you have done upon this last Incident.

Sir, I salute you, and am perfectly,

Your most humble,

And most obedient Servant,

PAYEN.

Mr. Cowper. This explains that there was another Cause depending, besides that of the Law-Suit: For he says, our Friend's Cause will soon be ready to be tried, all Preparations are making for it. Now there was no Cause depending in *France*, for this a *French* Letter from *D'Aulmay*, and it is not pretended that there was any Law-Suit depending on that Side the Water.

[Clerk reads.]

This is directed to *Francis Francia*, and dated,

August 24, 1715.

I Am very much surprized not to have heard from you by the Post that came in Yesterday. Our Friend was at my House expecting the same. We desire you both, Sir, not to let one Post go off without writing to us, and acquainting us with what passes with Relation to our common Friend's Law-Suit. When you see Mr. ^b H. assure him that all our Friends are perfectly well. The King's Health grows better and better, Heaven be praised.

I have had so much Business for some Days past, that I could not write to *Treacher*: I would do it speedily, but I still desire you not to give him any Quarter, and to believe me perfectly,

S I R,

Your most humble,

And most obedient Servant,

PAYEN.

Mr. Soll. Gen. This shews a Distinction between the Cause of their common Friend, and the Cause of *Treacher*.

[Clerk reads.]

This is directed to *Francis Francia*, and dated

S I R,

August 28, 1715.

I Received your Letter of the 22d Instant. Were I permitted to give you a Detail of all that passes concerning the *Affair* you know, you would be more easy

^a Mr. Harvey.

^b Mr. Harvey.

than to me you appear to be, and charge us with less Negligence than you do. I know there are favourable Moments, which 'tis dangerous to let slip; but then will you not agree with me that 'tis Matter of Prudence to foresee all Inconveniencies, and in order to that to take such right Measures as to be able to surmount them all? This is now doing, be persuaded of it, and that your Friends are more zealous than ever to procure you all the Satisfaction you may desire, therefore be easy some time longer. You did me the Pleasure to acquaint me, that on the 29th past, Treacher was adjudged to deliver to us his Account within a Fortnight, that he had since made a new Chicane, demanding Security for his Charges, and with the Measures you were pleas'd to take upon this Demand. I therefore believed that after this we might hope to see an End of this Affair, and that nothing now remain'd but to perform the Judgment or Rule of the 29th of July, nevertheless we are still put off to the Month of October. Pray acquaint me with the Cause of it.

We are here in a cruel Uncertainty about an Affair of the last Importance, God grant it may have a happy Issue. Pray continue writing to me every Post, and believe that I am ever with all my Heart, Sir, your most humble and most obedient Servant,

P A Y E N.

Mr. Denton. This appears to be a Letter in Answer to Francia's, wherein he complains that Things are not carried on with Vigour; I know, says he, there are favourable Moments that are not to be let slip; and then at last he concludes with the private Affair of Treacher.

[Clerk reads.]

This is directed to Francis Francia, and dated,

SIR,

September 3. 1715.

I Received this very Instant your last of the 29th past, and as the Post is going off, I have only Time to write an Answer. I did not write to you by the last Post, neither did I receive any of your Letters. I am extream sorry for all the Trouble I give you with respect to the Law-Suit I have with that Rogue, I shall still hope that thro' your Care we shall both be shortly rid of him.

We have at last had the Misfortune to lose the greatest of Kings, who, as undoubtedly you know it already, died on Sunday last at a Quarter past Eight in the Morning, with all the Sentiments of Religion and Greatness that were ever observ'd in the greatest Heroes; and indeed 'tis generally acknowledged, that he never was greater than in the last Moments of his Life. Monday Morning my Lord Duke of Orleans, accompanied by the Princes of the Blood, and the Dukes and Peers, repair'd to the Parliament, where he was declared Regent of the Kingdom with all the Authority due to that Dignity and his illustrious Birth. All France is overjoy'd to be under his Government, from which they can certainly expect nothing but happy Days, since no Person in the World has more Grandeur, Equity, Penetration, and Virtues in general, than that Prince. The Journey to Germany would be proper enough, and I wish it may be performed,

the rather because for the Reasons you know; our Measures have been somewhat suspended, tho' not in the least broke, Things going on still better and better; be persuaded of it, as also that due Notice is taken of your good Will. In particular ^a Mr. H— must undoubtedly be where you were told, for he has not appear'd here. 'Tis true my ^b D. D. and ^c M. B. are in a House within a small half League of this City, which a private Person has lent them, but they receive there all their Friends; with whom they go to dine and sup every Day; they are both in perfect Health, and their Thoughts are very different from those that are ascribed to them, I mean that they are such as they ought to be; assure their Friends of it. It is not possible for me to send to you to Day what you desire of me, 'twill be for the next Post. Let no one slip without acquainting me of your Health, for which you know I am more concern'd than any Body else, and be persuaded that I am, more than any Man, Sir, your most humble and most obedient Servant,

P A Y E N.

Mr. Cowper, junior. This Letter gives an Account of the Death of the French King, and tho' Things may be suspended, still they will go on, and it will be for the better.

Mr. Denton. The next Letter is not directed to any Body, it came under a Cover, which is lost; it appears to come from D'Aulmay, but not to be directed.

L. C. Baron. Is this one of them that was found in his House?

Mr. Denton. This is one of them found there, and owned by him.

[Clerk reads.]

SIR,

September 6. 1715.

YOUR Letter of the second Instant was just now deliver'd to me. My last inform'd you, that 'twas only on the first Instant we had the Misfortune to lose the greatest of Kings, but that for the Comfort of France, God had reserv'd M. the Duke of Orleans for our Regent. I cannot write any thing that can be depended upon in relation to what you desire of me by your two last, as soon as there is any thing I shall inform you of it. Since the Abbot B— came into this Kingdom, he has been very often in the Country; he is still actually there; as soon as he is return'd I shall not fail speaking to him according to what you write; as I have no Intimacy with any Merchant, and he must be one that I can depend upon to make use of his Direction, I cannot give it you this Day, but I hope I may by the next Post; in the mean time pray continue writing directly to me, and if you have any trusty Hand, other than your own and your Sons, it would not be amiss to make use of it; I even am of Opinion, that a Key or Cypher for the principal Names which you may send me, and of which you should keep a Copy for your own Use, would be necessary, for I will ingenuously own to you that such a Precaution appears to me very necessary. You'll find here enclos'd the Picture you have desired of me; it being impossible to send it to you without folding, when you have received it you must wet a Cloth, which you'll lay on a Table, and will lay also

^a Mr. Harvey.^b Duke of Ormond.^c Lord Bolingbroke.

the Print upon it, which will take the Plaits away. The Post (going off) presses me, and I have but just Time to tell you that I am your most humble, and most obedient Servant,

P A Y E N.

Prisoner. My Lord, this Letter is another Hand, and there is no Direction on it.

L. C. Baron. It was found among your Papers, and you own'd it; that is prov'd by the Secretaries.

Prisoner. This was pretended to be stopp'd at the Post-Office.

L. C. Baron. No, it was found among your Letters.

Mr. Soll. Gen. The next Letter is very particular; he says the Cause of the Common Friend will be at an End in a little Time; but as to his own particular Cause, he was unhappy to have to do with so troublesome a Man.

[Clerk reads.]

This is directed to *Francis Francia*, and dated,

S I R, *Sept. 14, 1715.*

I Did not write to you by the last Post, by reason I did not receive your last Letter, which by the by is without Date, till the Day after its Departure. Nor did I receive any from you by the Post that came in Yesterday, so that you owe me Answers to my two last, which I expect with Impatience, particularly an Answer to my last, by which I sent you what you had desir'd of me. *The Contents of your last without Date has given me a great deal of Satisfaction, as well as to all our Friends, who return you Thanks for it, and have charged me to assure you of it, and desire you to continue. We knew already Part of what you write about our Friend's Cause, which with God's Blessing, will soon End to his Satisfaction, otherwise all Appearances would be very deceitful. As for my own Cause, I cannot forbear telling you, that I am very unfortunate in having to do with so dishonest a Man, after having trusted my Goods with him, and loaded his Partner with Services and Civilities during his Stay here. But my Comfort is, that you will not give him a Moment's Respite, and that you will at last rid me of his unworthy Chicanes. I could have wished the Abbot had not embark'd me with such People; although I am persuaded he did not do it with any ill Intention, yet I find myself embarrass'd with those Scoundrels, whom I trusted only at his Desire.*

The King went the Day before Yesterday to the Parliament to hold his Bed of Justice, where the Regency was confirm'd to the Duke of Orleans, with all the Authority which such a Dignity deserves. We have nothing else new at present. If any thing happens I shall not fail acquainting you with it. I am most perfectly, Sir, your most humble, and most obedient Servant,

P A Y E N.

As we go at this time pretty often into the Country, be not uneasy if perchance I should fail some Post or other, answering your Letters re-

^a Duke of Ormond.

gularly, which however will not be, except when I shall be absolutely obliged to it.

Here's a Direction which you may use for the future if you think fit. But in case you do, you must conform yourself to this Model, and mark two Strokes both before and after the Word *Paris*.

To Madam, Madam the Widow de *Beagué*, Merchant, at the *Fair Star, Rue Tirechape.*
=*Paris*=

Mr. Att. Gen. The Correspondence now began to be dangerous, and therefore it was to be directed to a Woman, that there might be the less suspicion.

[Clerk reads.]

This directed to *Francis Francia*, and dated,

S I R, *September 17. 1715.*
YOUR last of the 9th Instant, which I should have had on *Friday* last, was not deliver'd to me till *Sunday* in the Evening. I ascribe this Delay only to the Winds, which may have hindered the Packet-Boat from having as quick a Passage as usual. I have caused the three Letters which you have directed to me, to be put into the Post-House.

My ^a *D. D.* had already shew'd me the Epitaph you have sent me, which with Gentlemen will ever pass for the Spring of *Cerberus*. I hope also that infamous Author will sooner or later be rewarded according to his Deserts. His Insolence may even be attended with some unexpected Consequences. We have, Thanks be to God, a just and equitable Regent, from whom we may hope every thing, he has already given us Proof of it, by the good Order he has settled in all Affairs, which indeed had a great Occasion for it.

You must undoubtedly have receiv'd by this time the Picture you desired of me, and I hope you will acquaint me with it by the next I shall receive from you.

All our Friends are, thank God, in perfect Health, My ^b *D. D.* had some Days ago a slight Fit of an Ague, which had no Consequence. *We are here, as well as you, impatient to attain the End propos'd. But we must take Patience, and be rul'd by those who are at the Helm.* I still assure you, Sir, that I am with Sincerity your most humble, and most obedient Servant.

Mr. Soll. Gen. We shall conclude the Letters with a very particular one from *D^e Aulmay*, which taxes *Francia* with Impatience, and takes notice, that *Mr. Harvey* was eager for going into *France*, but it was the Duke of *Ormond's* particular Advice, that he should not go, because probably they might come over to him.

[Clerk reads.]

This is directed to *Francis Francia*, and dated,

S I R, *September 23. 1715.*
IN Answer to your last of the 16th Instant, I begin with telling you, that our Friends are much to blame to throw themselves so precipitately into Im-

^b Duke of Ormond.

patience, especially ^a M. H. to whom you shall communicate this Letter as soon as you have receiv'd it, and tell him he must by no Means think of coming hither, as by your last you acquainted me he is preparing to do. 'Tis my ^b D. D. who charges me expressly with what I write to you, and who desires him to stay. He may easily guess at the Reason, which will give you all to understand, that this is not a time to be impatient, but to shew more Resolution than ever.

Perhaps some Letters for me will be delivered to you; as soon as you have received them, I desire you to forward them to me, either with the Directions I have sent you, or directly with my own.

You know perhaps by this time, that 'tis pretended that there are at *Havre-de-Grace* two Ships on Board of which are Arms, which has alarm'd some People, but without ground. For if that News be true, they must be Arms that are sent as a Present to the King of *Persia*, as I am told; therefore this ought not to make any Body uneasy. As for the rest, Sir, let all of us recommend our selves to God, and hope we shall soon be quiet, you at home after your wise Government, shall have dissipated all the Feuds that disturb the Tranquility, and we by the paternal and indefatigable Care which my Lord Duke of *Orleans* takes upon him to procure us, the Repose which we have so great Occasion for, and of which we have so long been depriv'd.

You will judge of it by the List I send you of the Councils he has lately establish'd, and which are certainly made up of the most able, and most worthy Persons in the Kingdom. I expect to hear from you, and ever am, Sir, your most humble and most obedient Servant,

PAYEN.

Whereabouts are we with our honest Man? I hope you will acquaint me by your next.

Mr. Denton. My Lord, the time when the King was pleas'd to acquaint the Parliament with the Design of the Invasion, was the 20th of July.

We have a Copy of the Speech examin'd.

Then Mr. Paxton was sworn.

Mr. Soll. Gen. Have you examin'd this, and is it a true Copy.

Mr. Paxton. Yes.

Mr. Soll. Gen. Where did you examine it?

Mr. Paxton. At the Parliament Office.

Mr. Hungerford. What did you examine it by?

Mr. Paxton. By the Journal of the House of Lords.

Clerk reads. *Die Mercurii 20 Julii 1715.*

His Majesty after conferring with the Lord Chancellor, spake as follows.

My Lords and Gentlemen,

I Have given Direction to my Lord Chancellor to declare to you in my Name and Words, a Matter I think of the greatest Importance.

Then the Lord Chancellor spake as follows;

I have receiv'd his Majesty's Commands, to deliver to you in his Majesty's Name this his Majesty's Speech now put into my Hands by his Majesty from the Throne.

My Lords and Gentlemen,

THE Zeal you have shewn for preserving the Peace of my Kingdoms, and your Wisdom

in providing so good a Law to prevent all riotous and tumultuous Proceedings, give me great Satisfaction, but I am sorry to find that such a Spirit of Rebellion has discover'd itself, as leaves no Room to doubt, but these Disorders are set on Foot and encouraged by Persons disaffected to my Government, in Expectation of being supported from Abroad.

The Preservation of our Excellent Constitution, and the Security of our Holy Religion, has been, and always shall be my chief Care; and I cannot Question, but your Concern for these invaluable Blessings is so great, as not to let them be expos'd to such Attempts as I have certain Advices are preparing by the Pretender from Abroad, and carrying on at Home by a restless Party in his Favour.

Gentlemen of the House of Commons,

In these Circumstances I think it proper to ask your Assistance, and make no doubt but you will so far consult your own Security, as not to leave the Nation under a Rebellion actually begun at Home, and threatned with an Invasion from Abroad in a defenceless Condition; and I shall look upon the Provision you shall make for the Safety of my People, as the best Mark of your Affection to me.

Sir J. Fekyll. My Lord, We shall not trouble the Court nor the Jury, with reading any more Letters; I only take leave to observe shortly upon the Letters which have been read. The Correspondence began with a Desire from *D'Aulmay* to have some Correspondence about Affairs here, because his Wife was related to the Duke of *Ormond*. *Francia* tells him, there was a Discourse about the Marriage of the Pretender with the Arch-Dutchess, which, says he, is essential to the Interest of your Wife. *D'Aulmay* writes in Answer, that there had been some Talk of that Marriage but he don't care to come into it: He thinks a Party War would be much better. *Francia* writes again, that it can't be expected that Persons of Fifty or Sixty Thousands Crowns a Year should run the hazard of losing such Estates, unless more Encouragement were given them. And that is followed by another Letter from *Francia*, wherein he writes, that now we are to expect every thing from your side the Water, that is Explications, &c. Then he desires him if he thinks proper, that he would change his Name, and write by a strange hand.

There is this observable in these Letters, that the Prisoner plainly shews his desire that there should be an Assistance for the Pretender from France; and so all the Letters taken upon him fall into that Design; nay, he was anxious and impatient for the critical Minute. The Death of the French King is taken notice of to be a great Loss, yet he is assured that things will revive again; for that Person that succeeded in the Government, had favourable Thoughts and Intentions.

The Letters that are entered in his Copy-Book speak very plainly; and Gentlemen, what can be the purport of those Letters of the Prisoner's that are not entred, that can't be sought for any where but in those Letters, which were sent hither in Answer to them, and he is so far from pretending that these were not Letters sent in Answer to his Letters, that when he came to be examined,

^a Mr. Harvey.

^b Duke of Ormond.

he told what the Design of them was; *that it was the Design of the Pretender to invade his Majesty's Dominions*; and therefore it now appears plainly to you, that he did sollicite Aid and Assistance in order to an Invasion from Abroad, and an Insurrection at Home, in favour of the Pretender, and in order to depose his Majesty.

Mr. *Att. Gen.* We shall leave it here, and submit it to your Lordship and the Jury, upon the Evidence we have offer'd.

Mr. *Ward.* May it please your Lordship, and you Gentlemen of the Jury, I am Council for the Prisoner, and what I shall humbly offer to your Lordship before we go into our Evidence, is a single Point, we shall lay before you and insist upon; a particular Circumstance in the Indictment, which is such, that considering the Circumstance of my Client, it is impossible as the Law stands, that he should be guilty in such manner as is charg'd in the Indictment.

The Prisoner happens to be an Alien born, he was born at *Bourdeaux* in *France*; he came from thence into *England*, and never was Naturaliz'd. He owes therefore no natural Allegiance, nor can be guilty of any Treason against the King as his natural Liege Lord, as it's laid in this Indictment.

There is a Distinction of a double Allegiance, one that is due from a natural born Subject, and the other that is due from an Alien. The latter owes only a local Obedience with respect to his Protection, whereas the former owes it in respect of his Birth. This is a Distinction well known in *Calvin's Case*. It appears, that if an Indictment for Treason be against an Alien, it must be charged to be against his Allegiance in general, but not against his natural Allegiance. This is taken notice of in a great many Cases. In the Reports of my Lord *Hobart*, *Vaughan*, and *Keyling*, there are several Cases which shew this Distinction.

In my Lord Chief Justice *Holt's* time, in the Trial of *Cranborn* and *Lowick*, April 22. 1696. an Exception was taken to the Indictment; that it was not said *Contra naturalem ligeantiam*; and in that Case, *Calvin's Case* was agreed to be Law. It was held, that in case of an Alien, he ow'd only a general Allegiance; and it was agreed, that in case of an Alien, it must not be *Contra naturalem ligeantiam*; and my Lord Chief Justice *Holt* says, if it were so, it would be ill. And it may be given in Evidence, that he is an Alien, in order to acquit him of a Crime, charg'd to be against his natural Allegiance; there is none such due.

Mr. *Hungerford.* My Lord, the Objection is founded on a Fact. If the Fact is admitted, we will argue upon it; if not, we will call some Witnesses to prove it.

Then *Simon Francia* was sworn.

Mr. *Hungerford.* Pray give an Account what you know of the Prisoner, what Countryman he is, and where he was born?

Simon Francia. He is my Brother, he was born in *France* at *Bourdeaux*.

Mr. *Att. Gen.* Are you Elder or Younger than he?

Simon Francia. I am Four Years Elder.

Mr. *Att. Gen.* How then can you remember what was done when you was Four Years old?

Simon Francia. I can't remember the Day of his Birth, but I was bred up with him at *Bourdeaux*, we were all born in the same House.

Mr. *Hungerford.* What Age was you of when you first remember him?

Simon Francia. I remember him when I was about Six Years old.

Mr. *Hungerford.* And you don't remember that your Father and Mother came to *England* in that time?

Simon Francia. No.

Mr. *Hungerford.* Did your Father and Mother live at *Bourdeaux* when you was about Six Years old?

Simon Francia. Yes.

Then *Jaques Gonsales* was sworn on the Books of *Moses*. And an Interpreter was sworn, because the Witness spoke English very imperfectly.

Mr. *Hungerford.* Pray give an Account what Countryman the Prisoner is, and where he was born?

Gonsales. The Prisoner is the Son of *George Francia*, and *Mary Gonsales* my Sister. He was born at *Bourdeaux* the 26th of *March*, *New Stile*, 1675.

Sir *J. Jekyll.* How do you know he was born there?

Gonsales. Because I was present when he was born. My House was over-against my Sister's, who was the Prisoner's Mother; afterwards he was baptized in the Church of *St. Andrew*.

Mr. *Hungerford.* We have two or three Witnesses more, his Godfather and Godmother; but I think it plainly prov'd by these Witnesses, so that we need not go any further. Mr. *Attorney*, do you admit it, or shall we examine more Witnesses?

Mr. *Att. Gen.* Prove what you can?

Mr. *Hungerford.* Then Mr. *Attorney*, you admit what we contend for. I am sure if he be a good Englishman, he cannot be a false Traitor.

Mr. *Att. Gen.* He speaks good English.

Then *Emes Lamira* was sworn.

Mr. *Hungerford.* Give an Account whether you know where the Prisoner was born?

Lamira. He was born at *Bourdeaux*, I liv'd there when he was born.

Then *Jaques Gonsales* was call'd again.

Mr. *Att. Gen.* How long hath the Prisoner liv'd in *England*?

Gonsales. I can't tell positively.

Mr. *Att. Gen.* As near as you can?

Gonsales. I can't tell, for he has liv'd at one part of the Town, and I at the other.

Then *Simon Francia* was call'd again.

L. C. Baron. How long ago did your Brother come into *England*?

Simon Francia. He hath been here twice. He was here about Twenty Years ago, and this last time, he hath been here about Six or Seven Years.

L. C. Baron. How long did he stay when he first came?

Simon Francia. About Eight or Nine Years.

Then *Cecilia Ceres* was sworn.

Mr. *Hungerford.* What do you know of the Prisoner? What Countryman is he?

Ceres. I went to School with him at *Bourdeaux*.

Mr. *Hungerford.* Where was he reputed to be born?

Ceres. At *Bourdeaux*, in the same Street where I was.

Mr. *Hungerford.* How old was he when you knew him first?

Ceres. We were both Children.

Mr. *Hungerford.* I think the Place of a Man's Birth can't be better prov'd, it is prov'd by some that were in the Room at his Birth, some that went

went to School with him, and some that knew him there a Child.

Mr. *Att. Gen.* If the Jury should be satisfied with this Evidence, it will not acquit the Defendant, the Opinion in *Cranborn's* Case being, that the Word *Naturalem* was not necessary to be in the Indictment; and adding an immaterial Word will not therefore make the Indictment bad. If this does not satisfy the Defendant's Council, I shall insist that this Point be found specially.

Mr. *Just. Pratt.* If you insist that you have given a sufficient Evidence to satisfy the Jury, and indeed it is a strong Evidence, Mr. *Attorney* says, if the Evidence is to the Satisfaction of the Jury, he is willing to find it specially. Therefore are you willing to leave it to the Jury on that single Issue?

Mr. *Hungerford.* That is giving up all the rest. I would a little enforce and apply this Evidence.

Mr. *Just. Pratt.* I believe, if Mr. *Attorney-General* desires it to be found specially, it was never known to be denied.

Sir *J. Jekyll.* I desire it may be found specially.

Mr. *Hungerford.* I will be bold to say, this Objection is in all the Authorities which we have in the Law touching this Matter, held good: A Man who is not a natural born Subject cannot owe a natural Allegiance: And it is very hard, that without offering any Reason, to raise a Doubt, but upon bare asking to have a Matter found specially, it must be so.

Mr. *Att. Gen.* If you have a mind to it we will debate it with you now.

Mr. *Hungerford.* With all my Heart, I am ready to speak to it now.

Sir *J. Jekyll.* If we were to expect the Judgment of the Court upon it now, I would debate this Matter now, and I should not doubt but to be able to satisfy the Court that the Indictment is well fram'd against the Prisoner, notwithstanding he is an Alien born.

Mr. *Hungerford.* I would be glad to hear one Authority to support Sir *Joseph's* Opinion.

Mr. *Ward.* May it please your Lordship, I am Council for the Prisoner, who stands indicted of High-Treason. The Charge in the Indictment (besides the general Charge of imagining the King's Death) are conspiring to levy War, soliciting Aid from Abroad, and writing Letters for that Purpose into Foreign Parts.

What they have gone upon has been a long Course of Letters between the Prisoner and *D'Aulmay*, alias *Payen*, at *Paris*. They have produc'd a Copy-book of Letters, which they say he wrote, and have read some Letters out of it, which we must submit to you, whether there is any thing contain'd in them that amounts to Treason. They have also produc'd Letters to him from *D'Aulmay*, but we must submit that likewise, whether they can any ways affect him; he can answer only for what he wrote himself.

We did insist upon it, that they ought not to produce any Letters that were not specify'd in the Indictment, and though we are over-rul'd in that, yet your Lordship will be pleas'd to consider the Prisoner under this Disadvantage, that he stands indicted for writing treasonable Letters, without one Letter specify'd, or the Date, and much less the Substance of it, so that he can't be suppos'd to be ready to offer any Evidence, or to give any Answer, to explain all the Letters that in the

Course of his Life he may have wrote, and perhaps some of them may be so darkly penn'd, as not to be capable of an Explanation on a sudden.

It may be necessary also to shew your Lordship the Difficulties we have been under since we were taken up, and that will make it necessary to shew, that when we were committed, it was to a strict Confinement; we were prohibited from any Body coming to us, and from Pen, Ink, and Paper; no Body had Access to us, unless some Persons from the Secretaries Office, to press us to some Discoveries, which we declared we could not make. We will shew by them that were by at those Times what we were press'd to, and that will be an Evidence of our Innocence, when we withstood such Importunities.

They have offered some things, which will, I hope, go a great way to shew that he was not guilty of Treason. My Client was a Stranger, born in *France*, came here to Trade, and his Business not being very successful, he was willing to undertake something of less Value, and so engag'd in sending Letters from the Gentleman that has been nam'd, for the Profit of double Postage, which is allow'd in those Cases.

It was observ'd by the King's Council as a very strange thing, that a Man should enter in his Book Letters of a treasonable Nature, we say the same, and that is a Circumstance to shew that they were not of that nature; besides, the Entry of a Letter in a Copy-book is not like a Copy that the Law allows to be given in Evidence, that must be carefully examin'd; but in those Entries of what a Man writes over to his Correspondents, there may be Mistakes in them, and such as a Man's Life, in Case of High-Treason, may be lost upon; therefore you can't found so great a Certainty upon this Book as upon the Letters themselves or Copies examin'd and legally prov'd.

Another Circumstance to shew how unlikely it was that this was a treasonable Correspondence, or any thing that the Prisoner was concern'd to conceal, is, that he never took care of attending at the Post-Office, or engaging any one to attend there, to dispatch or take care of his Letters, but rested at Home till the Letter Carriers brought them about, or else they were left at one *Everald's* a Watchmaker in the *Strand*, where he had lodg'd, and they have been observed to lie there on a Table in a common Room for a Week together before they have been call'd for, or they have been sent to him.

It has been observed by the King's Council, that towards the latter End of the Correspondence, when he began to write more openly, that he neglected to enter his Letters in the Book; but there is no reason for that Surmise, for it appears upon one of the Letters they have produc'd from *D'Aulmay*, that he complains he had not heard from the Prisoner in Three Months Time; and to suppose those Letters which do not appear, worse than those which do, is a Presumption, we hope, will never be admitted in a Case of Life.

As the Prisoner himself could not apply himself to consider of any Account or Explanation of these Letters, much less can it be expected that we who are his Council can be of any Service to him in that Point, because we only hear those Letters read that the King's Council think fit to produce; there were others before and after, and those we are Strangers to; whatever there may be in them that may clear up the Expressions in those that

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are produc'd by the King's Council, we are entirely depriv'd of the Benefit of them; for the Prisoner has not been admitted to peruse his own Book, or to have recourse to any of his Papers. The Power of seizing Papers, that may be of use to a Man in his Defence, seems to me something dark; but I shall say nothing to it in this place.

We shall give your Lordship an Account of the Prisoner's Character and Circumstances. He was under low Circumstances, even to the pawning his Cloaths and Goods. People that are concern'd in Things of this Kind are usually better supported than he seems to have been. And we shall shew that he has at all times given all Instances and Proofs of his being quiet under the Government, and well affected to it.

Under these Circumstances, if there was stronger Evidence than is in the Copy-Book, it would not be sufficient: I hope, Gentlemen, you have distinguish'd between those Letters in the Copy-book and those that were sent to him, which latter, how criminal soever they may be, can't be made use of to his Prejudice.

If we prove these Circumstances, which is all that can be expected from us, we hope you will not think any thing in these Letters a sufficient Evidence to find him guilty of this Crime. And, Gentlemen, if any of those Letters can have such a Construction, yet, considering the nature of the Copy-Book, and the Manner of keeping such Books (which has fallen more under your Observation than mine) and how void of Care he was in managing those Letters that came to him, you will not think it probable that he was engag'd in a Correspondence of such a Nature; and if any thing looks that way, it may either be a Mistake in him that entered the Copies, or might be explain'd, if we were Masters of the rest of the Letters, and of the Book.

Mr. *Hungerford*. My Lord, I shall take up but a very little of your Time till we have gone through our Evidence, and then shall apply myself to make some Remarks upon it. But in general, the Accusation contained in this Indictment is, that this Man has conspired to take away the Life of the King; the Overt-Acts laid are, that he conspir'd to levy War, and endeavoured to engage Assistance from abroad, and wrote Letters, and sent them to divers Persons beyond Seas for that Purpose.

Gentlemen of the Jury, I am sure you must observe, that as to a direct Proof of his intending to take away the truly precious Life of the King, there is none, but what is endeavoured to be inferr'd from these Letters. If there were, I am sure I should not, and, I believe, none of my Profession would have spoke one Word for him. But all that is said arises from himself. There is no Consultation appears, but that this Man consulted with himself and his Compting-House to take away the Life of the King. As to any of those Letters, there is nothing in them that looks that Way. And as to what is contain'd in the Letters receiv'd from *France*, they cannot affect him. All that can be inferr'd from them is, that he was privy to what was contained in those Letters: And if that were High-Treason, yet it can only amount to Misprision of Treason in the Prisoner. You who live in this great Trading City, the most eminent for Trade and Commerce in the World, in which, I believe, you are very much concern'd, know that a great Part of the Commerce is

carried on by Letters, and all or most of them are entered in Books; you must have a due Apprehension of the Consequences of such a Transaction as this is. To have a Man living in his House in Peace, under the Protection of the King's Laws, to have his Books and Papers taken from him, and those Books and Papers turn'd against him, to the Destruction of him and his Family.

Mr. *Att. Gen.* I desire you would forbear inveighing in this Manner. This is not a proper Manner of Proceeding.

Sir *J. Fekyll*. You have had an Account that an Information was given to the Secretary of State, of a treasonable Correspondence carried on by this Man, and here is an Harangue complaining that his Person and Papers are seized. You know if there had been an Information given to the meanest Officer in the Kingdom, he could not have justified himself, without doing the same Thing.

L. C. Baron. You are not to arraign those Proceedings.

Mr. *Hungerford*. I don't doubt but that noble Lord had Grounds for what he did, but what Grounds he had doth not appear: And surely I have a Right to observe, that all the Evidence that appears against the Prisoner, arises from those Letters and Books that were taken away from him.

Mr. *Att. Gen.* Pray Mr. *Hungerford* act within the Bounds of your Profession.

Mr. *Hungerford*. Mr. Attorney, I am to be corrected by the Court, and not by you. I owe Duty to my Lords the Judges, and I shall always pay it.

Mr. *Just. Tracy*. You ought not to reflect on that Matter of seizing the Papers.

Mr. *Hungerford*. I am not understood. I say all that is offer'd against him is from the Papers found in his Custody.

Mr. *Just. Pratt*. If that was all that you had said you ought not to have been interrupted; but I never knew in my Life, but what was done in this Case was ordinarily done in the like Cases, and ought to be done, and you ought not to go on with Invectives to the Jury, complaining that his Papers are seiz'd, and then that those Papers are turn'd against him. When a Correspondence is carried on by Letters, ought they not to be seiz'd? and if they appear to be treasonable, ought they not to be kept and made use of against him? We must not sit here to hear Invectives against Magistrates of the highest Quality, for doing that, which if they had not done, they had failed in their Duty.

Mr. *Hungerford*. I have not said any thing to impeach the Legality of what was done. All I said, and do say, is, that the Evidence is from the Papers found in his own Custody.

You have heard the Letters read, and you observe, that great Part of them is about Dogs and Horses, and a Sum of 130 *l.* 4 *s.* and about a Suit that was carrying on in the Court of Chancery. As to the Book, I shall touch no more upon it now, but I believe we shall be able to offer Proof that there is not any Part of it wrote by himself. How that will agree with the Evidence already given, we must submit. We shall likewise give some Account of some Discourses that had been had with the Man himself. And, I believe, I need not observe to Gentlemen of your Figure and Circumstances, that the Mr. *Harvey*, who is represented by the King's Council, to be the first Promoter of, and carried on this treasonable Correspondence,

spondence, is at Liberty, even without a Trial; and what the Law hath done for him without a Trial, I hope shall, by your Justice, be done for the Prisoner, now upon his Trial, that is, that he shall be acquitted.

Mr. *Ward*. Though it is difficult for us to be put to explain any of those Letters, yet we will call some Witnesses to explain one, which mentions Persons of 50 or 60 Thousand Crowns a Year, and shew that it was meant of one that was concerned in the Revenue in *France*, and suffered by it.

Mr. *Just. Pratt*. If you are going to explain that Letter, it will be necessary to read it again to the Jury.

Which was done accordingly.

Mr. *Ward*. We will shew it was meant of one *George Francia*, who had been concern'd in the Revenue in *France*.

Simon Francia being sworn.

Mr. *Hungerford*. Did you know *George Francia*?

S. Francia. Yes.

Mr. *Hungerford*. Was he concern'd in the Revenue in *France*, and had he any Loss there?

S. Francia. Yes, he lost all he had.

Mr. *Hungerford*. By what Occasion was it?

S. Francia. I don't know.

Mr. *Hungerford*. Was it by his own Management, or depending on others?

S. Francia. I don't know, but I know he had an Estate and lost it all.

Mr. *Ward*. We offer this only as a Sample for the rest.

Mr. *Att. Gen*. What was this Man worth?

S. Francia. I computed him to be worth Eight or Ten Thousand Pounds.

Mr. *Att. Gen*. Doth he answer the Description in the Letter of a Person of Fifty or Sixty Thousand Crowns a Year?

Sir *J. Jekyll*. Had he any Estate in Land?

S. Francia. No, only in Money.

Mr. *Hungerford*. Do you know of any Offers that have been made, or Threats used to the Prisoner?

S. Francia. I know of some.

Mr. *Hungerford*. By whom?

S. Francia. By Mr. *Buckley*. That if he would swear against Mr. *Harvey* of *Comb*, he should have a good Reward.

Mr. *Hungerford*. Do you know of any other?

S. Francia. Yes, my Lord *Townshend* told me he had given my Brother five Guineas, and he would give him more if he would swear against Mr. *Harvey*.

Mr. *Hungerford*. Where did he tell you so?

S. Francia. In the Office at the Cockpit.

Mr. *Hungerford*. Do you know any thing of two Warrants that Mr. *Buckley* brought, one for his Release, and the other for his Confinement.

S. Francia. I don't know any thing of that.

Mr. *Att. Gen*. How came this Discourse between my Lord *Townshend* and you?

S. Francia. I was several Times with him at the Office about my Brother.

Mr. *Att. Gen*. I hope it will be proper at this Time that my Lord *Townshend* and Mr. *Buckley* may be asked to this Matter.

Mr. *Just. Pratt*. I suppose you was present when this past between Mr. *Buckley* and the Prisoner?

S. Francia. It was between my Lord *Townshend*

and me, and Mr. *Buckley* and me.

Mr. *Just. Pratt*. Who else was by, besides Mr. *Buckley* and you?

S. Francia. No Body else.

Mr. *Just. Pratt*. Who was by when that which you mention'd past between my Lord *Townshend* and you?

S. Francia. No Body else. The first Time I applied to my Lord *Townshend*, I think there was another Secretary there.

Mr. *Just. Pratt*. But at that Time that you say this Offer was made, was any Body present?

S. Francia. Indeed I don't remember that there was.

Mr. *Cowper*. I think you say, the first Time you was with my Lord *Townshend*, there was the other Secretary there?

S. Francia. Yes, there was.

Mr. *Cowper*. Where was this, in what Room?

S. Francia. In the Cockpit.

Mr. *Cowper*. What is your Relation to the Prisoner?

S. Francia. I am his Brother.

Mr. *Hungerford*. You say there was another Secretary by, was it the other Secretary of State?

S. Francia. I know not who it was, there was another Gentleman.

Mr. *Att. Gen*. He said another Secretary of State.

L. C. Baron. What did my Lord *Townshend* say to you?

S. Francia. He said he had given my Brother five Guineas, and he would give him more if he would swear against Mr. *Harvey*.

L. C. Baron. You say at that Time there was another Secretary?

S. Francia. No, no, not at the Time of that Discourse.

L. C. Baron. Nor there was no Body with you and Mr. *Buckley*?

S. Francia. No.

Then *Lucy White* was sworn.

Mr. *Hungerford*. Was you by, or in hearing, when any Offers were made to the Prisoner.

White. Upon the Seventh of *September* I went to see the Prisoner in *Newgate*. He told me Mr. *Buckley* was to be there with him, and desired me to conceal myself in the Room, that I might hear what past, and I did so. When Mr. *Buckley* came he spoke about one *Flint*; and afterwards Mr. *Buckley* asked him several Questions about Mr. *Harvey*. He said he knew nothing but that he was innocent. Mr. *Buckley* told him he must swear right or wrong for the Government; if he would not, he himself would swear High-Treason against the Prisoner; for he had taken Money of my Lord *Townshend*, and done nothing for it.

Mr. *Hungerford*. Did you see any thing of two Warrants Mr. *Buckley* had at that Time?

White. No.

Mr. *Hungerford*. Did Mr. *Buckley* see you?

White. No, I concealed myself under the Feet of the Bed.

Mr. *Att. Gen*. You say this was the Seventh of *September*. What Year?

White. In the Year 1716.

Mr. *Att. Gen*. Where was he then?

White. In *Newgate*.

Then *Mary Meggison* was sworn.

Mr. *Hungerford*. Do you know of any Offers that were made to the Prisoner, and by whom?

Meggison.

Meggison. Upon the Twenty Eighth of September last I was in Mr. *Francia's* Room, and Mr. *Buckley* came in and told him he should be tried suddenly, and there were a great many Witnesses against him; and he would swear against him, because, says he, you have cheated my Master of five Guineas, and won't swear against Mr. *Harvey*.

Mr. *Att. Gen.* Was you in the Room then?

Meggison. I sat upon a little Box at the Bed's Feet, and it was so dark he could not see me.

Mr. *Att. Gen.* How came you to *Newgate*?

Meggison. I have been a great many Times in *Newgate*.

Mr. *Att. Gen.* You dwell there sometimes, don't you?

Meggison. No, I never did.

Mr. *Att. Gen.* Are you a married Woman?

Meggison. Yes.

Mr. *Att. Gen.* What is your Husband?

Meggison. A Dealer, but he is not in *England* now.

Prisoner. What Room was I in?

Meggison. A little dark Room.

Prisoner. What do they call it?

Meggison. The Lion's Den.

Prisoner. Every Body knows that Room is a dark Room, that People can't easily be seen in it.

Mr. *Hungerford.* Did you hear Mr. *Buckley* say any thing more?

Meggison. Nothing, but that he would bring my Lord *Townsbend* into Court, on purpose to influence the Jury by his Presence.

Mr. *Hungerford.* As to these two Witnesses, we have several to speak to their Reputations; but I believe you have no doubt as to that.

Sir *J. Fekyll.* I dare say no one Person in Court believes a Word they say.

Then Mr. *Buckley* was called again.

Prisoner. I desire to know whether you was not with me in the Lion's Den.

Mr. *Buckley.* My Lord, the Prisoner sent to me by *Revell* the Turnkey, and desired to speak with me; when I came to him, he spoke to me first about *Flint*, and desired he might be releas'd from his strait Confinement; and then about his own Affairs. He thank'd me for my Humanity in coming to talk with him, so we parted immediately. I told my Lord *Townsbend* what had pass'd; *Flint* had the Benefit of it. He had been confined close, but *Francia* speaking on his behalf, he was released from that Confinement; and that was the Business I went about. The Room is a little dark Room, but if any Body had been at the Foot of the Bed, I believe I might have seen them.

L. C. *Baron.* Did you say those Words?

Mr. *Buckley.* No, my Lord, it is impossible I should.

Mr. *Hungerford.* Not impossible surely?

Mr. *Buckley.* Yes, impossible, I appeal to my Character: I entirely and utterly deny it. I desire that *Revell* may be called.

Mr. *Ward.* We are now in our Evidence.

Mr. *Att. Gen.* If the Prisoner calls a Witness that has been called before, and he to make his Evidence entire, appeals to *Revell*, we ought to call him now, for it would have been improper before.

Mr. *Hungerford.* If it be nothing but that he was sent for Mr. *Buckley*, there is no great Harm

in it. Otherwise we are in the Course of our Evidence.

Then *Revell* was sworn.

Mr. *Att. Gen.* Do you know the Occasion of Mr. *Buckley's* coming to *Francia* in *Newgate*? Give an Account of what you know of it.

Revell. My Lord, Mr. *Francia* called to me one Day, and I think it was when I was in the Chapel, and told me, I believe I can do a Piece of Service to the Government: I believe I can suppress the publishing of the *Shift-Shifted*, I am sure I can: Pray let me speak with Mr. *Buckley*. Says I, if you would have me, I will go to him, and desire him to come. When would you speak with him? At any time, says he; then I believe the Morning is the best to meet with him; and the next Morning I went to him.

Sir *J. Fekyll.* Did you tell him the Occasion of *Francia's* desiring to speak with him?

Revell. Yes.

Sir *J. Fekyll.* Was you in the Room with them?

Revell. No, but afterwards he said to me, I think I have done the Government some Service, you don't hear it come out as it us'd to do.

Prisoner. I desire to know whether Mr. *Buckley* was not angry with you that you did not stand at the Door?

Revell. He order'd me to be about the Door, but there came some Workmen to survey the Chapel, I was obliged to go with them, and he came out and was angry that I was not there; and after that I stood there till they had done, but I did not hear what Discourse pass'd.

Then the Lord *Townsbend* stood up.

Lord *Townsbend.* My Lord, Mr. *Buckley* came to me, and told me of the Message he had receiv'd from the Prisoner about the *Shift-Shifted*, a scandalous Paper that was sent about the Kingdom. He ask'd me if he should go: I told him I thought it was right to go, but I told him he must be cautious, for I did not doubt but that the Prisoner was capable of that Villany I now find he is. He came back to me, and told me what he has now said; and I believe it to be all that pass'd between them, for I have always found him faithful and honest. I thought it was a Service to put a Stop to that Paper; and I did give some Ease to that Man that is named.

I am amazed how there can be such Villany as is in the Brother. He came to the Office two or three Times with Petitions. I never said any thing more, than that it was not in my Power to do any thing; that he must deal ingenuously, tell all that he knew, and shew that he would speak all the Truth; that that was the Way to recommend him to the King's Mercy; that I could not do any thing without it. And I believe the manner I treated Mr. *Harvey* will justify me, with all that know any thing of it, from the Suspicion of such Intentions against him. All that I did was in regard to the Prisoner's wretched Circumstances, and before Mr. *Stanbope*; and I never desir'd any thing of him, but to tell the Truth, and the whole Truth.

Prisoner. You told me I should be hang'd, drawn, and quarter'd; and your Lordship told me many a time, Damn you, you Dog, now I have got Mr. *Harvey* in my Clutches, and you will let him go from me. If there was no particular Animosity against me, why should I be distinguished, for none were put in Irons for treasonable Practices, but me.

Lord Townshend. I would not take up your Lordship's Time, but only to say, that the Warrant for Irons, and to be kept without Pen, Ink, and Paper, was after that Letter had been delivered to me, the Contents of which will sufficiently justify the Precautions used in that Warrant. I was sorry to see the ill Use he made of the Liberty that I had before given him, and I did use that Warrant in that manner. Treasonable Practices were then no more bailable than Treason; and it's no new Thing to fetter State-Prisoners under such an Accusation.

Mr. Ward. I beg leave to ask your Lordship one Question, Whether you apprehend that *Curtis* deserved any Credit?

Lord Townshend. I can say no more, than that he made some Discoveries, and there was no Prosecution against him. I knew nothing of the Man before, and I know nothing more of him now.

Mr. Ward. Did those Informations appear to be true?

Lord Townshend. A great Part did, by the Confession of one of the Persons he accused.

Mr. Hungerford. As to the two Women that were examined just now, there was a Remark made, that their Testimony was extraordinary; I have five or six People to speak to their Reputation, if it sticks with *Mr. Attorney*.

Mr. Att. Gen. Perhaps such as themselves; but however call them.

Then *Mr. Everall* was called.

Mr. Hungerford. What do you know of *White* or *Meggison*?

Everall. I know nothing of them.

Mr. Ward. Do you know where the Prisoner's foreign Letters used to be left?

Everall. His Letters always came to my House.

Mr. Ward. Was he usually watchful for the coming in of his Letters, as if there was any Thing of Concern in them?

Everall. No, they often used to lye some time before he called for them.

Mr. Ward. How long did they use to lye?

Everall. Sometimes three or four Days.

Mr. Ward. Were they kept up close till he called for them?

Everall. No, they lay in a public Room, so that any one might see them.

Then *Mrs. Everall* was sworn.

Mr. Hungerford. What do you know of any Letters directed for *Mr. Francia*; where were they left?

Mrs. Everall. They used to be brought to our House, and they have lain two or three Days together on a public Table before they have been fetch'd away.

Mr. Cowper. How long ago was that?

Mrs. Everall. About seven Years ago.

Mr. Cowper. Have any been directed to your House of late?

Mrs. Everall. No.

Mr. Ward. We shall now examine some Witnesses to the Copy-Book, to prove that it is not of his Hand-writing; and I don't doubt but that will have its Weight.

L. C. Baron. He own'd it to be his Copy-Book of his Letters to his Correspondents.

Mr. Cowper. We lay the Stress upon this, that he said it was his Copy-Book of his Letters to his Correspondents Abroad.

Mr. Ward. But you know *Mr. Buckley* laid a

Stress upon its being his Hand-Writing.

Then one *Rafter* was sworn.

Mr. Hungerford. Shew him the Copy-Book, look upon it, are you acquainted with the Prisoner's Hand-Writing?

Rafter. Yes.

Mr. Hungerford. Is any Part of that Book his Hand-Writing?

Rafter. No, I take it to be his Son's, *George Francia's*: The Prisoner writes a smaller Hand, I take no Part of it to be his Hand so far as I have gone.

Mr. Hungerford. I believe it may be of use for all the Witnesses to look it over; we have four or five to this Point; and if I am rightly instructed, there is not one Word in that Book wrote by the Prisoner.

Mr. Just. Pratt. If it is not his Writing, whose do you take it to be?

Rafter. I don't take it to be his.

Mr. Just. Pratt. Whose do you take it to be? Are you acquainted with his Son's Hand?

Rafter. I don't know whether it his Son's or not.

Mr. Just. Pratt. Are there any other Persons that write for him?

Rafter. He had sometimes.

Mr. Att. Gen. Here is a Letter of his own Writing; pray let him look on that, and see whether that is his Hand; do you believe that to be his Writing?

Rafter. No, I don't think it is.

Mr. Att. Gen. *Curtis* has prov'd that he own'd that Letter.

Prisoner. What Letter did I own?

Then *Simon Francia* was call'd again.

Mr. Hungerford. What do you say to that Book?

S. Francia. There is not one Syllable of his Writing in this Book; I have known his Hand-Writing about twenty Years.

Then *Barwell* was sworn.

Mr. Hungerford. Are you acquainted with the Prisoner's Hand-Writing? Is any of that Book of his Writing?

Barwell. None of it is his Writing.

Mr. Hungerford. Do you know what Condition of Health he was in about the latter End of the Year 1714, and 1715?

Barwell. He was sick.

Mr. Hungerford. For a Year before he was taken, what Condition was he in? Was he able to write Letters?

Barwell. He was sick.

Mr. Hungerford. Did he use to write Letters in that Time?

Barwell. I don't know.

Mr. Att. Gen. Whose Hand do you take it to be?

Barwell. How do I know that?

Mr. Att. Gen. Are you acquainted with his Son's Hand?

Barwell. No, not at all.

Then *Simon Francia* was call'd again.

Mr. Att. Gen. You have looked on the Book; whose Hand-Writing do you take it to be?

S. Francia. I don't know.

Mr. Att. Gen. Do you know his Son's Hand-Writing?

S. Francia. I never had any Correspondence; or great Acquaintance with him.

Mr. Att. Gen. Did you ever see him write?

S. Francia.

S. Francia. I don't remember that I did.

Mr. Ward. We will trouble you with but one Piece of Evidence more; we will call *Dr. Cade*, who attended him in his Sickness. We have offered Evidence, that no Part of that Book is his Writing; we will now offer some Proof that he was not capable of writing at that Time.

Then *Dr. Cade* was sworn.

Mr. Ward. Pray Doctor, did you attend the Prisoner as his Physician at any Time?

Dr. Cade. My Lord, I was sent for to him on the second Day of *November*, 1714. I attended him till the 18th of the same Month, and within that Time I visited him nine Times, I found him in a great deal of Pain, and he was lame in his Hand; some Time after my coming he grew better.

Mr. Ward. Was he confin'd to his Bed?

Dr. Cade. Sometimes he kept his Bed, and sometimes he sat up.

Mr. Ward. You say he was in Pain, and lame in his Hand; which Hand was it?

Dr. Cade. I don't remember which; nor do I know any thing of him, only at that Time.

Sir J. Fekyll. Every one of the Letters were wrote after that Time.

Prisoner. What Condition did you leave me in?

Dr. Cade. In a very bad Condition.

Prisoner. Did you not hear of the Condition I was in afterwards?

Dr. Cade. I don't remember that I heard any thing of you after that.

Mr. Ward. We will call a few Witnesses to prove what Circumstances he was in, and that he was well affected to the Government.

Mr. Hungerford. By my Instructions he appears to be a Foreigner, and so disinterested in those unfortunate Divisions that are amongst us: And accordingly there is nothing of *Whig* or *Tory* in his Letters.

Mr. Att. Gen. Don't you remember when he came to *Newgate* he wrote he liked his Company, for he found them all *Tories*.

Mr. Hungerford. We will shew you that he was zealous for the Good of the Kingdom, and was against all that was disadvantageous to Trade in the late Treaty of Peace. That he never went into any public Places, except to the *Grecian* Coffee-House, which is a Place sure not tainted with Sedition.

Then *Mr. Everall* was call'd again.

Mr. Ward. How long have you known the Prisoner?

Everall. Several Years.

Mr. Ward. Has he been peaceable, and easy in his Conversation, with Respect to the Government?

Everall. I remember at the proclaiming the Peace he said, he thought the Nation was ruin'd, for he thought it a scandalous Peace.

Mr. Att. Gen. That is much; for you make him a *Frenchman*, sure he might have approved it.

Mr. Hungerford. This is not what I have in my Brief, but perhaps he may recommend himself to your Esteem by it: He doth not to mine.

My Lord, I will take up your Time only with this Remark: The great Foundation of this Evidence is the Confession made by the Man himself. Without the Key made by him, this had been applicable to no Body. I remember *Sir*

Joseph Fekyll was pleas'd to say, he would not excite the Passions of the Jury, but rather appeal to their Judgments, so will I. Great Part of this Correspondence relates to *Mr. Harvey*, and one would have thought they had something extraordinary to have charged on him, considering the Length of his Restraint; but I need not observe to the Jury that he is at large. He was under Restraint, nothing could be imputed to him, and he is discharged.

L. C. Baron. *Francia*, have you any Thing more to say?

Prisoner. As for my Nativity I have more Witnesses. I have more Witnesses as to my Character. I have more Witnesses to prove that I was a quiet Man, and never disaffected to the Government.

Then *Mr. John Slater* was sworn.

Mr. Hungerford. What do you know of the Prisoner's Behaviour?

Mr. Slater. I have known him about four or five Years. There being a Commission of Bankruptcy against him, I was recommended to assist him in that Commission. I did give him the best Assistance I could, and I several Times met him, sometimes at the *Grecian* Coffee-House, and sometimes at my own House. I took him for a *Frenchman*, he used very much to espouse the Interest of the King of *France*, which I used to chide him for. As for Parties here, I had some Discourse with him, and he used to think we were a strange People to fall out among ourselves.

Then *Thomas Richardson* was sworn.

Mr. Hungerford. What do you know of the Prisoner and his Behaviour?

Richardson. I have known him five or six Years, and I believe I have taken five or six Pounds of his Money. When he was sick he took a Liking to me, and would not be quiet unless I came often to see him, and I used often to sit with him in an Evening and bear him Company, and it was a great Surprize to me when I heard he was taken up, for he used often to drink a Health to King *George*, and hoped he should get up to see him, and hoped this would be a quiet Nation again. He was then so weak that he could not stir Hand or Foot. But he used to call me *Vulcan*, and bid me drink King *George's* Health.

Mr. Hungerford. How long is it since he was so weak that he could not stir Hand or Foot?

Richardson. About a Year and five or six Months. And when he got abroad I then was forced to follow him for what he owed me, and I have gone after him several Times to the *Grecian* Coffee-house.

L. C. Baron. Have you any thing more to say?

Prisoner. No.

Mr. Soll. Gen. My Lord, I must beg Leave (by Way of Reply to what has been offered, on Behalf of the Prisoner) to say, That this is a Cause of very great Concern to the King, to the Royal Family, and to the whole Kingdom in general; and I may with Justice affirm, that this Day one of these two Points must be determin'd; either that the Prisoner at the Bar is guilty of High-Treason, or that no Man can, as the Law now stands, be convicted of holding a foreign, traitorous Correspondence, if this Evidence be not sufficient; for here has been the strongest Evidence given of such a Correspondence, as I believe

believe ever was, or perhaps ever can be given, according to the Nature of the Thing.

The Gentlemen of the Jury will consider the Nature of the Treason, as it is laid in the Indictment, it is for compassing and imagining the Death of the King; now, that rests in the Imagination, and is compleat in the Mind; but there must be some open or public Act that must appear to you in Proof, to convince you that the Prisoner had that Imagination. There are three Overt-Acts laid in this Indictment, and we have produced Evidence sufficient for the Proof of two of them, though if any one of them be prov'd, it is enough. The first is, conspiring, consenting and agreeing to raise an Insurrection and Rebellion within this Kingdom, in Favour of the Pretender; and for conspiring, consenting, and agreeing to solicit and procure from *France*, Arms, Ammunition, Men and Money, to aid and assist in such Rebellion; and the last is for composing and writing several treasonable Letters, declaring his Intention and Resolution to levy that War, and to raise that Rebellion.

The Evidence that has been given is of two Sorts; it consists first, of Letters wrote by the Prisoner himself to his Correspondents in *France*; and secondly, of Letters wrote to him by such Correspondents, signifying the Receipt of Letters wrote by the Prisoner to him, touching this traiterous Design. For Proof of the Letters wrote by the Prisoner, we have produced his Copy-Book of Letters, wherein they are entered, proved to be Part his own Hand-writing, and the rest his Son's; and indeed, it is a surprizing Thing, that that Copy-Book should remain, which indeed is so rare a Way to perpetuate the Testimony of Treason, as I believe the like Evidence is never to be expected again; and it is absurd to expect, when a Traitor writes in a foreign Country, that he should be able to produce the Original Letters. The Proof of this Copy-Book to be his is beyond doubt; it is prov'd by his own Confession, before three Witnesses, and in very strong Terms, *This*, says he, *is my Copy-Book of my Letters to my Correspondents abroad*. Is it possible that stronger Evidence can be given? Nay, he goes farther, as a Noble Lord informed you; for when he was examining the Prisoner, and the Prisoner pretended that he was only a Conveyer of Letters, but did not write himself; says he, *As to what I have wrote, I appeal to my own Copy-Book of Letters*. They have brought indeed some Witnesses to say, That they believe that the Copy-Book is not of his Hand-Writing, though they don't tell you whose Hand it is. But that is not material, nor of any Weight, for Copies of Letters are sometimes enter'd by the Parties themselves, and sometimes by their Servants, or others whom they appoint, and that is the same thing; but to answer that fully, the Prisoner has confessed that Part of this Copy-book was of his own Hand-writing, and the rest of his Son's.

As to the other Letters from *D'Aulmay*, his *French* Correspondent to him, which are many in Number, we have given the best Proof the Thing is capable of; we have produc'd the very Original Letters themselves, directed to him, with the Post-Mark from *France*, found all in his Custody, and confessed to be his Letters which he received from *France*, before three Witnesses. This shews evidently that there was a traiterous Cor-

respondence, and is a plain Evidence, that the Prisoner sent those Letters mentioned to be received in *D'Aulmay's* Letters to him, to which these were Answers, and the Letters exactly tally as to Dates, Circumstances and Subject. If there had been but one of those Letters sent to the Prisoner, containing treasonable Matter, it would have been Misprision of Treason, if he had not discovered it; but his going on with the same treasonable Correspondence for Months together, and in so many Letters, in every one of which he charges the Prisoner with writing High-Treason, and he preserving all those Letters, concealing and keeping them close; this is a strong Evidence of his Approbation and Assent to that Treason and traiterous Correspondence. And so it is in the common Case, if a Man meet accidentally, not knowing of the Design, and light into the Company of Traitors, and hear their Discourse and say nothing, if he don't discover it, he is guilty of Misprision of Treason only, as a bare Concealment; but if he comes a second time into their Company, and meet them again and hear their Consultations, or the same Treason is proposed and talk'd of, and he conceals it, he is guilty of High-Treason; because it shews a Liking and an Approbation of their Design, and so it was resolved in Sir *Everard Digby's* Case. So here, all these Letters that came from *D'Aulmay*, and were kept up close by the Prisoner, containing treasonable Matter, shew his Approbation of the Treason, and are a strong Evidence, that he sent those Letters to his Correspondent *D'Aulmay*, to which these are Answers: It has been said, that admitting these Letters were sent by *D'Aulmay* to the Prisoner, yet he is not answerable for what others write: That, surely, is a great Mistake; for if what he writes be Treason, it is his Duty to disclose it; and if he do not, but continue to receive such Letters, this is a clear Proof of his traiterous Correspondence, and by that he makes the Treason his own. They object farther, that the Prisoner was only a Conveyer of Mr. *Harvey's* and the Duke *D'Aumont's* Letters; but that this is otherwise, appears from the Letters themselves, for most of them relate to himself, and are meant of himself, and of a Correspondence with him; for it appears from his own Confession in his Examination proved by three Witnesses, that this *French* Correspondence held from a little before the late Queen's Death, till a few Days before his Examination; which shews that the Correspondence was his own, and carry'd on by himself.

In the next place we come to consider the Exposition and Meaning of these Letters, whether the Subject Matter be Treason or not; one of the Council for the Prisoner said, there was nothing in them but about Dogs and Horses; but that is a Mistake, for those were Mr. *Harvey's* Letters, which talked sometimes of Dogs and Horses; but give me leave to say, there seems even in them to be a good deal of Treason, intermixt with the Discourse of Dogs and Horses. Let us examine some of his own Letters, and see whether the Subject Matter be not treasonable. It is not to be expected that Men will in these Cases speak out plain; no, the Treason is always to be dressed up in a Cant, and many of these Cases have appeared in this place. In my Lord *Preston's* Case, the Overt-Act charged there, was sending treasonable Letters to *France*, to give the Prince of that Nation an Account of our Strength and Forces here;

here; those Letters run all in a sort of Cant, and it was in that Case pretended, that the Meaning was uncertain, and that no Body knew what to make of some of the Expressions in them; but notwithstanding that, both Judges and Jury took upon them to understand them, and he was found Guilty of High-Treason.

In the Letter of the 26th of February, *D'Aulmay* writes to the Prisoner, and desires to know some News, because the Interest of his Wife and Family, which, says he, is *Irish*, is concern'd in it, his Wife being a *Butler*, and of Kin to the Duke of *Ormond*. *Francia*, in Answer to that Letter writes him word, as for News, that he heard there was a Marriage in good forwardness between the Prince in *Lorraine* and one of the Arch-Dutcheffes. "Let me know, says he, what there is in it, since 'tis essential to the Interest of your Wife, that is to say, that *Ireland* as well as *England* was concern'd in the Pretender's Marriage; for every one knows who is meant by the Prince in *Lorraine*. Now see what Answer *D'Aulmay* sends back, he gives his Opinion freely, and thinks that this intended Marriage of the Chevalier de *St. George* (which by the way explains who the Prince in *Lorraine* was) with the Arch-Dutcheffes, would not be a sure way to bring his Affairs to an happy Issue. What was to be done then? *Why*, says he, a Party-War would be much more to his Advantage. Is not this easily to be understood? Is not this Party-War a Civil-War, an Insurrection, a Rebellion? *D'Aulmay* then giving his Opinion, that a Rebellion was the most eligible Way; what is the Prisoner's Answer? why he closes with the Advice, but says, *That Persons of Fifty or Sixty Thousand Crowns a Year can't with Prudence run the Hazard of losing such Estates, unless more Encouragement be given them*: What is this but soliciting Aid and Encouragement from *France*, for an Enterprize in which Men of Estates must run the Risque of losing them? It is said Persons in the Plural Number, not one single Person, tho' the Prisoner's Council endeavour'd to put such a Colour upon it; but it is plain in a Party-War many must be concern'd.

In his Letter of the 28th of *March*, after he had express'd a great deal of Uneasiness and Impatience, the Negligence and Delay of this Assistance from *France*, not usual in that Nation, after he had wrote again and again, and wonder'd the Delays were so great; at last, says he, *We are now to expect every thing from your side the Water*. What can be the meaning of this, but that the design'd Rebellion here was to be encourag'd from *France*. And this surely is as much as can be expected in an Affair of Treason, unless People were to write out plain, which is never to be expected, unless from Fools and Ideots who cannot commit Treason. All *D'Aulmay's* Letters to the Prisoner tally with those of the Prisoner's own, and pursue the same Design, tho' under a Cant which runs thro' most of them, as was in the Lord *Preston's* Case. In that Case there was the Cant of a Law-Suit, as in this; but my Lord Chief Justice *Holt*, and my Lord Chief Justice *Pollexfen* said, that would not acquit his Lordship of Treason, if the Jury understood them in that Sense as every Body else would. And why Words and Letters are not to be understood in Court, as every Body understands them out of Court, is a hard Matter to be explain'd.

It was indeed insisted by the Council for the

Prisoner, that there really was a Cause recommend- ed to the Prisoner's Care, that is very true; but then the Distinction between this private Cause, and the public Cause of the Pretender, appears from many of *D'Aulmay's* Letters; sometimes he calls it our Cause, sometimes the Cause of our Common Friend, and in a very remarkable Letter of *D'Aulmay's*, dated from *Paris*, 7 August 1715. he says, *The Prisoner was in the right to inveigh against that Indolence he reproached them with; but he persuaded, says he, 'tis only so in Appearance. I even hope, that by this time you have convincing Proofs of it, and that we make suitable Returns to the good Disposition on your Side, and that at last, God blessing the just Cause of our Friend, will let him gain his Suit*. To explain this Letter, the Time is very material, for on the 20th of July before his Majesty inform'd his Parliament, that he had undoubted Intelligence of the Pretender's Design to invade these Kingdoms from Abroad. And in other Letters he distinguishes between the private Cause, and the Cause of the Pretender, and calls it my Cause. And in a Letter of the 14th of September 1715. *We know already, says he, what you tell us about the Cause of our Friend, which will soon end to his Satisfaction, or all Appearances will deceive us*; and then says, *as to my own Cause, I can't help telling you, that my Fate is very unhappy to have to do with so dishonest a Man*; if Treason be not meant by those Letters, what is; Let the Prisoner tell us the Meaning of them. Neither he, nor his Council, have offer'd at any other Interpretation, nor have offer'd to explain but one single Letter in the whole Packet; and that has been observ'd was a poor Interpretation, and contrary to the very Grammar and Sense of the Letter. But what puts this Matter beyond doubt, if there could be any, about the Meaning of these Letters, is, that he himself tell you in his Examination, in express and positive Terms, that the Subject Matter of the Letters that were to be communicated to Mr. *Harvey*, which are the Letters now produc'd in Evidence, *was the Intention of the Pretender to invade his Majesty's Dominions*; and when he himself has allow'd this, who is to gainsay it? Can you have a better Witness than himself, to the Subject of his own Letters, and to explain his own Meaning?

There have been some Reflections offer'd which by no means ought to have been, and I think were very improper on this Occasion; and it is our Duty to take notice of them when they are offer'd. It was said, by way of Reflection, that first of all, the Prisoner's Books and Papers were seized, and then they were turn'd upon him, and made use of against him, as if this was illegal, unusual, and new; when every Body knows in those Cases, there can be no other Evidence; and is the same that has been done in all Ages past, and must be done in all Ages to come. I am sure they have no reason to charge the Government with Inclemency; there has been shewn, even in this very Case, as much Clemency and Tenderness as was possible. When the Noble Lord, my Lord *Townshend*, had the first Information of treasonable Practices against the Prisoner, he had been justified, if he had immediately sent his Warrant and sent him to *Newgate* for High-Treason; but instead of that, he was cautious, and was willing to be further inform'd before he committed him; and therefore he sends to the Post-Office and orders his Letters to be stop'd, in which he found the

the treasonable Correspondence confirm'd; and then he was taken into the Custody of a Messenger only, in order to be examin'd. His Lordship thereupon gave him all the Opportunities he could desire, of throwing himself at his Majesty's Feet; but he grossly prevaricated with his Lordship, as appears by that Letter wrote to his Wife; wherein he takes notice, that in *Newgate* they were all Tories, and the Majority for the Government, *i. e.* sent thither upon that Account: "You know, says he, why I am here, which can't be a Dishonour to me, be then at ease; I have not said any thing against Mr. *Harvey*, nor nothing can be done to him; he can only be suspected to be the Pretender's Friend.

And now give me leave to take notice, that in this Letter he gives a further Explanation of this Business; for he says, *According to their Information, i. e. the Tories, though every thing should fail, my Lord Townshend could do nothing, for Affairs will be at an end in less than a Fortnight.* Now the time is very material, every one knows that the Rebellion was just then breaking out; it began in *Scotland* in *September*, and in *England* in *October* following. They have call'd some Witnesses to the Prisoner's Reputation, but they have not proved any thing material on that Head, nor given a tolerable Account of him. But if they had, it would in this Case be of little or no weight; when a thing is doubtful, Reputation may sway a little, but in Cases where the Evidence is so full and plain as in this Case, it can have no Signification or Weight. It was observ'd by us, that when the treasonable Correspondence began to be more plain and full, then the Prisoner desisted from entering his Letters in his Copy-book; in Answer to which, it was urg'd by the Prisoner's Council, that it was improbable it should be so, for that the Correspondence was entirely interrupted for several Months together, because as they insisted in one of *D' Aulmay's* Letters, dated 17th *September*, he complains he had not heard from the Prisoner in three Months; but that is grounded on a Mistake, for the Person that uses that Expression, is not *D' Aulmay*, but another Person, and it is wrote in *French* in a Postscript under *D' Aulmay's* Letter; for in the Beginning of the Letter it self, *D' Aulmay* expressly says, he had received the Prisoner's Letter of the Ninth Instant, which shews the Correspondence continued, but was too gross to enter such Letters in his Copy-book, or to write under the same Name; for now, he says, when he has any thing material, he would write in a strange Hand, and would sign it by the Name of *Jacques Chrétien*, and that Mr. *Harvey* might write under the same Name too; but none of these Letters appear.

Thus I hope I have answer'd every thing that has been materially objected by the Prisoner's Council, and if you, Gentlemen of the Jury, do believe that the Prisoner at the Bar wrote these Letters, the Copies whereof have been produced to you, and that those Letters produced from his Correspondent *D' Aulmay*, were receiv'd by the Prisoner, and that he wrote the Letters therein mentioned, and that he has therein carried on a traitorous Correspondence, you will acquit yourselves to your King and Country, and find him Guilty of the High-Treason charg'd upon him.

Mr. *Cowper*. My Lord, it may be proper on this Occasion, Mr. *Solicitor* having repeated the particular Parts of the Evidence, to take notice

of some Things, that have appeared in general in the Course of this Trial: We think it of Importance to the Public, that this traitorous Correspondence should appear in a proper Light, that the deluded Populace may be no longer to seek, who were the Persons that incited, and fomented the late unnatural Rebellion.

The Gentlemen of the Jury will observe, that our Evidence begins with a secret Information which was given to a Noble Lord who was then Secretary of State, of a traitorous Correspondence carried on by the Prisoner, and his Accomplices: That Information was not immediately or hastily relied upon, but Orders were given that all Letters, directed to *Francia* the Prisoner, should be intercepted at the Post-Office; accordingly you have heard, that several Foreign Letters from *France*, directed to the Prisoner, were stopp'd, and sent to the Secretary's Office; those Letters fully disclosing the Treason, it was thought Time to issue a Warrant, and send a Messenger to seize the Prisoner and his Papers; and it is to us wonderful, that one of the Council for the Prisoner should undertake to censure that Proceeding, the Neglect of which must have been censured, if it had not been done: After an Information receiv'd, of so vile and dangerous a Conspiracy, confirmed and made evident by Letters intercepted, was it possible for one, entrusted in so high a Station, under his Majesty, to do less than to cause the Person and Papers of the Prisoner to be secured?

You have heard, Gentlemen of the Jury, that from the Time of seizing the Letters, and Copy-Book of Letters, in the Lodging and actual Custody of the Prisoner, there is a regular and certain Proof, as to the Identity of the Book, and Papers produced at this Time, and given in Evidence; they were carried by the Messengers just as they were taken, to Mr. *Walpole*, who deliver'd them to Mr. *Buckley*, and the Witnesses all speak likewise, to the Book and Papers themselves, so that there remains no Manner of Dispute concerning them.

Amongst these Papers, Gentlemen, you will observe, there is one Letter that relates to Mr. *Harvey*, which is now produced because it is Evidence against the Prisoner *Francia*: He, it seems, was to manage Mr. *Harvey's* Correspondence, and did so for a considerable Time, but at last Curiosity prevail'd; and it is very remarkable, by what Accident that Original treasonable Letter happens to appear now in this Place: It seems the Prisoner, in Breach of the Trust and Confidence which was reposed in him, and to gratify his Curiosity, opened the Letter, and finding he could not seal it up, and put it together again in that manner, but that it might be suspected he had opened it; for that Reason he himself kept the very Original Letter under Mr. *Harvey's* own Hand. When that Letter comes to be read, it appears to be mysterious, as to the Figures and Numbers made use of, instead of the Names of Persons, but the Prisoner's Examination explains it, which shews he was Master of the Key, and of the Secret.

This Discovery was attended with Circumstances that will have their Weight, in a Cause of this Nature, when this Letter found upon the Prisoner, is produced to the Person that wrote it, before a Committee of the Lords of the Council, you have heard that he was in the utmost Disorder,

order, as indeed well he might, that he express'd himself ready to disclose all that he knew; for what Person being in his Condition, and seeing one of his own Letters, which he believed safe in the Hands of his Correspondents Abroad, would not have believed the Government Masters of the rest; I dare say *Francia's* impertinent Curiosity was then unthought of and unsuspected. I am sorry, Gentlemen, to mention a particular Accident, which, however, serves to shew that the Correspondence was of a dangerous Nature, otherwise what Account can be given, that that Gentleman should, in about twelve Hours after, make a desperate Attempt upon himself?

Mr. *Hungerford*. My Lord, I apprehend that nothing of this Matter ought to be mentioned here; whatever Mr. *Harvey* was liable to, he is now at Liberty.

Mr. *Cowper*. I say, my Lord, it had that Consequence, and if it had not been a Discovery of the utmost Importance, if it had not been thought very dangerous in its Consequence to himself, that Attempt upon himself had never been made: But so it was, and it is so far material, as it was occasioned by Part of that Correspondence which the Prisoner was employ'd to transmit to the Conspirators in *France*.

You have heard, Gentlemen, that *Francia*, when he was first examined, capitulated for himself; that he promised to make a full Confession, and accordingly gave in a first, and second Information, which have been read to you; and I dare say, when he signed those Examinations, he really intended to save himself by a Discovery of his Treason; but when he had taken Counsel with his Party and Fellow-Prisoners in *Newgate*, you find by his Letter to his Wife, he changed his Mind, and the Expression is to this Effect, *He hopes he had said nothing that could hurt either himself or Mr. Harvey, and that he laugh'd at any thing the Government could do to himself.*

Your Lordship has heard how artificially and maliciously it has been insinuated, that the Noble Lord, the Secretary of State, gave some Hopes of Intercession to be made in Favour of the Prisoner; I firmly believe, no Man living that knows that Lord, but thinks he would have been better than his Word, if the Prisoner had honestly deserv'd it. Whatever was said upon that Occasion, proceeded from the Prisoner's Assurances, that he would make a full Confession, that was the Ground and Condition upon which the Prisoner was told he should be recommended to Mercy. But let the World judge, whether that Noble Lord could justify it to the King, his Country, or to himself, to interpose in his Favour, when he came to discover by a Letter under the Prisoner's own Hand, that he was resolv'd to conceal all that he knew: Surely, the Condition being broke by the Criminal himself, it became the Duty of the Noble Lord not to intercede for an obstinate Offender; one, that was determined to abide every Extremity, rather than do his Duty, by disclosing those Treasons that were latent in his Breast; so that we owe the Discovery which is made by the Examinations to the same Providence that has brought to Light the rest of the Evidence in a strange and wonderful Manner.

After so much Time has been spent, it would be tedious to observe the particular Passages of the Letters which have been given in Evidence, only this I would observe, that when the Rebel-

lion was not so near at hand, there seems to be some little Caution used in penning the Letters which have been read out of the Copy-book; but as the Time grew near, the Correspondence also grew more warm and open, as may be perceived by the Letters from Abroad; which is the Reason, Gentlemen, you find him discontinue entering his own Letters in his Copy-book. It has been said by his Council, Can it be imagined that a Man would copy and enter Letters of a criminal Nature? but Gentlemen, the Question is, Whether he has done it? And you hear it proved by three Witnesses, that he owned it to be his own Copy-book of Letters to his Correspondents Abroad; so that there can remain no doubt, but that every Letter in that Book is a Copy of the Original wrote by the Prisoner: Whoever will observe the Time when he discontinues entering his Letters as formerly, which was just as the Rebellion was breaking out, will think it a strong Evidence, if Evidence were wanting, that the Letters enter'd, contained a criminal and traitorous Correspondence.

Had the Correspondence been innocent, the same Method would have been continued; for the Rebellion had nothing to do with the sham Law-Suit. But as the Rebellion grew nigh, it became necessary to be more express and plain, as appears by all the Letters to *Francia* from abroad; which is the true Reason he discontinued entering his own Letters. Can any Body than can hear or read, doubt, but that the Prisoner continued to write to his Friend *Payen*? I think there is not one Letter directed to the Prisoner that don't in the first Line of it acknowledge the Receipt of the Prisoner's, *Yours of such and such a Date I have received*; and some of them acknowledge the Receipt of two Letters from the Prisoner at the same Time, which shews his Diligence, and proves, that he writ oftener to his Correspondent than his Correspondent to him. You see, Gentlemen, the Letters from *D'Aulmay*, alias *Payen*, to the Prisoner, make it manifest he went on to the last in the same traitorous Correspondence; but it can't be expected his Original Letters should be produc'd. *D'Aulmay's* Letters plainly intimate the Tenour of the Prisoner's: I will trouble you but with an Instance or two amongst many that might be observed.

Of this kind are all those Letters which dissuaded the Prisoner from being impatient; that give him Assurance they are not dilatory; that promise him every thing will answer his Expectation. All these, and many other Expressions of the like kind, manifesting that he was solliciting Aid from *France*, and that he did what in him lay to incite, promote, and encourage an Invasion from Abroad, and the Rebellion at Home.

This Gentlemen, is the Nature of the Evidence that has been laid before you: The Discovery was accidental, the tracing of it is strange and wonderful. Deep and secret are the Councils of Traytors; and yet we see, let them be never so cautious, whatever Method they may take to disguise their Treason, whatever subtle Inventions may be used to carry on their Conspiracy, yet the same Providence that has placed his sacred Majesty upon the Throne of his Ancestors, will continue to guard and protect him, and to baffle the Devices of his Enemies. Upon the whole Matter, we think we have fully prov'd the Treason and the Overt-Act laid in the Indictment.

We think it may reasonably be concluded from the Evidence, that the Prisoner has conspired, consulted, and agreed to raise and levy War within this Kingdom, to depose and murder the King; that he has written to and received from his Correspondents Abroad many Letters to procure foreign Assistance for that Purpose; and the Court will inform you, Gentlemen, that this is Treason in the Prisoner at the Bar.

L. C. Baron. Gentlemen of the Jury, *Francis Francia* stands indicted of High-Treason, for compassing and imagining the King's Death; contriving to depose him from the Throne, and to advance the Pretender to the Crown. And there are laid in the Indictment several Overt-Acts; one is, that he consulted and agreed to raise an Insurrection and Rebellion against the King: And that for that Purpose he wrote Letters to divers Foreigners, to solicit and procure Arms, Men and Money, and to cause an Invasion; and caused those Letters to be sent to divers Foreigners in *France*.

This is the Substance of the Indictment, and to prove this, it has been shewn you how he was taken and seized. And *Mr. Smith* tells you, it was upon the Nineteenth Day of *September, 1715*. that he had a Warrant to seize him; That he went with another Messenger, since deceased, whose Name was *Wilcox*, and found him and a Woman in Bed. The Prisoner in a little Time got up. He tells you there was a Closet in the Room, the Door whereof he caused to be open'd, and in it, upon a Shelf, found a Parcel of Letters lying open in Folio, wrote in *French*, and a Book, that has been produced, lying upon the Desk. He put up the Letters and the Book together; when he had so done, says the Prisoner, *What do you take that Book for? That is my Copy-Book of my Letters to my Correspondents, and there is nothing material in that.* The Messenger took notice of a sort of Writing at the End of it, that he knew it by again, and the Prisoner said, *That was his Son's Writing.* It has been deduced to you, that the Book and the Letters that have been produced to you, are the same Book and Letters that were seized in the Prisoner's House, and carried to my Lord *Townshend's* Office.

Mr. Walpole tells you on what Day the Warrant was granted, and that the next Day the Book and Papers were delivered to him by the Messenger; that he looked over them with *Mr. Buckley*, and then he carried them to my Lord *Townshend*; and that the Prisoner owned the Letters upon his Examination before my Lord, and said, *This is my Book of my Letters to my Correspondents; some of them were enter'd by me, and the rest of them by my Son.* This is prov'd to be the same Book; and upon Perusal of the Letters, *Mr. Walpole* proves them to be the same that were brought to him by the Messenger.

Mr. Buckley says, that when these Letters were brought to the Office, he read several of them; and that when *Mr. Walpole* went to *Holland*, they were left with him, and he copied several Passages out of them. *Mr. Buckley* was present at the Prisoner's Examination, but can't say any thing as to the Book's being shewn to him, because he was busy in taking the Examination; but says, that *Francia*, upon his Examination, would not be sworn upon a *New Testament*; but took a Book out of his Pocket, and was sworn upon that, that his Examination was true. He subscribed his

Name to it, and it was read over to him. It was objected, that he was refused the Liberty of reading it: But there was no such Thing; he might have read it, and it was read to him, and he was never refused to read it.

My Lord *Townshend* informs you, that he having received an Information, that a Correspondence was carried on between the Duke *D'Aumont*, the late Duke of *Ormond*, and *Mr. Harvey*, and that Letters past between them by means of the Prisoner, there were Orders sent to the Post-Office, to stop all Letters directed to *Francia*; that the Prisoner being examined before my Lord, own'd all these Letters. And says he, *As to my own Letters, I appeal to my Book which will shew them, these are so many Evidences that he owned this Book to be the Book of his Letters. What others write to me, says he, can't affect me; but as for my own Letters I appeal to my Book.* My Lord says, there seem'd to be a Disposition in him to tell all he knew, and he offered to explain the Letters there produced; that at the next Time *Mr. Harvey's* Letter was produced, and he explained the Figures in that Letter; and my Lord *Townshend* then took him to be sincere, but he found afterwards, that he had not discovered all he knew. These Letters were laid upon the Table during the Time of the Examination, and were taken back again. The Prisoner asked several Questions about Money being given him, and more offered to him, by my Lord *Townshend*. My Lord gave an Account of that, and says, that the Prisoner pretended to be in a miserable Condition, his Wife starving, and he begg'd hard for something, pretending to be miserably poor; and as he was going away, as meer Alms, my Lord gave him three, or four, or five Guineas, not as any Encouragement to him to swear any Thing, but as meer Alms, because he begged so hard, and pretended to be in so miserable a Condition. Then he desired to know, whether it was not promis'd him, that his Examination should not be produced against him. He was told, that if he was candid there should be no Advantage taken against him, and that my Lord would intercede on his Behalf; and if he had been so, no doubt, my Lord would have done what he could to incline the King to be favourable to him; but after this my Lord found he knew a great deal more than he would discover. His Wife came indeed to my Lord, and pretended she could prevail upon him to discover, if she might be admitted to him; but after this, when he was in *Newgate*, a Letter was found directed to his Wife, in which he said, he met with good Company in *Newgate*, and hoped he had said nothing against *Mr. Harvey* which would prejudice him; and upon this, my Lord *Townshend* did not think him so sincere as he pretended to be at first. *Mr. Buckley* proves that Letter to be of his Hand-Writing. In it he desires his Wife to make herself easy, *They were all Tories that were there; he had good Company, and the Business will be at an End in a Fortnight.* What Business could he mean? Nothing but that about which the Correspondence was, and *God will assist us; I know nothing against Mr. Harvey, he is only suspected to be for the Affair, he was well known to be so before; and if all were here that are so, he believed three Parts of the Nation would be there.* So that he had a good Opinion of the Cause, and that it would be over in a Fortnight.

This

This Examination was also prov'd by Mr. *Stanbope*, who says, that the Letter of Mr. *Harvey* annexed to it, was produc'd at Council to Mr. *Harvey*; that he was in the utmost Confusion, chang'd Countenance, desired to withdraw, and to have liberty to speak to a certain Lord: My Lord *Townsbend*, and Mr. *Stanbope*, both thought him in a good Disposition to discover, but that very Night he stabb'd himself. As to the Examination, he pretended he was not suffer'd to read it; but Mr. *Stanbope* says, that every thing of Consideration was repeated more than once or twice; and after the first Night's Examination, he represented himself to be in a miserable Condition, and thereupon my Lord *Townsbend* did give him some Money, what it was he knows not; and this was after he had sign'd his Examination, and shew'd no Reluctancy to it; and says, that he would not have been denied to have read it, if he had desired it. This Examination being thus proved, it appears to have been taken as fairly and carefully in all respects, and with as much Kindness to the Prisoner as could be: Things were gone over and over again. It has been read, and there are some things in that explain this Correspondence, and tell you how it was begun and carried on.

It was begun by means of a Law-Suit that was recommended to him to manage here, and that brought on the Correspondence between him and the Abbot *Butler*: This begun a little before the Queen's Death, and it continu'd till within a few Days of the Prisoner's Examination. During that Correspondence he received several Letters from the Abbot, directed to Mr. *Harvey*, and several were conveyed to the Abbot from Mr. *Harvey*, which were sometimes brought by Mr. *Harvey* himself, and sometimes sent by other Hands. The Prisoner also explains the initial Letters and Numbers in Mr. *Harvey*'s Letter, and then tells you, that he believes the Subject Matter of the Letters wrote to Mr. *Harvey*, by *Payen aliàs D'Aulmay*, was the Design of the Pretender to invade these Kingdoms; this he could not know unless he had been privy to the Design. If a Man is privy to a treasonable Design, and contributes to carrying it on, it is not then barely a Misprision: If he comes to the Knowledge of Treason, without being otherwise concern'd in it, and does not discover it to a Magistrate, this is Misprision of Treason; but if he assents to the Treason, or acts in carrying it on, it is High-Treason.

In the next Examination it is, that he shews what the Marks in Mr. *Harvey*'s Letter signify: That 22 is the Duke *D'Aumont*, 6 the French King, 17 is the Word Tory, and believes that by 8 is to be understood the Pretender, and by 9 is to be understood his Majesty. There are some Marks that he don't know, but his knowing thus far the Signification of these Marks, shews that he was privy to the Design.

Mr. *Harvey*'s Letter is annex'd to this Examination, and that has been read to you; there are some Things remarkable in that Letter, though a great part of it seems to be about some Money that he wanted to be paid him; yet at the end he says, *Press 22 to think of his Friends; it will be well for 6; all Things look well for 8, and in my heart, I think better than ever; 9, says he, Every Day loses himself, and for the 24000 that makes for 8 and 6, that is, for the Pretender and the French King.* He says, that opening the Cover the Let-

ter stuck to the Seal, and that was the reason that he kept it by him, and did not send it forward. If this Man had not been for carrying on the Design, it had been his Duty to have carried this Letter to the Secretary of State, he ought to have discover'd it to a Magistrate; but instead of that, he owns, that he has since written other Letters that have been read to you.

At the beginning of the Correspondence *D'Aulmay* desires to have some News, and *Francia* tells him, there was a Discourse of a Marriage in Forwardness between the Prince at *Lorraine* and the Arch-Dutchess. "Let me know," says he, "what is in it, for it is for the Interest of your Wife, for he had married a Wife whose Name was *Butler*. *D'Aulmay* writes word again, As for the Marriage of the C——r *St. G——e*; but it is in Answer to the former Letter, and it is known that he was called by the Name of the Chevalier *St. George*; so that it must be the same Person. He says, there had been some talk of that Marriage, but no mention had been made of it lately, *I am of Opinion*, says he, *that it will not be a sure way to bring his Affairs to a happy Issue; a Party-War would be of more Advantage: Francia* writes again to *D'Aulmay*, and complains, that some Letters had not been answer'd, tho' entirely for the Affair. And what that Affair is, must be left to you to judge. *Besides*, says he, *I must tell you, that Persons of Fifty or Sixty Thousand Crowns a Year won't run the Hazard of losing such Estates unless more Encouragement is given them; you will be understood if you mention it to that Lord. And I must add, that the Misfortune of a certain Person is more owing to your Delays on the other Side the Water, than to the Party that is against him.* They would have you think, that by Persons of Fifty or Sixty Thousands Crowns a Year, was meant a Person in *France*, that had suffered by being concerned in the Revenues; but it is plain, it is meant of Persons here, that would not Hazard their Estates: And he adds, *You will be understood if you mention this to Duke D'Aumont.*

There are other Letters from the Prisoner; in one he tells *D'Aulmay*, He would advise them to satisfy Mr. *Harvey*, *I am persuaded to deal with him as has been done is no good Policy; and if ever I have the Honour to talk face to face with you, I will shew you clearly, how unhappily, through Negligences, very important Affairs have miscarried; this must be the Affair of the Pretender, and not of the Law-Suit: The Affair that concerned Mr. Harvey, for Mr. Harvey had nothing to do with the Law-Suit, but by his Letter shews himself to be concerned for what makes for 8 and 6, that is for the Pretender and French King.*

There is another Letter from *Francia*, wherein he writes, *What you tell me at the End of your Letter, of your having spoken in the manner I desir'd you, is sufficient, and consequently we are now to expect every Thing from your Side of the Water, that is to say, Explications, &c.* I must leave it to you to consider what he meant by that.

In another Letter he says, *I am order'd to tell you, on the part of Mr. Harvey, that you will do him a Pleasure in desiring the Duke D'Aumont, in his Name, to send hither some Persons to fetch the Horses and Dogs he has had so long, or else to send Orders to some Body to take them: Affairs are here in such a Situation, that great Precautions must be used to avoid giving Umbrage to those who are in Power. When I have any thing particular to*

write to you, I will do it by a strange Hand, and will sign Jacques Chrétien. Take Notice of this, and provided you let me know you received this Letter, without its having been opened, I shall be easy. There then began to be more Difficulty, and therefore the Correspondence must be carried on in that Name, and in a strange Hand.

In another Letter he writes, *Mr. Harvey gives his Service to you, and bid me tell you, when any thing new offers, if he cannot write himself, he will get J. C. to write for him. That must be Jacques Chrétien.*

Then there are other Letters from *D'Aulmay* to *Francia*, which were found in the Prisoner's Custody; and several of them import his having received Letters from *Francia*. In one of them *D'Aulmay* says, *You are in the right to inveigh against the Indolence you reproach us with; but be persuaded, 'tis only so in Appearance. I even hope, that by this Time, you have convincing Proofs of it, and that suitable Returns are made to the good Dispositions of your side.* This grew near the Time of the Rebellion. This Letter was dated the 7th of August, and the Rebellion broke out in October: He goes on, *And that at last, God Blessing the just Cause of our Friend, will let him gain his Suit; at least, Assistance and powerful Sollicitations shall not be wanting.*

There are other Letters which shew he knew the Design, and was privy to it; *Our Friend's Cause will soon be ready, God willing, to be tried.* That could not be the Law-Suit depending on this side the Water; for that Letter was wrote from France; and he says, *All Preparations are making for it. The Friend who is related to my Wife, that is, the Duke of Ormond, has read your two Letters, and is mightily pleas'd with them.* Which implies, that he had wrote Letters, tho' they are not entered in the Copy-Book.

Then he writes upon the 24th of August, under the Name of *Payen*; *I am very much astonish'd I did not hear from you by the Post which arriv'd Yesterday. Our Friend was at my House expecting it. We both of us desire you not to let one Post go without writing to us, and letting us know all that passes relating to the Cause of our common Friend.* That can't be the Cause of *Butler's* or *D'Aulmay's* Friend that was depending here. There are several other Letters which have been read to you, which mention both those Causes, and shew that he made a Distinction between them.

On the 14th of September, says *D'Aulmay*, *The Contents of your last without a Date were very agreeable to me, as well as to all our Friends, who give you Thanks for it, and have order'd me to tell you so, and to desire you to continue. We know already Part of what you tell us about the Cause of our Friend, which will soon end (please God) to his Satisfaction, or all Appearances would deceive us. As to my own Cause, I can't help telling you, that my Fate is very unhappy to have to do with so dishonest a Man.*

I think this is the Substance of most of the Letters that have been read to you, which relate to his Correspondence, in endeavouring to procure the Pretender to make an Invasion here.

Upon these Letters it has been observ'd, that the Cause of the Pretender is one, and the Cause of the Law-Suit is another; but in all these Letters there is plain Mention made of the Pretender; advising how to bring it on, and giving Intelligence about it. And these Letters being in the Prisoner's Custody, and written to him, and

having such Treason in them as is mentioned; and he keeping these Letters by him, is a great Evidence that he assented to the Transaction, and to the endeavouring to bring the Pretender over, and to contrive, as well as he could, to carry on the Affair. If he had receiv'd but one Letter, and did not design to promote the Cause, he should have carried it to the Secretary of State, and then he had done his Duty. But to receive so many Letters, and to keep them so long, is an Evidence that he assented to the Matter, and that he did write such Letters as are mentioned to be received from him.

On the Behalf of the Defendant, there was an Objection made by his Counsel, that the Defendant is an Alien born; and that is an Objection to the Indictment. He is indicted as a natural born Subject, and they have examined several Witnesses to prove him an Alien. The Proof is strong, and you will find him an Alien, and so that matter must be left specially for the Judgment of the Court, and you must find the other Fact: And if you believe that he did promote the Invasion, or conceal and assent to that Design, that is, a conspiring the Death of the King, then he will be guilty of the Treason charg'd in the Indictment.

It has been objected, that in one of the Letters, the Person who wrote those Letters complains, that he had not heard of the Prisoner in three Months; but that is a Mistake, for that was in a Postscript wrote by another Person, and in a different Hand; for the very same Letter shews, that there were Letters received from him within that Time.

They say, there is no direct Proof that he intended the Life of the King; but if he kept a Correspondence, and promoted the intended Invasion, that is in Law conspiring the Death of the King.

They have produced some People who have given an extraordinary sort of Evidence, of what *Mr. Buckley* and my Lord *Townshend* should say about this Matter, as if they promised him great Things, if he would swear against *Mr. Harvey*. *Simon Francia* said, that *Mr. Buckley* told him, if his Brother would swear against *Mr. Harvey*, he should have a good Reward; and that my Lord *Townshend* said, he had given him Five Guineas, and he should have more.

Lucy White said, that she was in *Newgate*, and *Francia* desir'd her to conceal her self when *Mr. Buckley* came: That *Mr. Buckley* told him, he must swear right or wrong for the Government; and if he did not swear against *Mr. Harvey*, *Mr. Buckley* would charge him with High-Treason, for he had cheated my Lord *Townshend* of his Money, and done nothing for it.

Mary Meggison swears, that *Mr. Buckley* should say, he would swear against him, because he had cheated my Lord *Townshend* of Five Guineas, and would not swear against *Mr. Harvey*.

Mr. Buckley was called again, and he denies it: He says there was no such Thing. And it seems improbable that a Man of his Credit should talk thus to the Prisoner; therefore the Credit of *Mr. Buckley* must be left to you, against the Credit of those two Women. He tells you that *Francia* sent to him, to desire to speak with him, not about *Mr. Harvey*, but on Behalf of one *Flint*, who is a Prisoner in *Newgate*, and was concern'd in writing the *Shift Shifted*; and

Francia

Francia sent a Message to Mr. *Buckley*, that he could do a Service in suppressing it. Mr. *Buckley* went to him, and he desired some Favour on Behalf of *Flint*, which was granted: And Mr. *Buckley* denies he had any Discourse with the Prisoner about Mr. *Harvey*.

Revell was called, and he proves, that *Francia* sent him to Mr. *Buckley*, to desire he might speak to him. That he order'd *Revell* to stand at the Door, and he did so, but did not hear what they said.

My Lord *Townsbend* tells you, that Mr. *Buckley* gave him an Account, that *Francia* had sent to him, for the Purpose which he mentioned before: That my Lord ordered him to go: That he went accordingly, and he gave my Lord an Account what he had done about the Matter, and *Flint* had some Favour shewn him.

As to *Simon Francia*, my Lord says, he was several Times with him, but my Lord never proposed any Reward for Swearing against Mr. *Harvey*; but told him, his Brother must deal openly, and tell all he knew, and that was the way to recommend himself to Favour.

As to the two Women, their Credit must be left in Opposition to my Lord *Townsbend* and Mr. *Buckley*, which of them you will believe, for they deny what the others have sworn.

Then they call another Witness *Everall*, he tells you, that the Prisoner's Foreign Letters were brought to his House; that they lay in an open Window, and sometimes remained there some Days, and any Body might see them; and from thence they infer that they must be of no great Consequence? But how can you infer that? Who can tell by the Superscription of a Letter who it comes from, or what are the Contents of it; but these People can't say that these were all the Letters that were sent to him.

There is an Objection made to the Book; a Witness says, he has looked upon it, and that none of the Book seems to be of his Hand-writing; he says, *Francia* writes a fuller Hand. *Simon Francia* has look'd upon it, and says, not a Syllable is of his Writing; and others tell you, they believe it is not his Hand, and that he was three Months lame of a Rheumatism. As for that, it is not material whose Writing it is, if it contains the Copies of his Letters, and he has own'd before three Witnesses, That it is the Copy-book of his Letters:

Dr. *Cade* tells you he was ill, and thence they infer, that it is not probable that he should write Letters so constantly as he did. He tells you, that from the Second of *November 1714.* to the

Eighteenth of the same Month, he was in pain in one of his Hands, but does not know which of them, nor whether he was able to write: But this was before this Correspondence by Letters that have been read to you began.

Then they call some Witnesses to his Reputation: One tells you, that in Discourse with him about the late Peace, he said, it would ruin the Nation; that sort of Evidence is of no Signification. Mr. *Slater* has known him four or five Years; there was a Commission of Bankruptcy against him, on which Occasion he became acquainted with him. He says, he always seemed to espouse the Interest of the King of *France*, but he always laugh'd at our Parties among ourselves. Those that were for the Interest of *France*, would of Consequence laugh at our Divisions.

Richardson says, that he used to go to the Prisoner often in his Sickness, and knows no harm of him: That *Francia* liked him, and called him *Vulcan*, and bid him drink King *George's* Health, and drank it himself.

This is the Substance of the Evidence that has been given on both Sides: Now, if you believe these Letters were wrote to him and by him, and that they contain a Correspondence of a treasonable Nature, inciting or encouraging any Persons to levy War against the King, or any thing which shews that he was privy and assenting to it, then he is guilty of High-Treason. If you don't believe those Letters were his, or that they don't amount to such a Correspondence, then you must acquit him.

If you find him Guilty, then you must also find that he was born in *France*, and is an Alien.

Then the Jury withdrew to consider of their Verdict; and when they return'd into Court, were called over, and answered to their Names.

Cl. of Arr. Gentlemen, are you all agreed on your Verdict?

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. *Francis Francia*, Hold up thy Hand, Which he did.

Look upon the Prisoner, how say you? Is he Guilty of the High-Treason whereof he stands Indicted, or Not Guilty?

Foreman. Not Guilty.

Whereupon the Prisoner was discharged:



CLXXXVIII. *Proceedings against Robert Earl of Oxford, before the House of Lords, upon an Impeachment for High-Treason, and other High-Crimes, and Misdemeanours, June 24, 1717. 3 GEO. I.*



HE Earl of *Oxford* having been impeached by the House of Commons, and been confin'd near two Years in the *Tower*, without being brought to a Trial, presented a Petition to the House of Lords, setting forth his long Confinement, submitting his Case to their Lordships Consideration, and praying that his Imprisonment might not be indefinite.

Upon this Petition some of the Lords urged, That the Impeachment was *ipso facto* destroyed and determin'd, since he was not brought to Trial the same Session in which he was impeach'd, and that the Prorogation was an actual *Superfedeas* to the whole Proceedings; however, the Vote of the House pass'd to the contrary, and the Earl of *Nottingham*, who had insisted strenuously upon it, enter'd his Protestation against it.

This being over-ruled the Duke of *Buckingham* moved to appoint a short Day for the Earl's Trial, which after some Debates was fix'd for the 13th of *June*, and afterwards at the Desire of the House of Commons was deferr'd till *Monday* the 24th, on which Day the Lords came from their House at twelve o' the Clock in their Robes and went into the Court in *Westminster-Hall*, in their usual Order.

The Lords being seated in their Places, (and the Commons in a Committee of the whole House being in their Seats, and the Managers for the House being also in Places appointed for them;) The House was resumed.

Then Proclamation was made as follows, *viz.*

Serjeant at Arms. O Yes, O Yes, O Yes! Our Sovereign Lord the King doth strictly charge and command all Manner of Persons to keep Silence, on Pain of Imprisonment.

Then the Commission for appointing a Lord High-Steward was (after three Reverences made in coming up from the Clerk's Table) presented to the Lord High-Steward sitting upon the Woolfack, by the Clerk of the Crown in Chancery on his Knee; and the same being brought to the Table, Proclamation was again made for keeping Silence.

William Lord Cowper. *L. H. Steward.* My Lords, his Majesty's Commission is about to be read; your Lordships are desired to attend to it in the usual Manner, and all others are likewise to stand up uncovered while the Commission is reading.

Then the said Commission was read (all the Lords and others standing up uncovered) as follows.

GEORGIUS R.

Georgius, Dei Gratia, Magnæ Britanniae, Franciæ & Hiberniæ Rex, Fidei Defensor, &c. Prædilecto & Fideli Consiliario Nostro Willielmo Domino Cowper, Cancellario nostro Magnæ Britanniae, Salutem. Cum Robertus Comes de Oxon^o & Comes Mortimer, coram Nobis in Parlamento per Milites, Cives & Burgenses in Parlamento nostro Assemblat^o de alta Proditione & aliis Atrocissimis Criminibus & Offensis per ipsum Robertum Comitem Oxon^o & Comitem Mortimer commiss^o & perpetrat^o in nomine ipsorum Militum Civium & Burgensium & nomine omnium Communium Regni nostri Magnæ Britanniae Impetit^o & Accusat^o existit. Nos Considerantes quod Justitia est Virtus Excellens & Altissimo Complacens, volentesq; quod prædictus Robertus Comes de Oxon^o & Comes Mortimer de & pro proditione & aliis Criminibus & Offensis unde ipse ut præfertur Impetitus & Accusatus existit coram Nobis in præsentis Parlamento nostro, secundum Legem & Consuetudinem hujus Regni nostri Magnæ Britanniae, & secundum Consuetud. Parlamenti audiatur, examinetur, sententietur & adjudicetur, cæteraq; omnia quæ in hac parte pertinent debito modo exercentur & exequantur; ac pro eo quod Procures & Magnates in præsentis Parlamento nostro Assemblat^o Nobis humilime supplicaverunt ut Senescallum Magnæ Britanniae pro hac Vice Constituere dignaremur: Nos de Fidelitate, Prudentiâ, providâ Circumspectione & Industriâ Vestris plurimum Confidentes, Ordinavimus & Constituimus Vos ex hac Causa Senescallum Magnæ Britanniae ad Officium illud, cum omnibus eidem Officio in hac parte debit^o & pertinen^o hac vice Gerend^o Occupand^o & Exercend^o & ideo vobis Mandamus quod circa præmissa diligenter Intendatis & omnia quæ in hac parte ad Officium Senescalli Magnæ Britanniae pertinent & requiruntur hac vice faciatis, exercentis & exequimini cum effectu. In cujus rei Testimonium has Literas nostras fieri fecimus Patentes, Teste meipso apud West^o Vicefimo Quarto Die Junii, Anno Regni nostri Tertio.

Per ipsum Regem propriâ Manu Signat^o

Wrighte.

Then the Herald and Black-Rod, making three Reverences as they came up, presented, kneeling, the Staff to the Lord High-Steward; who thereupon standing up, made a Reverence to the Lords; and then, being attended by the Herald, Black-Rod, and Purse-Bearer carrying the Purse,

Purse, proceeded to the Chair placed on the second Step of the Throne.

Who having again made a Reverence to the Lords, he seated himself in the said Chair, and gave the Staff to the Black-Rod on his Right-Hand, the Purse-Bearer standing on his Left.

Serj. at Arms. O Yes, &c. (as before.)

Lord High-Steward. Make Proclamation for the Lieutenant of the *Tower of London* to bring the Prisoner to the Bar.

Serj. at Arms. O Yes, O Yes, O Yes! Lieutenant of the *Tower of London*, bring forth your Prisoner to the Bar, according to the Order of the House of Lords to you directed.

Then the Earl of *Oxford* came to the Bar, and kneeled for some time.

L. H. Steward. Your Lordship may rise.

Then the Earl of *Oxford* rose up.

Serj. at Arms. O Yes, &c. (as before.)

L. H. Steward. Clerk read the Articles of Impeachment.

The Clerk read the Articles, as followeth.

ARTICLES of Impeachment of *High-Treason, and other High Crimes and Misdemeanours, against Robert Earl of Oxford and Earl Mortimer.*

WHEREAS many solemn Treaties and Alliances have been formerly entred into between the Crown of *England*, and other Princes and Potentates of *Europe*, for their mutual Safety, and from the Considerations of the common Danger, which threaten'd all *Christendom*, from the immoderate Growth of the Power of *France*. And whereas the preventing the Monarchy of *Spain* from coming into the Hands of the House of *Bourbon*, has for many Years been a fundamental Principle and Maxim of Union among the Allies, in order to preserve a just Ballance of Power in *Europe*: And to that end, as the Designs of *France* on the Monarchy of *Spain* have from time to time appear'd, new Treaties and expres Stipulations have been enter'd into amongst the Allies, to strengthen themselves against that approaching Danger: And, on this Foundation, a Treaty for an intended Partition, whereby a small Part only of the Dominions of the Crown of *Spain* was allotted to the House of *Bourbon*, was condemned by the Wisdom of Parliament, as being highly prejudicial, and fatal in its Consequences to *England*, and the Peace of *Europe*: And whereas the Duke of *Anjou*, Grandson to the King of *France* on the Demise of *Charles* the Second, King of *Spain*, took Possession of the entire Monarchy of *Spain*, whereby the Ballance of Power, the Protestant Religion, and the Liberties of *Europe* were threaten'd with immediate Danger; whereupon *Leopold*, then Emperor of *Germany*, his late Majesty King *William* the Third, of ever-glorious Memory, and the States-General of the *United Provinces*, finding at that most critical Juncture, that a strict Conjunction and Alliance between themselves was become necessary, for repelling the Greatness of the Common Danger, from so great an Accession of Power to the then common Enemy, did, in the Year of our Lord one Thousand Seven Hundred an One, make, form, and conclude a new Treaty and Alliance, whereby it was agreed, That there shall be and continue between the said Confederates, his sacred Imperial

Majesty, his sacred Royal Majesty of *Great Britain*, and the Lords the States-General of the *United-Provinces*, a constant, perpetual, and inviolable Friendship and Correspondence, and that each Party shall be obliged to promote the Advantages of the other, and prevent all Inconveniencies and Dangers that might happen to them, as far as lies in their Power: That the said Allies, desiring nothing more earnestly than the Peace and general Quiet of all *Europe*, have adjudged that nothing can be more effectual for the Establishment thereof, than the procuring an equitable and reasonable Satisfaction to his Imperial Majesty for his Pretension to the *Spanish* Succession, and that the King of *Great Britain* and the States-General may obtain a particular and sufficient Security for their Kingdoms, Provinces and Dominions, and for the Navigation and Commerce of their Subjects: That the said Confederates therefore shall, in the first Place, endeavour, by amicable Means, to obtain the said Satisfaction; but if, contrary to their Expectation and Wishes, the same is not had, the said Confederates do engage and promise to one another, that they will assist each other with all their Forces according to a Specification to be agreed upon in a peculiar Convention for that purpose: That the Confederates in order to the procuring the Satisfaction and Security aforesaid, shall, amongst other Things, use their utmost Endeavours to recover the Provinces of the *Spanish Low-Countries*, that they may be a Fence and Rampart, commonly called a Barrier, separating and dividing *France* from the *United Provinces*, for the Security of the States-General, as they have serv'd in all Times, 'till of late that the most Christian King has seiz'd them by his Forces; as likewise the Dutchy of *Milan*, with its Dependencies, as a Fief of the Empire, and contributing to the Security of his Imperial Majesty's hereditary Dominions; besides the Kingdoms of *Naples* and *Sicily*, and the Lands and Islands upon the Coast of *Tuscany* in the *Mediterranean*, that belonged to the *Spanish* Dominions, and may serve to the same Purpose, and will also be of Advantage to the Navigation and Commerce of the Subjects of the King of *Great Britain*, and of the *United-Provinces*: That in Case the Confederates shall be forced to enter into a War, for obtaining the Satisfaction aforesaid for his Imperial Majesty, and the Security of his Majesty of *Great Britain*, and the States-General, they shall communicate their Designs to one another, as well in Relation to the Actions of the War, as all other Things wherein the common Cause is concerned: That it shall not be permitted to either Party, when the War is once begun, to treat of Peace with the Enemy, unless jointly, and by a Communication of Counsels; and no Peace shall be made, unless an equitable and reasonable Satisfaction for his Imperial Majesty and the particular Security of the Kingdoms, Provinces, Dominions, Navigations and Commerce for his Majesty of *Great Britain*, and the States-General, be first obtained; and unless Care be taken, by fitting Security, that the Kingdoms of *France* and *Spain* shall never come and be united under the same Government, nor that one and the same Person shall be King of both Kingdoms; and particularly that the *French* shall never get into the Possession of the *Spanish Indies*, neither shall they be permitted to sail thither on the Account of Traffick, directly or indi-

indirectly, or any Pretence whatsoever; And lastly, unless full Liberty be granted unto the Subjects of the King of *Great Britain*, and the States-General, to exercise and enjoy all the same Privileges, Rights, Immunities, and Franchises of Commerce by Sea and Land in *Spain*, the *Mediterranean*, and all Lands and Places which the King of *Spain* last deceased did possess at the Time of his Death, as well in *Europe* as elsewhere, which they used and enjoyed, or which the Subjects of both, or either of them, by any Right acquired by Treaties Agreements, Customs, or any other Way whatsoever, might have used and enjoyed before the Death of the late King of *Spain*: That at the said Time that the said Agreement or Peace shall be made, the Confederates shall agree amongst themselves about all the Things that they shall think necessary for maintaining the Navigation and Commerce of the Subjects of his Majesty of *Great Britain*, and the States-General, in the Lands and Dominions they may acquire, and that were possessed by the late deceased King of *Spain*, and also in what manner the States-General may be secured by the aforesaid Fence or Barrier. And whereas his said late Majesty King *William*, and the States-General, seriously considering, that *France* was then become so formidable from the Accession of *Spain* to the Duke of *Anjou*, that, in the Opinion of all the World, *Europe* was in Danger of losing her Liberty, and undergoing the heavy Yoke of Universal Monarchy, and that the surest Means of effecting that Design, were to divide the King of *Great Britain* from the States-General, for which Purpose all imaginable Efforts would be made; they therefore thought it necessary to unite in the strictest Manner that was possible, and to that End a Defensive Treaty and Alliance was concluded and entered into between them, in or about the Month of *November*, One Thousand Seven Hundred and One, wherein it was among other Things, agreed, That in case the said High Allies should be jointly engaged in War, by Reason of this Defensive Alliance before-mentioned in the fifth Article, or on any other Account, there shall be an Offensive, and Defensive, and perpetual Alliance between them, against those with whom the War shall be, and all their Forces shall be employed by Sea and Land, and they shall act in conjunction or separately, as it shall be agreed between them. That since, in the Alliance with the Emperor made in *September* last, particular Care was taken of the Recovery of the *Spanish Low-Countries*, out of the Hands of the most Christian King, the said Confederates expressly engage to aid one another with all their Forces for the Recovery of the same. And in regard the principal Interest of the said Confederates consists in the Preservation of the Liberties of *Europe*, the before-mentioned Treaty with the Emperor shall be faithfully and sincerely executed, and both Sides shall guaranty the same, and use their Endeavours to confirm and render it more strong from Time to Time: That in making Peace, particular Care shall be taken of the Commerce and Traffick of both Nations, as also for their Security, as well in regard to the *Low-Countries*, as the Countries adjacent: That when the War is begun, the Confederates shall act in concert, according to the seventh and eighth Articles of the Treaty of the Third of *March*, in the Year of our Lord One Thousand Six Hun-

dred Seventy Seven-Eight, between *England* and *Holland*, which is hereby renewed and confirmed; and no Peace, nor Truce, or Suspension of Arms, shall be negotiated or made, but according to the ninth and tenth Articles of that Treaty; by which it was agreed, that when the two Allies come once to an open War, it shall be lawful for neither of them afterwards to come to any Cessation of Arms with him who shall be declar'd and proclaim'd an Enemy, without it be done conjointly, and with common Consent: That no Negotiation of Peace shall be set on Foot by one of the Allies, without the Concurrence of the other: That each Ally shall continually, and from Time to Time, impart to the other every thing that passes in the said Negotiation, and shall stipulate with the common Enemy for the same Rights, Immunities, Exemptions and Prerogatives for his Ally, as he does for himself, if so be the said Allies do not agree to the contrary. And whereas the *French* King having got Possession of a great Part of the *Spanish* Dominions, exercised an absolute Authority over that Monarchy, having seized *Milan* and the *Spanish Low-Countries* by his Armies, and made himself Master of *Cadiz*, of the Entrance into the *Mediterranean*, and of the Ports of the *Spanish West-Indies* by his Fleets, every where designing to invade the Liberties of *Europe*, and to obstruct the Freedom of Navigation and Commerce; and instead of giving the Satisfaction that ought justly to be expected, had proceeded to further Violences, and had taken on him to declare the pretended Prince of *Wales* King of *England*, *Scotland*, and *Ireland*, and had also influenced *Spain* to concur in the same Affront; her late Majesty Queen *Anne* taking notice, that she found herself obliged, for maintaining the Public Faith, or vindicating the Honour of the Crown, and to prevent the Mischiefs which all *Europe* was threaten'd with, to declare War against *France* and *Spain*; did according, in the Month of *May*, One Thousand Seven Hundred and Two, in the most public and solemn Manner, declare War against *France* and *Spain*; and in the said Declaration, placing her entire Confidence in the Help of Almighty God, in so just and necessary an Undertaking, declared, That she would, in conjunction with her Allies, vigorously prosecute the same both by Sea and Land, being assured of the ready Concurrence of her Subjects, in a Cause they had so openly and heartily espoused. And his Imperial Majesty and their High Mightinesses, pursuant to the Treaties afore-mentioned respectively, in or about the said Month of *May*, One Thousand Seven Hundred and Two, did likewise declare War against *France* and *Spain*. And whereas the Kings of *Portugal* and *Prussia*, the Electors of *Hanover*, *Saxony*, *Treves*, *Mentz*, Palatine of the *Rhine*, the Duke of *Savoy*, the Prince of *Hesse*, the Dukes of *Wolfenbuttle*, *Mecklenburg*, and *Wirtemberg*, the Circles of *Suabia* and *Franconia*, and of the *Upper Rhine*, the Bishops of *Munster* and *Constance*, and other Princes and Powers, being invited by the said Grand Alliance, and relying on the Faith thereof, did afterwards become Parties to the said Confederate War against *France* and *Spain*; and in the Treaty entered into in or about the Month of *May*, One Thousand Seven Hundred and Three, between his Imperial Majesty, the Queen of *Great-Britain*, the States-General, and the King of *Portugal*, it is amongst other things, expressly stipulated, that

no Peace nor Truce shall be made, but by the mutual Consent of all the Confederates; nor shall any at any time be made, while the second Grandson of the most Christian King by the Dauphin, or any other Prince of the Line of *France* continues in *Spain*, nor unless the Crown of *Portugal* shall fully possess and enjoy all the Lands, Kingdoms, Isles, Castles, Cities, Towns, &c. with their Territories and Dependencies in *Spain*, or elsewhere, which it now possesses. And in the Treaty of *Nordlingen*, ratify'd by her late Majesty, it is, amongst other things, expressly agreed, that it shall not be allow'd to make particular Treaties, but the Peace shall be jointly treated of, and shall not be included without obtaining, as far as is possible, the Re-union of the Lands belonging to the Circles, and until at least the Security of the associated Circles be absolutely provided for, in the best manner that is possible, and better than it has formerly been. And whereas to give the greatest Strength that was possible to the Union, so necessary to both Nations, her late Majesty and the States by a Treaty in the Month of *June*, One Thousand Seven Hundred and Three, renewed and confirmed all Treaties and Alliances then subsisting between them; and therein it is, amongst other things, expressly and particularly stipulated, that as the said most serene Queen, and the Lords the States-General are now in War with *France* and *Spain*, and are reciprocally bound to assist each other, and mutually to defend, maintain, and preserve their Countries and Subjects in their Possessions, Immunities, and Liberties, as well of Navigation and Commerce, as other Rights whatsoever by Sea and Land, against and in Opposition to all Kings, Princes, and States, and particularly against *France* and *Spain*, to the end a just and reasonable Peace may the better be obtained, that may establish the Repose and Tranquillity of *Europe*, it is agreed between the most Serene Queen of *Great Britain*, and the said Lords the States-General, that neither of the said Allies shall make a Suspension of Arms, or a Peace with *France* or *Spain*, or any other King, Prince, or State, who shall molest or attac either of the said Allies, but in Conjunction and by common Consent. And whereas the said War was for several Years carry'd on with Vigour and Unanimity by her Majesty and her Allies, at a vast Expence both of Blood and Treasure; for the Support of which, on the Part of *England*, many Millions have been granted by Parliament, who, on many Occasions since, continued not only to express their Sense of the Justice and Necessity of the War, but did frequently give their humble Advice to the Throne, that no Peace could be Safe, Honourable, or Lasting, so long as the Kingdom of *Spain* and the *West-Indies* continued in the Possession of any Branch of the House of *Bourbon*. And whereas it pleased Almighty God to grant to the Confederate Arms, under the Command of their Great and Victorious General the Duke of *Marlborough*, such unparallel'd Successes as exceeded even their own Hopes and the Fears of the Enemy; and by the many signal Victories of *Schellenberg*, *Hochstet*, *Audenarde*, and *Ramellies*, as well as by the Conquests of the Electorates of *Bavaria* and *Cologne*, and the Reduction of the *Spanish Netherlands*, and many other great Advantages both by Sea and Land; and by the Wisdom and Unanimity of their Counsels, the Glory of the Confe-

derate Arms, and the Reputation of *Great Britain* in particular, was rais'd to an higher Pitch than in any former Age. And whereas her late Majesty, in Conjunction with her Allies, wisely foreseeing, that wherever the Enemy should be brought to make Overtures of Peace, the surest way to put an End to the War, and prevent *France* from putting in Practice her usual Intrigues, was, by previously insisting on such Conditions from *France*, that nothing might remain to be done in a General Assembly, but to give them the Form of a Treaty; and for these Reasons, a Preliminary Treaty was concluded on, and was afterwards sign'd by the Plenipotentiaries of his Imperial Majesty, of her late Majesty the Queen of *Great Britain*, and of the Lords the States-General of the United Provinces, and afterwards ratified by their Principals; wherein the Interests of the several Allies were adjusted, in order to a General Treaty of Peace with *France*: and therein the Restitution of the *Spanish* Monarchy to the House of *Austria*, being one of the chief Causes for carrying on the War, is laid down as an immutable Foundation among the Allies. And whereas in the Year of our Lord One Thousand Seven Hundred and Nine, the King of *France* having first signify'd his Consent to the Restitution of the *Spanish* Monarchy to the House of *Austria*, sent his Ministers to the *Hague* to treat with the Ministers of the Principal Allies on a General Peace; and in the Conferences held thereupon, the Interests of all the Allies, as adjusted in the said Preliminaries, were positively and expressly agreed to by the Ministers of *France*, and particularly that of the Restitution of the entire *Spanish* Monarchy to the House of *Austria*; and the said Negotiation was afterwards broke, on no other Dispute but on the thirty seventh Article of the Preliminary Treaty, concerning the Time and Manner of evacuating *Spain*. And whereas the Conferences being resumed at *Gertruydenberg*, in the Year of our Lord One Thousand Seven Hundred and Ten, the said thirty seventh Article became the only Subject of the Negotiation which was there set on foot, for the finding out some equivalent by which the same Security might be given to the Allies, as they had by the thirty seventh Article of the said Preliminaries; and tho' it was unquestionable, that before any Negotiation was begun, that while the Preliminaries were treating, that by those Preliminaries themselves, that before the last Negotiation was resumed, and all the while it lasted, the Restitution of *Spain* and the *Indies* was laid down as a firm and immoveable Foundation of the Negotiation, and no Question remain'd concerning it with the Ministers of the Allies or those of *France*, but touching the Security for its Execution: And tho' all reasonable and prudent Overtures were made by the Allies for settling an Equivalent, yet the Conferences were broke off by *France* without any Satisfaction therein. And whereas the sincere Intentions of all the Allies to have settled the Peace of *Europe* on solid and equitable Foundations were notorious and incontestable, and the Rupture of the said Negotiations could only be imputed to the Enemy; her sacred Majesty, in Conjunction with her Allies, renew'd their Resolutions to continue and push the War with Vigour, and to make all possible Efforts, as the only Means left to force a good and general Peace. And her Majesty in her Speech from the Throne on the Fifteenth of

November, One Thousand Seven Hundred and Nine, taking notice of the Endeavours of the Enemy during the said Negotiations, to amuse and create Jealousies among the Allies, declared her Resentment thereat, and earnestly recommended the carrying on the War, and a vigorous Prosecution of the Advantages obtained, that she might put the last Hand to that great Work of reducing the exorbitant and oppressive Power which had so long threaten'd the Liberties of *Europe*. And it having pleas'd Almighty God, after the said Preliminary Treaty, to bless the Confederate Army, under the Command of their consummate General the Duke of *Marlborough*, with new and signal Conquests, the Reduction of *Tournay*, the Victory of *Tafnières*, the taking of *Mons* and *Doway*, *Bezhune*, *St. Venant* and *Aire*, and the Penetrating the Lines near the *Scarpe*. And whereas, from the prosperous Condition of the Affairs of the Allies, and the Wisdom, Firmness, and Unanimity of their Counsels, nothing remained, in all human Appearance, but that they should reap the Fruits of all their Victories in a speedy, just, honourable and lasting Peace; and on the other hand, nothing was left to raise the Hopes of the Enemy, whereby to defeat that happy Prospect, but the Success of their secret Endeavours to disunite the Confederacy. And whereas *Robert Earl of Oxford* and *Earl Mortimer*, with other evil-minded Persons, Enemies to the true Interests of their own Country, as well as to the common Liberties and Welfare of *Europe*, having by many wicked Arts and base Insinuations obtain'd Access to her late Majesty *Queen Anne*, and in or about the Months of *July* or *August* One Thousand Seven Hundred and Ten, being admitted into her Councils, and into Places of the highest Trust, and to make way for their wicked Enterprizes, did, by their evil Council and Advice, prevail on her Majesty to dissolve a Parliament which had given the most unquestionable Proofs of their great Wisdom, and of their true Zeal for the common Cause; for which, as well as for the many Marks of Duty and Affection given to her, her Majesty return'd her hearty Thanks, and express'd her great Satisfaction. And whereas the said *Robert Earl of Oxford* and *Earl Mortimer*, and others his Accomplices, had formed a treacherous Correspondence with the Emissaries of *France*, by means whereof certain Propositions were transmitted from *France* to *England*, sign'd by *Monsieur de Torcy*, Secretary of the King of *France*, in the Month of *April* One Thousand Seven Hundred and Eleven, to be the Basis of a Treaty of a General Peace; which Propositions, tho' her Majesty was prevail'd on by the false Counsels of the said *Robert Earl of Oxford* and *Earl Mortimer*, and others, to receive as a sufficient Foundation of a Treaty of a General Peace, and as such to communicate them to the Grand Pensionary and the Ministers of *Holland*, her Majesty however was graciously pleas'd at the same time to declare to them her Pleasure by her Secretary of State, that being resolv'd, in making Peace as in making War, to act in perfect Concert with the States, she would not lose a Moment in transmitting a Paper of that Importance; and that tho' the Propositions were general, and contain'd an Air of Complaisance to her Majesty, and the contrary towards the States; yet that could have no ill Consequences, as long as her Majesty and the States understood one another, and acted with as little Reserve as became two Powers so nearly

ally'd in Interest; and that the Pensionary should be assured, that that Rule should be inviolably kept on her Part. Which gracious Declaration of her Majesty, as well as the said Propositions, being maturely consider'd by the Grand Pensionary and the Ministers of *Holland*, an Answer was return'd from them to her Majesty, full of Duty and Thankfulness for the obliging manner in which she was pleas'd to communicate the said Propositions, and with the utmost Assurances of mutual Confidence, so necessary to prevent the Designs of the Enemy; but more particularly that the States desired, equally with *Great Britain*, to have a general, definitive, and lasting Peace, and declar'd that they were ready to join in all the most proper Measures to procure it; that the Propositions were yet too general, and that the States desire, as *Great Britain* did, that *France* would explain herself more particularly upon the Points therein contain'd, and impart a Plan which she thinks the most proper to secure the Interest of the Allies, and settle the Repose of *Europe*, after which a more particular Negotiation might be enter'd into. Notwithstanding all which Premises,

ARTICLE I.

He the said *Robert Earl of Oxford* and *Earl Mortimer*, having no Regard to the Honour or Safety of her late Majesty or her Kingdoms, or to the many solemn Engagements she was then under to the old and faithful Allies of this Nation, or to the common Liberties of *Europe*; but, being devoted to the Interest and Service of the *French King*, the common Enemy; and being then Lord High-Treasurer of *Great Britain*, and one of her Majesty's most Honourable Privy Council, contrary to his Oath, and in Violation of his Duty and Trust, and in Defiance of the Tenour of the several Treaties afore-mention'd, or some of them, as well as of the frequent Advices of Parliament, and the many Declarations of her Majesty from the Throne; but more particularly in Defiance of the solemn and mutual Assurances which had been so lately renew'd between her Majesty and the States, to act in perfect Concert with them in making Peace as in making War, did on or about the Months of *July* or *August* in the Year of our Lord One Thousand Seven Hundred and Eleven, maliciously and wickedly form a most treacherous and pernicious Contrivance and Confederacy with other evil-dispos'd Persons, then also of her Majesty's Privy-Council, to set on Foot a private, separate, dishonourable, and destructive Negotiation of Peace between *Great Britain* and *France*, without any Communication thereof to her Majesty's Allies, according to their several Treaties; and was not only wanting in his Duty and Trust to her Majesty, by not opposing, and, as far as was in his Power, by not advising her Majesty against going into any private separate Negotiation with *France*; but in Execution of his Purposes aforesaid, he the said *Robert Earl of Oxford* and *Earl Mortimer* did advise her late Majesty to send *Matthew Prior*, Esq; directly to the Court of *France*, to make Propositions of Peace, without communicating the same to her Majesty's Allies. And accordingly the said *Matthew Prior*, by the Advice and with the Privy of him the said *Earl of Oxford* and *Earl Mortimer*, and other false and evil Counsellors, in or about the Months of *July* or *August*, in the Year

of

of our Lord One Thousand Seven Hundred and Eleven, was sent in a clandestine manner from *England* to *France*, and did communicate the said Propositions of Peace to the Ministers of *France*, in which the particular Interests of *Great Britain*, as well as the common Interest of *Europe*, were shamefully betray'd: And in Manifestation of his said Design to exclude her Majesty's Allies from their just Share in the said Negotiation, an express Article was inserted in the said Propositions, by the Privity and Advice of him the said *Robert Earl of Oxford* and *Earl Mortimer*, that the Secret should be inviolably kept till allow'd to be divulged by the mutual Consent of both Parties; although the *French King* had in the Propositions signed by *Monsieur de Torcy*, and transmitted in the Month of *April* preceding, offer'd to treat with the Plenipotentiaries of *England* and *Holland* alone, or jointly with those of the Allies, at the Choice of *England*. By which treacherous and dangerous Advice he the said *Robert Earl of Oxford* and *Earl Mortimer* did not only contrive and set on Foot a Negotiation of Peace more advantageous to *France* than even *France* it self had ask'd; but thereby did put it into the Power of the common Enemy to create incurable Jealousies and Discords between her Majesty and her faithful Allies, and to destroy that Confidence which had so long and so successfully been cultivated between them, and which was so necessary for their common Safety.

ARTICLE II.

That the *French King* laying hold of the said treacherous Overture, set on foot in manner aforesaid, did in or about the Months of *August* or *September*, in the Year of our Lord One Thousand Seven Hundred and Eleven, send over *Monsieur Mesnager* into *England* to carry on a clandestine and separate Negotiation of Peace; which being made known to him the said *Robert Earl of Oxford* and *Earl Mortimer*, he did afterwards in the said Month of *September* One Thousand Seven Hundred and Eleven, secretly and unlawfully, without any Colour of Authority, meet, confer, and treat with the said *Sieur Mesnager* on the Negotiations of Peace between *Great Britain* and *France*; and therein he did advise and promote the making a private and separate Treaty or Agreement between the said Crowns; which said Treaty or Agreement was afterwards, with the Privity, Consent, and Advice of him the said *Robert Earl of Oxford* and *Earl Mortimer*, agreed, concluded on, and sign'd by the said *Sieur Mesnager* on the part of *France*, and by the *Earl of Dartmouth* and *Henry St. John, Esq;* two of her Majesty's principal Secretaries of State, in behalf of her late Majesty, by vertue only of her Majesty's Sign Manual under the Signet, and without the least Knowledge or Participation of the Allies. In which Treaty the immediate Interests even of *Great Britain* are given up to *France*, and the *Duke of Anjou* is admitted to be King of *Spain*; an express Stipulation being therein made with the *Sieur Mesnager* in the Name, and (as is therein alledged) pursuant to Powers from King *Philip* as King of *Spain*: Whereby he the said *Robert Earl of Oxford* and *Earl Mortimer* did not only assume to himself Regal Power, in taking upon him to meet and treat with the Enemy without any Authority or Powers from her Majesty; but did what in him lay to subvert the ancient and establish'd Consti-

tution of the Government of these Kingdoms; by introducing illegal and dangerous Methods of transacting the most important Affairs of the State; and by which private and separate Treaty, he the said *Robert Earl of Oxford* and *Earl Mortimer* did, what in him lay to dissolve and cancel the many solemn Treaties her Majesty then stood engaged in to her good and ancient Allies, and whereby her Majesty, even before any thing was finally settled for the Safety or Advantage of her Kingdoms, was brought to this fatal Dilemma; either to submit to the Dictates of *France* in the Progress of the said Negotiation, or, so notorious a Breach of National Faith being divulged by the Enemy, from thence to lose all future Confidence of her good Allies.

ARTICLE III.

That the said *Robert Earl of Oxford* and *Earl Mortimer*, the better to disguise and carry on the aforesaid private, separate, and dangerous Negotiation, did, together with other evil-dispos'd Persons, then in high Trust under her Majesty, contrive and advise the preparing and forming a Set of General Preliminaries, intituled, *Preliminary Articles on the Part of France, to come to a General Peace*; and that the same should be sign'd by the *Sieur Mesnager* only. And the same being so prepar'd and sign'd by the said *Sieur Mesnager*, he the said *Robert Earl of Oxford* and *Earl Mortimer* did, contrary to his Duty and Trust, impiously advise her Sacred Majesty that the same should be, and accordingly they were receiv'd by her Majesty, and communicated to the Ministers of the Allies then residing in *England*, as the Ground of a General Negotiation of Peace; and as if the same were the only Transactions that had been on this Subject between *Great Britain* and *France*. And to this end, the private Treaty, sign'd as aforesaid by the *Earl of Dartmouth* and *Mr. St. John* on the part of *England*, and by the said *Sieur Mesnager* on the part of *France*, was by the evil Advice and Contrivance of him the said *Robert Earl of Oxford* and *Earl Mortimer*, and others, wilfully and industriously conceal'd not only from all the Allies, but even from her Majesty's Council and her Parliament. And he did further advise her Majesty not only to accept the said General Preliminaries, but in her Name and by her Authority to communicate the same to the States-General, as a sufficient Foundation whereupon to open the Conferences of Peace with *France*. And the more effectually to cover from the States-General the pernicious Steps which his evil Influence had engag'd her Majesty in with the common Enemy; certain Instructions were prepar'd, and, by his Counsel and Advice, were sign'd by her Majesty, and delivered to the *Earl of Strafford*, her Ambassador to the States-General: wherein the said *Earl of Strafford* is directed to represent to the Pensionary of *Holland*, and to such others as shall be appointed to confer with him, that when her Majesty had receiv'd in *May* last, by his Excellency's Dispatches, an Account of the Sense which those among them, who were at that time in the Secret, had of the Overtures made by *France* for setting a general Negotiation of Peace again on Foot, and of the Answer which it was desir'd might be return'd to the Propositions signed by *Monsieur de Torcy*; her Majesty did immediately acquaint the Enemy, that their Offers were thought

by her and by the States-General neither particular nor full enough; and therefore that her Majesty did insist, that they should form a distinct Project of such a Peace as they were willing to conclude. Whereas no such Instances had been made to the Enemy on her Majesty's Behalf; but on the contrary, notwithstanding her Majesty had declar'd that the Propositions of Monsieur *de Torcy* were thought by her and the States-General neither particular nor full enough, yet without any further Explication from the Enemy, her Majesty was prevail'd on, in manner aforesaid, to send over Propositions to *France* as general and ensnaring, and in all respects as destructive to the Interests of *Great Britain* and her Allies, as the Propositions of Monsieur *de Torcy*. And the said General Preliminaries, communicated to the States in manner aforesaid, were calculated only to amuse and deceive them into a General Negotiation with *France*. And in the Particulars aforesaid, as well as in the several others, the said Instructions contain'd Matters either false or grossly prevaricating and evasive. By which most wicked Counsels of him the said *Robert Earl of Oxford* and *Earl of Mortimer*, that unquestionable Truth and Sacredness which by the Laws of Nations ought to accompany and constitute the Instructions of Public Ambassadors to Princes in Friendship and Confederacy against the common Enemy, was most vilely prostituted to the most dangerous Purposes, to deceive and mislead her Majesty's good Allies, in Matters of the greatest Importance to their own Interests and the Interests of these Kingdoms; the Honour of her Majesty's sacred Person, and of the Imperial Crown of these Realms, which had been raised to the highest Pitch of Glory abroad, and had been justly held in Veneration with her good Allies, was scandalously debas'd and betrayed; and the Royal Hand, by the wicked Arts of him the said *Robert Earl of Oxford* and *Earl Mortimer*, was made the Instrument to advance the Interest of the common Enemy.

ARTICLE IV.

That whereas the *Earl of Strafford*, pursuant to the said Instructions, had communicated the Preliminaries signed by Monsieur *Mesnager* only to the States-General, who being justly alarmed at the pressing Instances made on the part of her Majesty, that Conferences should be opened on Propositions as general and uncertain as those so lately offer'd by *France*, and signed by Monsieur *de Torcy*; and their High Mightinesses having been unsuccessful in their Remonstrances to the *Earl of Strafford* against opening the Conferences upon the said Propositions, did send over Monsieur *Buys* their Ambassador to represent to her Majesty, as well the Hazard of meeting the Ministers of *France* before the essential Articles were first settled by special Preliminaries, or at least explained by *France*, and made specific; as likewise the Advantages to the Enemy, who being but one Body, were influenced by one Council, and directed by one Power; whereas the Confederates consisted of several Powers, whose Interests are not only distinct, but in many Cases contrary to each other, whereby the *French* would have a fair Opportunity to divide the Allies, when it would be impossible for them to break in upon *France*; and further to represent, that the Propositions themselves were in some Instances very pre-

judicial, particularly in the Articles of Commerce, *Dunkirk*, and the Union of the Crowns of *France* and *Spain*. All which Representations of the said Monsieur *Buys*, by the evil Influence of him the said *Robert Earl of Oxford* and *Earl Mortimer*, and others, were render'd ineffectual: but in order to prevail upon the States-General to open the Conferences upon the said general Preliminaries, by the Management and Contrivance of him the said *Robert Earl of Oxford* and *Earl Mortimer*, and others, an Occasion was taken to declare to Monsieur *Buys*, at a Committee of Council in her Majesty's Name, her constant Affection and good Disposition to their State, and to the promoting their Interest, and to treat with their High-Mightinesses with a perfect Confidence and Harmony: And at the same time he the said *Robert Earl of Oxford* and *Earl Mortimer* did then falsely and maliciously declare, or was privy to advising and consenting, that it should be, and so it was declared, in her Majesty's Name, that she had made no separate Treaty with *France*, nor would ever make any before she had fully complied with all Engagements to her Allies, and that each of them should have Opportunity to make good their Pretensions.

By which false, scandalous, and dishonourable Assurances, he the said *Robert Earl of Oxford* and *Earl Mortimer* did not only highly dishonour her Majesty, by whose Privy the said separate Treaty with *France* had been before that Time concluded and signed; but their High Mightinesses, the good Friends and antient Allies of her Majesty, were grossly abused, and thereby induced to enter into a Negotiation with *France*, so dangerous in itself, and so fatal in its Consequences.

ARTICLE V.

That her sacred Majesty Queen *Anne* having in due Form of Law, and under her Great Seal, constituted the Right Reverend *John Lord Bishop of Bristol*, and the *Earl of Strafford*, her Plenipotentiaries, with full Powers to meet, treat, and conclude with the Plenipotentiaries of the Confederates, and those whom the *French King* shall on his part depute for that purpose, the Conditions of a good and general Peace, that shall be safe, honourable, and as far as is possible, agreeable to the reasonable Demands of all Parties; he the said *Robert Earl of Oxford* and *Earl Mortimer* not contenting himself to abuse the Royal Authority, to the Delusion of the States-General, the nearest Allies of the Queen, but intending the Universal Prejudice of his Imperial Majesty, and all the Allies of these Kingdoms; and thereby the more successfully to carry on the Measures of *France*, wherein he was then engaged, contrived and prepared Instructions, or was privy to consenting and advising the same, for her Majesty's said Plenipotentiaries, which she was prevailed upon by the said *Robert Earl of Oxford* and *Earl Mortimer*'s evil Counsel to sign, and the same were delivered to the said Plenipotentiaries; wherein among other Things they are instructed to the Effect following, *viz.* If it shall be thought proper to begin by the Disposition of the *Spanish Monarchy*, you are to insist that the Security and reasonable Satisfaction which the Allies expect, and which his most Christian Majesty has promised, cannot be obtained, if *Spain* and the *West-Indies* be allotted to any Branch of the House of *Bourbon*: Whereas the said *Robert Earl of Oxford* and

and Earl *Mortimer* had at that Time privately and treacherously negotiated and agreed with the Ministers of *France*, that *Spain* and the *West-Indies* should remain in a Branch of the House of *Bourbon*; and had prevailed on her sacred Majesty to be Party to the said private Treaty, wherein the same is necessarily implied. And the said Plenipotentiaries are further instructed, in case the Enemy should object, as the Imperial Ministers had done, that the second Article of the seven signed by the *Sieur Mesnager* implies, that the Duke of *Anjou* shall continue on the Throne of *Spain*; you are to insist, that those Articles, as far as they extend, are indeed binding to *France*, but that they lay neither us nor our Allies under any positive Obligation; whereby the said *Robert Earl of Oxford* and *Earl Mortimer* basely entered into a Confederacy and Collusion even with the Ministers of the Enemy, and prevailed on her Majesty to give her Royal Consent thereto, the more effectually to impose on his Imperial Majesty and all the Allies, and to conceal the said secret Negotiations, and the separate Treaty that had then been agreed on between *Great Britain* and *France*. And the said *Robert Earl of Oxford* and *Earl Mortimer*, not only in the Particulars before-mentioned, but in many others contained in the said Instructions, has brought a lasting Reproach on the Crown of these Realms, and grossly violated the many Treaties wherein her sacred Majesty was then engaged to her Allies, to act in perfect Concert with them throughout the Negotiations of Peace.

ARTICLE VI.

That the Conferences of Peace being opened between the Plenipotentiaries of the Allies, and those of the Enemy, for the negotiating a general Peace upon the mutual and most solemn Engagements amongst the Allies, not only to act in perfect Confidence with each other, but to promote their common Interest, and to obtain from the Enemy all just and reasonable Satisfaction; and a specific Explanation of the General Preliminaries having been given by the Enemy at *Utrecht*, whereon the Allies delivered their respective Demands; by the Artifices of *France*, and the secret Encouragement and Concurrence of the Ministers of *Great Britain*, the progress of the said public Negotiation was delayed and kept in suspense, under Pretence of the Enemy's refusing to give their Answer in Writing: During which Time, he the said *Robert Earl of Oxford* and *Earl Mortimer* again assuming to himself Regal Power in Derogation of the Royal Authority, to treat of Peace with *France*, which was then delegated under the Great Seal of *Great Britain* to her Majesty's Plenipotentiaries at *Utrecht*, and for the promoting the Designs of the Enemy to the apparent Destruction of the common Cause of her Majesty and her Allies, contrary to the known Laws and Constitution of this Kingdom, in direct Violation of the several Alliances her Majesty then stood engaged in, and in Opposition to the many Assurances given by her Majesty to act in Concert with her Allies, and in Defiance of the express Instructions given to her said Plenipotentiaries, was not only wanting in his Duty to her Majesty, as far as in him lay to have put an end to, and prevented any further private and unlawful Negotiations with *France*, but did, with others his Accomplices, advise, concur, con-

tinue, and promote a private, separate, and unjustifiable Negotiation of Peace with *France*, directly from *England* to *France*, without any Communication thereof to the Allies; and in such private Negotiations did concert with the Ministers of the Enemy Terms of Peace highly prejudicial to the Interest of her Majesty and her Kingdoms, and of all her Allies, and whereby the good Effects of the said General Negotiations were entirely defeated.

ARTICLE VII.

That her sacred Majesty Queen *Anne* having been prevailed on by the false Counsels of him the said *Robert Earl of Oxford* and *Earl Mortimer* to accept of a Treaty with *France*, on the Supposition that the *Spanish* Monarchy should continue in the Possession of a Branch of the House of *Bourbon*; and it being acknowledged even by the *French* King in the General Preliminaries signed by *Monsieur Mesnager*, that the Excess of Power from the Re-union of the Crowns of *France* and *Spain* would be contrary to the good and general Repose of *Europe*: He the said *Robert Earl of Oxford* and *Earl Mortimer* having nothing so much in view as the aggrandizing the common Enemy, yet always intending to cover the Iniquity of his Heart under specious Pretences and false Appearances, did wickedly and treacherously advise and carry on a private and separate Negotiation with *France*, on the Subject of a Renunciation of his Right to the Kingdom of *France* by the Duke of *Anjou*, and that such Renunciation should be the Security against the Re-union of the two Kingdoms. And by the Influence of his evil Counsels her Majesty was prevailed on to accept and finally to conclude and ratify a Treaty of Peace with *France*, wherein the said Renunciation is taken as a sufficient Expedient to prevent the Mischiefs that threaten'd all *Europe*, in case the Crowns of *France* and *Spain* should be united upon the Head of one and the same Person; although he the said *Robert Earl of Oxford*, and *Earl Mortimer* well knew, that a Memorial had been, during the said separate Negotiation, transmitted by *Monsieur de Torcy*, Secretary of State and Minister to the *French* King, to one of her Majesty's Principal Secretaries of State; whereby it was declared, that the said Renunciation would be null and invalid by the Fundamental Laws of *France*, which Laws were looked upon as the Work of him who had established all Monarchies, and which he only could abolish; and that no Renunciation thereof could destroy it: And if the King of *Spain* should renounce, they would deceive themselves that should receive it as a sufficient Expedient to prevent the Mischiefs proposed to be avoided. By which false and treacherous Counsels, he the said *Robert Earl of Oxford* and *Earl Mortimer* did not only betray the Interests of the common Cause into the Hand of the most formidable Enemy, but wilfully and maliciously abused the Power and Influence which he had obtained with her Majesty, so far as to engage her sacred Majesty, and the Honour of the Imperial Crown of these Kingdoms, to become Party with *France* in so fatal a Deceit.

ARTICLE VIII.

That her late Majesty Queen *Anne* having on the Seventh Day of *December*, in the Year of our
Lord

Lord One Thousand Seven Hundred and Eleven, earnestly recommended it from the Throne, that Provision might be made for an early Campaign, in order to carry on the War with Vigour, and as the best way to render the Treaty of Peace effectual; in order to which, vast Supplies were granted, and Magazines provided at a great Expence for an early Campaign; and in pursuance thereof, her Majesty having sent her Generals, *Lumley* and *Cadogan*, to give early Assurances to her Allies of her sincere Intentions, and likewise expressly instructed her General, the Duke of *Ormond*, not only to renew the same Assurances and declare her Resolutions of pushing on the War with the utmost Vigour, but to concert with the Generals of the Allies the proper Measures for entering on Action; and the Confederate Army, which at that Time was the finest and strongest that had been in the Service during the whole Course of the War, and provided with all Necessaries to act with Vigour, having march'd, according to the Resolution taken in Concert with her Majesty's General, almost up to the Enemy, with a great Superiority both as to the Number and Goodness of Troops, and animated with a noble Courage and Zeal to acquit themselves bravely; so that in all human Appearance, and with the divine Assistance, which had appeared so visibly for them on many other Occasions, they would have been able, either by Battle or Siege, to have gained great Advantages over the Enemy, to have better'd the Affairs of the Allies, and to have facilitated the Negotiations of Peace: And the Ministers of *France* have frequently and earnestly represented to the said *Robert Earl of Oxford* and *Earl Mortimer*, and others his Accomplices, during their secret Negotiations, their just Apprehensions from the Bravery and good Disposition of the Confederate Army; he the said *Robert Earl of Oxford* and *Earl Mortimer*, being truly informed of the sure Prospect, which, by the Blessing of God, the Army of the Confederates then had, of gaining new Conquests over the Army of *France*, and whereby they would have been enabled to have forced Terms of Peace, safe, honourable, and lasting: In order to disappoint those comfortable Expectations of the Allies, and to give Success to his secret Negotiations with the Ministers of *France*, was privy to, consenting and advising, together with other false and evil Counsellors, and together with them did advise and consent, that an Order should be sent in her Majesty's Name, to the Duke of *Ormond* in *Flanders*, to avoid engaging in any Siege, or hazarding a Battle, till further Orders; although nothing had then been settled in the said private Negotiations for the Interest and Security of *Great Britain*; and although *Philip King of Spain* at that Time had not consented to the Renunciation of his Right to the Crown of *France*. And not contenting himself with having obtained that fatal Step, so highly advantageous to the Cause of *France*, but being wickedly determined to do all that in him lay to dissolve the whole Confederacy, he the said *Robert Earl of Oxford* and *Earl Mortimer*, with others was privy to, and did consent and advise, that Orders should be sent to the Bishop of *Bristol*, one of her Majesty's Plenipotentiaries then at *Utrecht*, to take the first solemn Opportunity to declare to the *Dutch* Ministers, that her Majesty looked on herself from their Conduct to be then under no Ob-

ligation whatsoever to them: Which two Declarations giving just Alarms to all the Allies, they represented to the Bishop of *Bristol* their general Dissatisfaction, and the inexpressible Consternation they were all in; that these Proceedings were the unavoidable Ruin of *Europe*: They urged Religion, Liberty, and the Faith of Treaties, to shew the Enormity of this Usage; and the States expressed their Uneasiness on no account so much, as that they could not come to the Knowledge of their own Lot. Which Representations the Bishop of *Bristol* did, at the Instance of the Allies, signify to one of her Majesty's Principal Secretaries of State; but their High Mightinesses finding that all Applications to the Ministers of *Great Britain*, and in particular to the said *Robert Earl of Oxford* and *Earl Mortimer*, were of no avail against *France*, and for the Interest of the common Cause, thought it necessary, in a manner the most moving and respectful, to address directly to her Majesty by a Letter of the Fifth of *June*, One Thousand Seven Hundred and Twelve; therein expressing their great Surprise and Affliction at the two Declarations aforementioned; and finding it difficult to conceive how such Declarations, so prejudicial to the common Cause, given so suddenly without their Knowledge, and undoubtedly too without the Knowledge of the other Allies, could agree and consist with the Nature of an Alliance, and with those Assurances and Engagements her Majesty had so lately made; and not knowing how to reconcile it with the great Goodness and Kindness which her Majesty had always honoured them with, and not being able to conceive how such a sudden Change could happen with respect to them, having carefully examined their own Conduct, and finding nothing therein that could have given Ground to her Majesty's Dissatisfaction; and having represented the visible and immediate fatal Consequences of the said two Orders, not only to the common Interest of her Majesty and the States, but to the whole Confederacy and to the Protestant Religion; they beseeched her Majesty, with all the Respect, and all the Earnestness they were capable of, that she would not persist in the Declarations made by the Bishop of *Bristol*, and would be pleased to revoke the Orders given to the Duke of *Ormond*; and would authorize him to act according to Occurrences, and as the Exigency of the War, and the Advancement of the common Cause should require. Notwithstanding which, he the said *Robert Earl of Oxford* and *Earl Mortimer* being acquainted with the said Representations of the States, was not only wanting in his Duty to her Majesty, and to his Oath, and the great Trust reposed in him, in not advising, as he ought to have done, her sacred Majesty to have hearkened to the said several Instances made to her; but persisting in his desperate and destructive Measures for the Advancement of the Interest of the common Enemy, did afterwards advise her Majesty to disregard and reject the same; and did countenance, encourage, advise, and promote the said private, separate, and wicked Negotiations with *France*, without any Participation of the Allies, contrary to all her Majesty's Engagements, and to the apparent Ruin of the common Cause. By which several wicked and perfidious Counsels, the Progress of the victorious Arms of the Confederates was stopped, and an Opportunity lost for conquering the Enemy, the most favourable,

favourable, in the Opinion of all the General Officers and the Quarter-Masters of the Allies, who were sent out to view the *French* Camp, and whereby all Hopes of Confidence between her Majesty and her Allies was entirely destroyed, and the *French* King made absolute Master of the Negotiations of Peace, and the Affairs of *Europe* given into his Hands.

ARTICLE IX.

That to impose upon the Allies the fatal Necessity of submitting to the Terms of *France*, and in order thereto to leave the whole Confederate Army at the Mercy of the common Enemy, he the said *Robert* Earl of *Oxford* and Earl *Mortimer*, was privy and consenting to a secret and separate Concert with the Ministers of *France*, without the Knowledge of the Allies, for the separating the Troops in her Majesty's Pay from the rest of the Confederate Army: For the effecting whereof, instead of preventing as far as in him lay so fatal a Step, he was not only wanting to advise against so unwarrantable a Proceeding, but did consent to and advise her Majesty, that the Duke of *Ormond*, and all the Troops then in her Majesty's Pay, or such of them as would obey his Orders, should separate themselves from the Army of the Confederates: And having notice that the Generals of the Auxiliaries, paid by her Majesty, whose Honour and Consciences would not permit them to abandon the Confederates, and leave them as a Sacrifice to *France*, but for the Sake of the common Interest of *Europe*, and according to the true End and Design of their Conventions, did refuse to withdraw with the Duke of *Ormond*, without particular Orders from their respective Masters; he the said *Robert* Earl of *Oxford* and Earl *Mortimer*, being then Lord High-Treasurer of *Great-Britain*, and one of her Majesty's most Honourable Privy Council, in Violation of his Oath, and the Duty and Trust reposed in him, did take upon himself an arbitrary and illegal Power, to refuse and put a Stop to the Pay and Subsidies due on account of the said foreign Troops, although they were entitled thereto by the Conventions entered into with her sacred Majesty, and by express Provision made by Act of Parliament for the Payment of the same. By which fatal Separation, which pursuant to his evil Counsels was afterwards made, great Numbers of the Confederate Troops, who had before, on many Occasions, signaliz'd themselves in the Defence of the Cause of *Europe*, soon afterwards, at the unfortunate Action of *Denain*, fell as Sacrifices to the Fury and Revenge of *France*; the Siege of *Landrecy* was raised, the important Towns and Fortresses of *Quesnoy*, *Bouchain*, and *Doway* were retaken by the *French* Army; and not only the Fortune of the War, but the Fate of *Europe* decided in Favour of *France*.

ARTICLE X.

That in further Execution of his pernicious Designs to compleat the Destruction of the common Cause of *Europe*, and to render it impracticable for her Majesty to resume the War against *France*, in Conjunction with her Allies, or to recover the Union with her Majesty's old and faithful Allies, so necessary to the Preservation of

these Kingdoms; he the said *Robert* Earl of *Oxford* and Earl *Mortimer*, then Lord High-Treasurer of *Great Britain*, did carry on and concert with the Ministers of *France*, a private and separate Negotiation for a general Suspension by Sea and Land, between *Great Britain* and *France*; and to that end among others, did advise her Majesty to send over *Henry* Viscount *Bolingbroke*, one of her principal Secretaries of State, to the Court of *France*, with Powers to settle the said Suspension. In pursuance of which, a destructive Treaty of Suspension was made in *France*, on the Nineteenth of *August*, N. S. One Thousand Seven Hundred and Twelve, by the said *Henry* Viscount *Bolingbroke*, on the Part of her said Majesty, for four Months, without the Knowledge or any Participation of the Allies; and before any Terms of Peace were settled with the Enemy, either for *Great Britain* or the Allies. By which evil Counsels, the express Terms of several of the afore-mentioned Treaties were expressly contravened and broken, the good Friends and antient Allies of her Majesty and these Kingdoms were totally deprived of the just Assistance to which they were thereby entitled, and were left exposed to the Insults of the common Enemy; and the sacred Ties of Union and Friendship between her Majesty and her Allies being cut asunder, her Majesty's Person and Government, the Safety of her Kingdoms, and of the Protestant Succession to the Crown of these Realms, were left exposed to the Enterprizes of her most formidable Enemy.

ARTICLE XI.

That whereas the States-General of the *United Provinces* were, in or about the Months of *September* or *October*, in the Year of our Lord One Thousand Seven Hundred and Twelve, in Possession of the strong and important Town and Fortrefs of *Tournay*: And whereas the *French* King had, during the Course of the said private, separate, and traitorous Negotiation between him the said *Robert* Earl of *Oxford* and Earl *Mortimer*, and others, and the Ministers of *France*, signified his Consent to the Ministers of *Great Britain*, that the said Town and Fortrefs of *Tournay* should remain to the said States-General as Part of their Barrier: And whereas her Majesty, in her Instructions of *December* the Twenty-third, One Thousand Seven Hundred and Eleven, to her Plenipotentiaries at *Utrecht*, had expressly directed them to insist with the Plenipotentiaries of *France*, in the General Congress, that towards forming a sufficient Barrier for the States-General, *Tournay*, should remain to their High Mightinesses; and did afterwards declare herself conformably thereunto, in her Speech to both Houses of Parliament, on the Sixth of *June*, One Thousand Seven Hundred and Twelve, in which she communicated to them the Terms whereon a Peace might be made. And whereas for several Years before, and till the said Months of *September* and *October*, in the Year of our Lord One Thousand Seven Hundred and Eleven, there was open War between her late Majesty and the *French* King; and the said War continuing for all the said Time, and afterwards, the said *French* King and his Subjects were Enemies to her Majesty: He the said *Robert* Earl of *Oxford* and Earl *Mortimer*, then Lord High-Treasurer of *Great Britain*, and a Subject

Subject of her Majesty's, not considering the Duty of his Allegiance, but having altogether withdrawn the cordial Love, and true and due Obedience, which every true and faithful Subject owed to her said Majesty; and designing to give Aid and Succour, and to adhere to the said *French King*, did in or about the Months of *September* or *October*, One Thousand Seven Hundred and Twelve, during the said War, falsely, maliciously, wickedly, and traiterously aid, help, and assist, and adhere to the *French King*, then an Enemy to her late Majesty: And in Execution and Performance of his aiding, assisting, and adhering, maliciously, falsely, and traiterously did counsel and advise the said Enemy, in what manner and by what Methods the said important Town and Fortress of *Tournay*, then in the Possession of the States-General, might be gained from them to the *French King*, contrary to the Duty of his Allegiance, and the Laws and Statutes of this Realm.

ARTICLE XII.

That whereas her late Majesty Queen *Anne*, not only in pursuance of the Treaties she stood engaged in to her good Allies, and in particular to his Imperial Majesty, for the Recovery of the Monarchy of *Spain* to the House of *Austria*, thereby to preserve a due Ballance of Power in *Europe*, but also from her just Resentment against the Duke of *Anjou*, who then stil'd himself King of *Spain*, and who, in Defiance of her Majesty's Title to the Crown, acknowledged the Pretender as King of *Great Britain*; and on these just Foundations her Majesty had, in vindication of the Honour of the Crown, and in justice to her People, at a vast Expence of Blood and Treasure, and on the earnest and repeated Advices of her Parliament, prosecuted a vigorous War against the Duke of *Anjou*: And whereas, in the Years of our Lord One Thousand Seven Hundred and Ten, One Thousand Seven Hundred and Eleven, and One Thousand Seven Hundred and Twelve, the said open, bloody, and expensive War was carried on between her said late Majesty Queen *Anne*, and the said Duke of *Anjou*, and during all the time aforesaid, the said War did continue, and for all that time the said Duke of *Anjou*, and the Subjects of *Spain* adhering to him, were Enemies of her late Majesty: He the said *Robert Earl of Oxford* and *Earl Mortimer*, then Lord High Treasurer of *Great Britain*, and one of her Majesty's Privy-Council, and a Subject of her said Majesty, not considering the Duty of his Allegiance, but having withdrawn his true Obedience from her said late Majesty, did at several times, in the said Years of our Lord, One Thousand Seven Hundred and Ten, One Thousand Seven Hundred and Eleven, and One Thousand Seven Hundred and Twelve, falsely, maliciously, wickedly, and traiterously aid, help, assist, and adhere to the said Duke of *Anjou*, then an Enemy to her said late Majesty; and in the Execution and Performance of his said aiding, helping, assisting and adhering, and in Confederacy and Combination with the then Enemies of her late Majesty, and with divers other wicked and evil disposed Persons, did, at several times, in the Years aforesaid, advise and counsel the Enemies of her late Majesty, and in such counselling and advising, did concert with them, and did promote the yielding and giving up *Spain* and the *West-Indies*, or some part thereof, to the said Duke of

Anjou, then in Enmity with her Majesty, against the Duty of his Allegiance, and the Laws and Statutes of this Realm.

ARTICLE XIII.

That whereas the Riches, Power, and Strength of these Kingdoms depend entirely on the flourishing Condition of Trade and Navigation, and her late Majesty Queen *Anne* having due Regard thereto, as well as to the just Expectations of her People, after the vast Expences they had so cheerfully undergone in Support of the War, did, on the first Opening the Conferences for a General Peace, declare from the Throne to both Houses of Parliament, on the Seventh of *December* One Thousand Seven Hundred and Eleven, that she would endeavour, that after a War which had cost so much Blood and Treasure, the Nation might find their Interest in Trade and Commerce improved and enlarged by a Peace: And on the Sixth of *June* One Thousand Seven Hundred and Twelve, when she was pleased to communicate the Terms on which a General Peace might be made, did declare, that nothing had mov'd her Majesty from steddily pursuing the true Interest of her own Kingdoms, and that the Terms of Peace obtained for her own Subjects were such, as she had Reason to expect would make her People some Amends for the great and unequal Burden which they had laid under through the whole Course of the War; and hoped that none of the Confederates would envy her Share in the Glory and Advantage of the Peace; and afterwards declared to both Houses of Parliament her Satisfaction in the near View she had of a Peace; since it would, in some measure, recompense her Subjects for the vast Expence: And after the Conclusion of the Treaty of Peace and Commerce with *France*, did declare from the Throne, on the Ninth of *April* One Thousand Seven Hundred and Thirteen, that the many Advantages she had obtained for her Subjects, had occasioned much Opposition and long Delays to the Peace; but it afforded her great Satisfaction, that her People will have it in their Power, by degrees, to repair what they had suffered during so long and burthensome a War. Whereupon both Houses of Parliament did from time to time express their grateful Acknowledgments to her Majesty for her great Care and Concern for the Welfare of her People. And whereas at the setting on Foot, and the Progress of the said private, separate, and pernicious Negotiations between the Ministers of *Great Britain* and *France*, it was laid down as a Principle, on the part of *Great Britain*, never to be departed from, that *France* should consent to adjust the Interests of *Great Britain* in the first Place, that the Ministers of *Great Britain* might thereby be enabled to engage the Queen to make the Conclusion of the General Peace easy to *France*; and on this plausible Pretence it was insisted on by the Ministers of *Great Britain*, to remit the Discussion of the particular Interests of the Allies to General Conferences; and throughout the whole Course of the said separate Negotiation, all imaginable Concessions were not only made by the Ministers of *Great Britain* for a real Advantage of the Interests of *France* against the Allies, but all Measures were entered into and concerted between them, that even the Ministers of *France* could dictate, in order to strengthen their Hands, and

to enable them to impose the Terms of a General Peace : He the said *Robert Earl of Oxford* and *Earl Mortimer*, having nothing in view thro' the whole Course of the said Negotiation, wherein he was wickedly and principally engaged in Concert with *France*, but the final Destruction of his Country ; and to that end the sacrificing the Commerce of *Great Britain* to the Aggrandisement of *France*, was not only wanting in his Duty to her Majesty, in not insisting on in all Events, and not procuring, in the first Place, the most certain and strict Securities imaginable for the Safety and Advantage of the Commerce of these Kingdoms ; but did advise her late Majesty, that in the Proposition sent by his Privy and Advice, by Mr. *Prior to France*, and also in the said private and separate Treaty, signed on the Seven and Twentieth of *September*, One Thousand Seven Hundred and Eleven, wherein the Preliminary Demands for *Great Britain*, more particularly were intended to be adjusted with *France*, the Demands for *Great Britain*, in point of Commerce, should not only be made in loose, general, and insufficient Terms, but that the Liberty of Fishing, and Drying of Fish on *Newfoundland* should be expressly given up to *France*, tho' the Restitution of that small part of the Island, which *France* had taken during the War, was therein referred to be discuss'd to General Conferences. And having, by his wicked Artifices, engaged her Majesty in the said private Treaty with *France*, without any Security for the Commerce of *Great Britain*, he did artfully and cunningly contrive with the Ministers of *France* to keep in Suspence all Matters that concerned the Commerce of *Great Britain*, until, by means of his wicked and pernicious Counsels aforementioned, *France* was become Masters of the Negotiations, and the chief Advantages for the Commerce of *Great Britain* by that means remaining unsettled : And the Ministers of *France* afterwards disputing the most essential Articles which had been in agitation, and in particular that fundamental Principle of treating and being treated as *Gens Amicissima*, and endeavouring to elude what had been agreed on in the said private and separate Negotiation, for the supposed Advantage of *Great Britain* ; he the said *Robert Earl of Oxford* and *Earl Mortimer*, under pretence of removing a Difficulty then depending, by an Expedient advantageous to *Great Britain*, did treacherously advise the ninth Article of the Treaty of Commerce with *France*, a Bill for the rendering whereof effectual was afterwards rejected by the House of Commons, as highly prejudicial and destructive to the Commerce of these Kingdoms : But yet for the sake of gaining that destructive Article for *Great Britain*, as if the same had been advantageous, he the said *Robert Earl of Oxford* and *Earl Mortimer*, in Defiance of the express Provision of an Act of Parliament, as well as in Contempt of the frequent and earnest Representations of the Merchants of *Great Britain*, and of the Commissioners for Trade and Plantations, did advise her Majesty finally to agree with *France*, that the Subjects of *France* should have liberty of Fishing and drying Fish on *Newfoundland* ; and did also advise her Majesty to make a Cession to *France* of the Isle of *Cape Breton*, with liberty to fortify the same, altho' the Isle of *Cape Breton* was part of the antient Territories of the Crown of *Great Britain* ; and her Majesty had declared from the Throne, that *France* had consented to make an absolute Cession of *Nova Scotia*, or *Arcadia*,

whereof *Cape Breton* is part, to her Majesty. And the said *Robert Earl of Oxford* and *Earl Mortimer*, intending in all Events to secure to *France* the Advantages relating to the Fishery of *Newfoundland* and to *Cape Breton*, did, in conjunction with the Ministers of *France*, advise her Majesty to consent, that the same should be made an Article in the Treaty of Peace between *Great Britain* and *France* ; whereas the only Advantages in Trade, pretended to be stipulated for *Great Britain*, being inserted in the Treaty of Commerce, were to depend on certain Conditions to be made good by Act of Parliament ; and pursuant to, and by the Influence of the said evil Counsel of him the said *Robert Earl of Oxford* and *Earl Mortimer*, her sacred Majesty was advised to ratify the said Article in the said Treaty of Peace and the said Treaty of Commerce. By means of which pernicious Counsels, the good Intentions of her sacred Majesty to have obtained for her People advantageous Terms of Commerce were entirely frustrated, the Trade and Manufactures of *Great Britain*, as far as in him lay, rendered precarious, and at the Mercy of the Enemy, and that beneficial Branch of Trade, always esteemed the great Support of the Naval Power, and the chief Nursery of the Seamen of *Great Britain*, yielded up to the Subjects of *France* : and the only Pretence for the avowed and notorious Violation of Treaties, and the carrying on the Measures of *France*, viz. the adjusting first the Interests of *Great Britain*, thro' the whole Course of the said private and separate Negotiations, terminated at last in the Sacrifice of the Commerce of *Great Britain* to *France*, without the least Shadow of Advantage in Trade procured for these Kingdoms.

ARTICLE XIV.

That he the said *Robert Earl of Oxford* and *Earl Mortimer* did, in concert with other evil and false Counsellors, even without any Application from his Royal Highness the Duke of *Savoy*, and after the *French King* had, in the Course of the said private and separate Negotiations, consented that the Kingdom of *Sicily* should remain to the House of *Austria*, form a Project and Design to dispose of the Kingdom of *Sicily* to the Duke of *Savoy* from the House of *Austria* : And to effect that his unjust, dishonourable, and pernicious Project, he did advise her Majesty to give Instructions, among other things, to *Henry Viscount Bolingbroke*, then appointed her Ambassador to *France*, to demand in her Majesty's Name, of the *French King*, the Kingdom of *Sicily* for his said Royal Highness. And a Treaty of Peace being afterwards made between the *French King*, his Royal Highness, and the Duke of *Anjou*, wherein a Cession is made to his Royal Highness of the Kingdom of *Sicily*, without any Concurrence or Participation of his Imperial Majesty ; he the said *Robert Earl of Oxford* and *Earl Mortimer* did basely and scandalously advise her sacred Majesty to consent to the same, by an Article inserted in the Treaty of Peace between her Majesty and the *French King*. And afterwards, by his Privy and Advice, her Majesty was prevailed on to assist his Royal Highness against the Emperor then in Alliance with her Majesty, with a part of her Royal Fleet at her own Expence, in order to put him in Possession of the said Kingdom of *Sicily*. Whereby the greatest Injustice was done to his Imperial Majesty, in direct Violation of the Grand Alliance, and contrary to her Majesty's frequent Declarations from the Throne, and her plain and full Instructions to her Plenipotentiaries

tentiaries at *Utrecht*, for obtaining his just and reasonable Satisfaction; and whereby National Faith, and the Honour of the Crown, was vilely betray'd, and the Naval Power of these Kingdoms, and the Supplies granted by Parliament for reducing the common Enemy, were perfidiously employ'd against the great and faithful Allies of this Kingdom.

ARTICLE XV.

That whereas the Dignity and Support of the Imperial Crown of these Realms has in all Ages greatly depended on the Wisdom and Truth of the Communications made from the Throne, especially in Parliament, as the sure and only means whereby the Kings and Queens of this Realm can receive the sincere and faithful Advice of their People in Matters of the highest Importance, and which by the Fundamental Laws and Constitution of this Government ought to be inviolably observ'd as the sacred Band of the Duty and Affection of Subjects to their Sovereign. And whereas by the most antient and known Laws of this Kingdom it is indispensably incumbent on the great Officers of State that surround the Throne, to maintain as far as in them lies the Sacredness of the Royal Word on all Occasions; it being most apparent that the greatest Dishonour to the Throne, and the greatest Danger to these Kingdoms must inevitably ensue, whenever that Fountain of Truth by wicked Counsels shall be in any degree corrupted, and thereby lose its just Influence and necessary Authority. And whereas the Power of making Peace and War, one of the antient, undoubted, and most important Prerogatives of the Crown, has been always exercis'd by the Sovereigns of these Realms, with the strictest Regard to the Honour of the Crown and the Welfare of the People; and for that end they have in great Wisdom in all Ages taken the Advice of Parliament on such weighty Occasions. And whereas her late Majesty Queen *Anne* declared from the Throne her gracious Intentions to communicate the Terms of Peace to her Parliament, for their deliberate and serious Advice therein, wisely foreseeing that the Safety of her Person and Government, of the Protestant Succession to the Crown, which she had nearest her Heart, and of the Protestant Religion, and of the Liberties of *Europe*, did inevitably depend on the happy Conclusion of the said Negotiations: He the said *Robert Earl of Oxford* and *Earl Mortimer*, then Lord High-Treasurer of *Great Britain*, having taken on himself throughout the said Negotiations a most arbitrary and unwarrantable Authority, and the chief Direction and Influence to her Majesty's Councils; and most wickedly designing to prostitute the Honour of the Crown, and the Dignity of Parliaments, and not only totally to deprive her Majesty of the wholesome and necessary Advice of her Parliament in so great a Conjunction, but by misrepresenting the most essential Parts of the Negotiations of Peace, to obtain the Sanction of Parliament to his traitorous Proceedings, and thereby fatally to deceive her Majesty, her Allies, her Parliament, and her People; he the said *Robert Earl of Oxford* and *Earl Mortimer* was not only wanting in the Discharge of that Duty to his Sovereign which became his High Station, by not advising against, and as far as in him lay in all Events by not preventing even any Intimation from the Throne to the Parliament, which was not conformable to the exactest Truth and Impartiality; but taking Advantage of his ready Access to her

Majesty, and his exorbitant Influence in her Councils, did prepare, form, and concert, together with other false and evil Counsellors, several Speeches and Declarations to be made by her Majesty from the Throne to her Parliament, on the Subject of the said Negotiations of Peace, and did advise her Majesty to make the same to her Parliament: And particularly, by means of his false and evil Counsels, her Majesty did, amongst other things, on the seventh of *December*, One Thousand Seven Hundred and Eleven, declare from the Throne in the Words, or to the Effect following: *That notwithstanding the Arts of those who delight in War, both Place and Time are appointed for opening the Treaty of a General Peace. Our Allies, especially the States-General, whose Interest I look upon as inseparable from my own, have by their ready Concurrence express'd their Confidence in me.* Whereas it was then notorious to all *Europe*, and the said *Robert Earl of Oxford* and *Earl Mortimer*, and others his Accomplices, well knew, that the principal Allies of her Majesty, and particularly the *States-General*, then had in the strongest and most pressing manner represented not only to her Majesty's Ministers in *Holland*, but afterwards by a Minister of their own directly to her Majesty, the Insecurity and Danger to the Common Cause, by entering into general Negotiations with *France* on the Propositions signed by *Monsieur Mesnager*; and also their firm Opinion of the fatal Consequences that might ensue thereon: And although they had still great Apprehensions concerning the Method of opening the Conferences, and the Consequences that might happen thereupon; yet being wrought on by the Menaces and other extraordinary Methods used with them by her Majesty's Minister's, and relying on the solemn Assurances and Declarations of her Majesty to support the Interest and Concern of their State, and to act in perfect Confidence and Harmony with them; they did at last, with the greatest Reluctance, consent to enter upon a General Negotiation of Peace with *France*. And in the same Speech her Majesty was prevail'd on by the evil Counsels of him the said *Robert Earl of Oxford* and *Earl Mortimer*, and others, to declare in the Words, or to the Effect following: *That the Princes and States which have been engaged with us in this War, being by Treaties entitled to have their several Interests secured at a Peace; I will not only do my utmost to procure every one of them all reasonable Satisfaction, but I shall also unite with them in the strictest Engagements for continuing the Alliance, in order to render the General Peace secure and lasting.* And in her Message of the seventeenth of *January* following, her Majesty again expresses the Care she intended to take of all her Allies, and of the strict Union in which she proposed to join with them. Whereas by the evil Influence of him the said *Robert Earl of Oxford* and *Earl Mortimer*, her Majesty was not only induced to enter into a private Negotiation with *France*, exclusive of her Allies; but the same was in like manner carried on by him the said *Robert Earl of Oxford* and *Earl Mortimer*, and others. And the several Interests which the Allies were intitled to by their Treaties, were not only not secured to them by the Peace, nor any reasonable Satisfaction given to them, but the main Interests of her principal Allies, especially of his Imperial Majesty, were by the wicked Practices of him the said *Robert Earl of Oxford* and *Earl Mortimer*, and others, given up to *France*; and no Engagements

ments were obtained for continuing the Alliance, in order to render the general Peace secure and lasting. And her Majesty having on many former Occasions express'd her Resolutions never to make Peace with *France* and *Spain*, so long as *Spain* and the *West-Indies* remain'd in the House of *Bourbon*; she was prevail'd upon by the Advice of him the said *Robert Earl of Oxford* and *Earl Mortimer*, and others, to declare herself, in Answer to an Address of the House of Peers, the Eleventh of *December*, One Thousand Seven Hundred and Eleven, to the Effect following, viz. *I should be sorry any one could think I would not do my utmost to recover Spain and the Indies from the House of Bourbon.* Whereas it is most manifest, that the leaving the Kingdom of *Spain* and the *Indies* in the House of *Bourbon*, was the Foundation of the private and separate Treaty between *Great Britain* and *France*, which had been before that Time signed even with her Majesty's Consent; and the same fundamental Resolution was immutably observed between them to the Conclusion of the Peace. And her Majesty having frequently declared from the Throne, that her Resolutions in entering into the said Negotiations were to obtain a general, good, and lasting Peace, and the Plenipotentiaries at *Utrecht* being instructed to treat with *France* conformably to that End, he the said *Robert Earl of Oxford* and *Earl Mortimer*, in order to remove the just Suspicions which had been conceived of his private and separate Negotiations with *France*, did advise her Majesty to make this further Declaration in her said Message of the Seventeenth Day of *January*, That the World will now see how groundless those Reports are which have been spread Abroad by Men of evil Intentions to serve the worst Designs; as if a separate Peace had been treated, for which there has not been the least Colour given: Whereas a private and separate Negotiation had been carried on for five Months together between *Great Britain* and *France*; and during that Time private Propositions had been sent from *England*, and a private Treaty with a Minister of *France* signed, even by her Majesty's Privy, exclusive of all the Allies, before the said Declaration made by her Majesty: And private and separate Measures were thenceforth carried on by the said *Robert Earl of Oxford* and *Earl Mortimer*, and his Accomplices, on Behalf of her Majesty, with the Ministers of *France*, even to the Conclusion of the Peace with *France*. Her Majesty was further prevailed on by the wicked Advice of him the said *Robert Earl of Oxford* and *Earl Mortimer*, in her Speech of *June* the Sixth, One Thousand Seven Hundred and Twelve, to declare, that to prevent the Union of the two Crowns, she would not be content with what was Speculative, but insisted upon something Solid: And in the same Speech to the Effect following, *videlicet*, The Nature of the Proposal for a Renunciation is such, that it executes itself, and *France* and *Spain* are thereby more effectually divided than ever: Whereas the Ministers of *France* had before that Time assured the Ministers of her Majesty, that to accept of the Expedient proposed on her Majesty's Behalf, would be to build on a sappy Foundation; and that the Renunciation would be null and void by the fundamental Laws of *France*; and that they would deceive themselves who accepted it as an Expedient to prevent the Union

of the two Crowns. And not only in the Particulars before-mentioned, but in many others contained in the said several Speeches and Messages made and sent to her Parliament, even while the said Negotiations of Peace with *France* were depending, the most essential Points relating to Peace and Commerce, and which concerned the Interest, as well of the Allies as of *Great Britain*, were grossly misrepresented. By all which wicked, treacherous, and unexampled evil Counsels he the said *Robert Earl of Oxford* and *Earl Mortimer* did most basely, ungratefully, and scandalously abuse the Favour of his Royal Mistress, and by means of her Authority did mislead her Parliament into groundless and fatal Resolutions; and thereby not only prevented the just Advice of the Parliament to her Majesty in that critical Juncture, but obtained the Approbation of Parliament to his mysterious and dangerous Practices; and did not only deprive her Majesty of the Confidence and Affection of her Allies, but exposed her Majesty and her People to the Contempt of the common Enemy.

ARTICLE XVI.

That whereas the said *Robert Earl of Oxford* and *Earl Mortimer* having on all Occasions used his utmost Endeavours to subvert the antient established Constitution of Parliaments, the great and only Security of the Prerogative of the Crown, and of the Rights, Liberties and Properties of the People, and being most wickedly determined at one fatal Blow as far as in him lay to destroy the Freedom and Independency of the House of Lords, the great Ornament and nearest Support of the Imperial Crown of these Realms, and falsely intending to disguise his mischievous Purposes under a pretended Zeal for the Prerogative of the Crown; he the said *Robert Earl of Oxford* and *Earl Mortimer*, on or about the Months of *December* or *January*, One Thousand Seven Hundred and Eleven, whilst the House of Lords were under an Adjournment, and had Reason to expect that on their next Meeting Matters of the highest Importance would be communicated to them from the Throne, they having some few Days before given their humble Opinion and Advice to her Majesty, that no Peace could be safe or honourable to *Great Britain* or *Europe*, if *Spain* and the *West Indies* were to be allotted to any Branch of the House of *Bourbon*; being then Lord High-Treasurer of *Great Britain*, and one of her Majesty's Privy Council, and assuming to himself an arbitrary Direction and Controul in her Majesty's Councils, contrary to his Duty and his Oath, and in Violation of the great Trust reposed in him, and with an immediate Purpose to render ineffectual the many earnest Representations of her Majesty's Allies against the said Negotiations of Peace, as well as to prevent the good Effects of the said Advice of the House of Lords; and in order to obtain such further Resolutions of that House of Parliament on the important Subject of the Negotiations of Peace, as might shelter and promote his secret and unwarrantable Proceedings, together with other false and evil Counsellors, did advise her Majesty to make and create twelve Peers of this Realm, and Lords of Parliament; and pursuant to his destructive Counsels Letters Patents did forthwith pass, and Writs issued, whereby twelve Peers were made and created; and did likewise advise her Majesty immediately to call and summon them to Parliament; which being done accord-

ingly, they took their Seats in the House of Lords on or about the Second of *January*, One Thousand Seven Hundred and Eleven, to which Day the House then stood adjourned. Whereby the said *Robert Earl of Oxford* and *Earl Mortimer* did most highly abuse the Influence he then had with her Majesty, and prevailed on her to exercise in the most unprecedented and dangerous Manner that valuable and undoubted Prerogative, which the Wisdom of the Laws and Constitution of this Kingdom, hath entrusted with the Crown for the rewarding signal Virtue and distinguish'd Merit. By which desperate Advice he did not only, as far as in him lay, deprive her Majesty of the Continuance of those seasonable and wholesome Counsels in that critical Juncture, but wickedly perverted the true and only End of that great and useful Prerogative to the Dishonour of the Crown, and the irreparable Mischief to the Constitution of Parliaments. All which Crimes and Misdemeanours were committed and done by him the said *Earl* against our late Sovereign Lady the *Queen*, her Crown and Dignity, the Peace and Interest of this Kingdom, and in Breach of the several Trusts reposed in him the said *Earl*, and he the said *Earl of Oxford* and *Earl Mortimer* was Lord High Treasurer of *Great Britain*, and one of her Majesty's Privy Council, during the Time that all and every the Crimes before set forth were done and committed. For which Matters and Things, the Knights, Citizens, and Burgeſſes of the House of Commons in Parliament assembled, do, in the Name of themselves and of all the Commons of *Great Britain*, impeach the said *Robert Earl of Oxford* and *Earl Mortimer* of High-Treason, and other High Crimes and Misdemeanours in the said Articles contained. And the said Commons by Protestation saving to themselves the Liberty of exhibiting at any Time hereafter, any other Accusations or Impeachment against the said *Earl*, and also of replying to the Answers which the said *Robert Earl of Oxford* and *Earl Mortimer* shall make to the Premises; or any of them, or any Impeachment or Accusation that shall be by them exhibited, according to the Course and Proceedings of Parliament, do pray that the said *Robert Earl of Oxford* and *Earl Mortimer* be put to answer all and every the Premises; and that such Proceedings, Examinations, Trials and Judgments may be upon them, and every of them had and used, as shall be agreeable to Law and Justice. And they do further pray and demand, that the said *Robert Earl of Oxford* and *Earl Mortimer* may be sequestred from Parliament, and forthwith committed to safe Custody.

After these Articles were deliver'd and debated upon; a Motion was made, that the *Earl of Oxford* might be committed to safe Custody, when his Lordship spoke to this Effect.

My LORD,

I *is a very great Misfortune for any Man to fall under the Displeasure of so great and so powerful a Body as the Commons of Great Britain; and this Misfortune is the heavier upon me, because I had the Honour to be placed at the Head of the late Ministry, and must now, it seems, be made accountable for all the Measures that were then pursued: But on the other Hand, 'tis a very great Comfort to me under this Misfortune, that I have the Honour to be a Member of this august Assembly: An Assembly which always squares their Proceedings and Judgments by the Rules*

of Honour, Justice and Equity; and is not to be byass'd by a Spirit of Party.

My Lord. I could say a great deal to clear my self of the Charge which is brought against me: But as I now labour under an Indisposition of Body, besides the Fatigue of this long Sitting, I shall contract what I have to say within a very narrow Compass. This whole Accusation may, it seems, be reduced to the Negotiation and Conclusion of the Peace. That the Nation wanted a Peace, nobody will deny; and I hope it will be as easily made out, that the Conditions of this Peace are as good as could be expected, considering the Circumstances wherewith it was made, and the Backwardness and Reluctancy which some of the Allies shew'd to come into the Queen's Measures. This is certain, that this Peace, as bad as it is now represented, was approved by two successive Parliaments. It is indeed suggested against this Peace, that it was a separate one; but I hope, my Lord, it will be made appear, that it was general; and that 'twas France, and not Great Britain, that made the first Steps towards a Negotiation. And, my Lord, I will be bold to say, that during my whole Administration, the Sovereign upon the Throne was loved at Home, and feared Abroad.

As to the Business of Tournay, which is made a capital Charge, I can safely aver, that I had no manner of Share in it; and that the same was wholly transacted by that unfortunate Nobleman who thought fit to step aside: But I dare say in his Behalf, that if this Charge could be proved, it would not amount to Treason. For my own part, as I always acted by the immediate Directions and Commands of the late Queen, and never offended against any known Law, I am justify'd in my own Conscience, and unconcern'd for the Life of an insignificant old Man. But I cannot, without the highest Ingratitude, be unconcern'd for the best of Queens: A Queen who heap'd upon me Honours and Preferments, tho' I never ask'd for them; and therefore I think myself under an Obligation to vindicate her Memory, and the Measures she pursued, to my dying Breath. My Lord, If Ministers of State, acting by the immediate Commands of their Sovereign, are afterwards to be made accountable for their Proceedings, it may one Day or other be the Case of all the Members of this august Assembly: I don't doubt, therefore, that out of Regard to your selves, your Lordships will give me an equitable Hearing; and I hope that, in the Prosecution of this Enquiry, it will appear, that I have merited not only the Indulgence, but likewise the Favour of the Government. My Lord, I am now to take my Leave of your Lordship, and of this honourable House, perhaps for ever! I shall lay down my Life with Pleasure, in a Cause favour'd by my late dear Royal Mistress. And when I consider that I am to be judge by the Justice, Honour and Virtue of my Peers, I shall acquiesce, and retire with great Content: And my Lords, God's Will be done.

Further Articles of Impeachment of High Crimes and Misdemeanours, against Robert Earl of Oxford and Earl Mortimer.

ARTICLE I.

THAT whereas in or about the Month of *January*, in the Year One Thousand Seven Hundred Ten-Eleven, a dangerous and destructive Expedition had been projected and set on Foot, under Pretence of making a Conquest on the Possessions of the *French King* in *North America*, but with a real Design to promote his Interests, by weakening the Confederate Army in *Flanders*, and dissipating the Naval Force of this Kingdom, as well as for the Sake of the private Interests and corrupt Gain of the Promoters of the said Expedition, he the said *Robert Earl of Oxford* and *Earl Mortimer*,

timer, being then one of her late Majesty's Privy-Council, and one of the Commissioners of her Majesty's Treasury, was not only wanting in his Duty to her late Majesty, by wilfully and industriously absenting from the Meetings of other Persons, then in high Trust under her Majesty, wherein the said Expedition was concerted, and by not advising her Majesty against, and doing what in him lay to have prevented the putting the same in Execution, but did, contrary to his Oath, and the high Trust then reposed in him, advise her Majesty to consent to the making an Expedition for the conquering *Canada* and the City of *Quebeck* on the River of *St. Laurence* in *North America*; and in Execution of his said evil Counsels, he did further advise her Majesty to give Orders for detaching several Battalions of the Forces then in the Service of her Majesty, in Conjunction with her Allies in *Flanders*, and to send the same with a large Squadron of Men of War on the said Enterprize; although the said *Robert Earl of Oxford* and *Earl Mortimer* well knew, that the said Project or Expedition having been frequently deliberated on and maturely considered, a short Time before, in a Committee of Council, was then laid aside as dangerous and impracticable. And a Demand being made at the Treasury on or about the Months of *May* or *June*, One Thousand Seven Hundred and Eleven, for the Sum of Twenty-eight Thousand Pounds or thereabouts, on Pretence of Arms and Merchandize said to be sent on the said Expedition to *Canada*, he the said *Robert Earl of Oxford* and *Earl Mortimer* being then Lord High Treasurer of *Great Britain*, and one of her Majesty's Privy Council, tho' he well knew, or had Reason to suspect, that the same was an unjust and exorbitant Demand, and a great Abuse on her Majesty and the Public, and such as ought not to have been complied with, was not only wanting in his Duty to her Majesty, in not giving his humble Advice against the said Demand, or at least in not representing to her Majesty the Grounds of such his Suspicion, but did, contrary to his Oath and his Duty, advise her Majesty, that the said Sums should be issued and paid; and did accordingly countersign a Warrant to the Paymaster of her Majesty's Forces for the Payment of the same, pursuant to which the same was issued and received. And in further Violation of his Oath, his Duty, and Trust, and with the most corrupt Design to prevent the Justice due to her Majesty and the Nation, he the said *Robert Earl of Oxford* and *Earl Mortimer*, being then Lord High Treasurer of *Great Britain*, and exercising a most unexampled arbitrary Power, not only in her Majesty's private Councils, but extending his evil Influences to the great Council of the Nation; after the said Expedition had proved unsuccessful, and it had been discover'd to him the said *Robert Earl of Oxford* and *Earl Mortimer*, that the Nation had been cheated of above Twenty Thousand Pounds on that Account, did most ungratefully and corruptly employ his wicked Arts, and the Credit which he had gained by his many false and crafty Insinuations and Practices, to keep the House of Commons from examining that Affair. And in or about the Month of *August*, One Thousand Seven Hundred and Fourteen, in a Letter or Memorial under his Hand to her late Majesty, he did presume, not only to insinuate the ill Opinion he therein pretended always to have had of the said Expedition, but did declare the Suspicions he had

of the great Injury and Abuse done to her Majesty and the Public, in the Demand of the said Twenty-eight Thousand Pounds, even at the Time when the same was made, and that the Public had been cheated of above Twenty Thousand Pounds on that Account; and in the said Memorial did presume further to declare to her Majesty, that he was forced to use all his Skill and Credit to keep the House of Commons from examining that Affair in the last Parliament; thereby vainly, but most wickedly, recommending himself to the Continuance of her Majesty's Favour, by the Success of his most profligate Measures. By all which unparallel'd Corruptions and most dangerous Councils and Practices of him the said *Robert Earl of Oxford* and *Earl Mortimer*, the good and faithful Allies of her Majesty were deprived of the Aid of her Majesty's Troops to which they were entitled by their Conventions, and the Confederate Army in *Flanders* was greatly diminished, to the apparent Advantage of the common Enemy: The Public Money, granted by Parliament for reducing the Power of *France*, and which was expressly appropriated for other special Services, was arbitrarily and illegally misapplied and embezzled, and an heavy Debt incurr'd on the Nation, not only sitting the Parliament, but even in Contempt and Defiance of a Representation made by the House of Commons to the Throne, even whilst the said Expedition was concerting; and whereby the highest Injustice was done, in suppressing an Enquiry so just to her Majesty and her People, and a lasting Reproach and Scandal brought on that House of Commons, of which he boasts, as having been wrought on by his corrupt Influence not to examine into so high and so scandalous an Abuse.

ARTICLE II.

That the said *Robert Earl of Oxford* and *Earl Mortimer*, not contented with the high Employments and Places of Honour and Profit bestowed on him by her late Majesty, nor with the large and excessive Gains by him made by the Incomes and Profits of the said Employments, on or about the Month of *October*, One Thousand Seven Hundred and Eleven, whilst the Nation was engaged in a most expensive War against *France* and *Spain*, for preserving the Liberties of *Europe*, and greatly exhausted with the Supplies and Taxes for carrying on the same, and was under such heavy Debts as were impossible to be satisfied, without the utmost Frugality or laying grievous Taxes upon the Commons of *Great Britain*: Contrary to his Oath and his high Trust, and making a most dishonourable and ungrateful Use of the ready Access he had to her late Majesty, did prevail on and advise her Majesty to sign a Warrant to himself, being then Lord High Treasurer of *Great Britain*, for the issuing and Payment of the Sum of Thirteen Thousand Pounds to *John Drummond*, Esq; or his Assigns, for such special Services relating to the War, as her Majesty had directed: And the said *Robert Earl of Oxford* and *Earl Mortimer*, on or about the Twenty-fourth Day of *November* following, in pursuance of the said Warrant under her Majesty's Sign Manual, did sign a Warrant for the Payment of the said Thirteen Thousand Pounds for such special Services of the War, as her Majesty had directed; although no special Services had been, or were at any Time afterwards directed by her Majesty, to which the said Monies were to be applied. And the said *Robert Earl of Oxford* and *Earl Mortimer*, having privately desired leave of the said

Drummond

Drummond to strike some Fin-Tallies in his the said *Drummond's* Name, he did, pursuant thereto, direct that Orders amounting to the Sum of Thirteen Thousand Pounds should be charged in the Register of the Exchequer on the Monies arising by Sale of Tin, in the Name of the said *John Drummond*; and tho' the same were accordingly struck in the Name of the said *Drummond*, in or about the Month of *November*, One Thousand Seven Hundred and Eleven, they were not deliver'd out to the said *Drummond*, but were kept in the Treasury Chamber, or else were in the Power or Custody of the Earl, till about the End of *January* following, when the said *Drummond* having occasion, as the said *Robert Earl of Oxford* and *Earl Mortimer* well knew, to go into *Holland*, at the Desire and Request of the said Earl, he indorsed his Name on the said Orders, and the same were left, by his Privity, Direction, or Consent, in the Hands of Mr. *John Taylor*, a Clerk of the Treasury; and the said *Robert Earl of Oxford* and *Earl Mortimer* having afterwards got Possession of the said Orders, did in or about the Month of *June*, One Thousand Seven Hundred and Twelve, send an Order in Writing to the said Mr. *Taylor* to deliver the said Tallies to a Servant of the said Earl, which was done accordingly, the said Indorsements not being at that Time fill'd up: And the said *Robert Earl of Oxford* and *Earl Mortimer*, having by these corrupt and scandalous Methods got the said Tallies and Orders into his own Hands, did afterwards fill up Assignments of the said Orders for Twelve Thousand Pounds, Part of the said Thirteen Thousand Pounds, to himself, and the remaining Part to such other Persons as he thought fit; and did afterwards in or about the Months of *August*, *October*, and *November*, One Thousand Seven Hundred and Thirteen, at several Times, dispose of the said Orders and Tallies to his own private Use and Advantage. And to cover the said scandalous Embezzlements, he the said *Robert Earl of Oxford* and *Earl Mortimer* did afterwards, as he pretends, advise and prevail on her Majesty, on or about the Fourteenth of *December*, One Thousand Seven Hundred and Thirteen, to sign a Warrant prepared by himself, wherein after the Recitals of his own good, faithful, and acceptable Services, which had tended to the Quiet, Safety and Prosperity of her Majesty and her Realms, though accompanied with great Difficulties on himself, and Hazards to him and his Family; and that her Majesty was resolv'd to bestow upon him a Sum of ready Money: But the said Earl representing to her Majesty, that the Arrears then due to her Servants and Tradesmen were very great and pressing, her Majesty did therefore agree and determine that he should have, to his own Use, the said several Sums, amounting to Thirteen Thousand Pounds comprized in the Orders aforesaid: It was directed that the said *John Drummond* should assign the said Orders, and the whole Right and Benefit thereof to the said Earl and his Assigns; although the said Earl had privately and clandestinely procured from the said *Drummond* an Assignment of the said Orders near two Years before the said Warrant, and had fraudulently and corruptly disposed and converted them to his own Use, without her Majesty's Privity or Consent, some time before her Majesty was prevailed on to sign the said Warrant. And though the last mentioned Warrant, if any such there be, was not communicated to the said *Drummond* by the said Earl during her Majesty's Life, nor was the same countersigned nor entered in the Treasury, yet he the said *Robert Earl of Ox-*

ford and *Earl Mortimer*, even after his said Corruption had been discovered in Parliament, did presume, without the Privity of the said *Drummond*, to send the said Warrant to the Commissioners of his Majesty's Treasury, desiring that the same might then have been entered in the Treasury; but the same was with great Honour and Justice refused to be so entered. By which most vile and scandalous Corruption, he the said *Robert Earl of Oxford* and *Earl Mortimer* was guilty of the most notorious Breach of his Oath and Trust, as Lord High-Treasurer of *Great Britain*, of the highest Abuse of her Majesty's Goodness, and Embezzlement of her Treasure, and of the greatest Injustice and Oppression of other of her Majesty's Subjects.

A R T I C L E III.

That whereas by the established and known Laws of this Kingdom, the Allowances or Appointments for the Maintenance and Support of Ambassadors, Envoys, Plenipotentiaries, and other public Ministers of the Crown in foreign Courts, ought to be ascertained in due Form of Law, as well in Honour as in Justice to the Imperial Crown of these Realms: And whereas the said *Robert Earl of Oxford* and *Earl Mortimer*, in or about the Month of *July* or *August*, One Thousand Seven Hundred and Twelve, sent *Matthew Prior*, Esq; an Instrument and Creature of his own, into *France*, for the carrying on his separate and dangerous Negotiations; and did afterwards in the Month of *November*, One Thousand Seven Hundred and Twelve, by his evil Counsels prevail on her late Majesty, without the Privity of, or any Communication with her Allies, to send the said *Matthew Prior* as her Majesty's Plenipotentiary to the *French King*, with Instructions to treat and conclude Matters of the highest Importance, relating to the general Negotiations of Peace: But the same was a treacherous and wicked Contrivance of him the said *Robert Earl of Oxford* and *Earl Mortimer*, for the more effectually carrying on and promoting his private, separate, and dangerous Practices with the Ministers of *France*, and the Enemies of her Majesty and her Kingdoms; he the said *Robert Earl of Oxford* and *Earl Mortimer* not regarding his Oath, or his high Trust, or the Laws of the Kingdom, did most corruptly and scandalously combine with the said *Matthew Prior* for the defrauding her Majesty of very great Sums, under the Colour of his said Employments in *France*; and to that End the said Earl did contrive that the said *Matthew Prior* should be sent into *France*, with the Character aforesaid, but without any settled Appointments or Allowances: But in the Stead and Lieu thereof, he the said *Robert Earl of Oxford* and *Earl Mortimer* did give the said *Matthew Prior* an unlimited Credit, and did promise to answer and pay such Bills as the said *Prior* should draw on him during his Residence in *France*; pursuant to which Contrivance and corrupt Agreement he the said *Matthew Prior* did, between the Twenty-seventh of *August*, in the Year One Thousand Seven Hundred and Twelve, New Stile, and the Tenth of *July*, One Thousand Seven Hundred and Fourteen, or thereabouts, at several times draw Bills of Exchange, to the Amount of Twelve Thousand Three Hundred and Sixty Pounds, or thereabouts, on him the said *Robert Earl of Oxford* and *Earl Mortimer*, which he being then Lord High Treasurer of *Great Britain*, did advise and prevail upon her Majesty to sign Warrants for the Payment of, and did countersign the same, although the said *Prior* was no way intitled to any such Allowances by Reason of his said

faid Employment, and the same greatly exceeded the Allowance even of an Ambassador of the Crown of *Great Britain*. And the said *Robert Earl of Oxford* and *Earl Mortimer* did, in the Years One Thousand Seven Hundred and Twelve, One Thousand Seven Hundred and Thirteen, and One Thousand Seven Hundred and Fourteen, without any Colour or Authority, but for the further promoting his corrupt and wicked Purposes, prevail on and advise her Majesty to sign Warrants, which were countersign'd by himself, for the Payment of the Sum of Five Thousand Five Hundred and Sixty Pounds, or thereabouts, to the Use of *Thomas Harley, Esq;* a near Relation and Emiffary of him the said *Robert Earl of Oxford* and *Earl Mortimer*, out of the Monies appropriated to the Use of her Majesty's Civil List: And did in like manner, at several Times in the Years aforesaid, most illegally, fraudulently, and corruptly issue, or direct, or advise the Direction and Payment of other large Sums of Money, to other Persons out of her Majesty's Treasury: By which most illegal and scandalous Management, he the said *Robert Earl of Oxford* and *Earl Mortimer* has introduced a Practice highly prejudicial to, and utterly inconsistent with the Constitution of this Kingdom, and of the most pernicious Consequence, by opening a Way for the most dangerous Corruption; and was not only guilty of a notorious Breach of his Oath, but enter'd into the most base and scandalous Combination with the Persons above-mentioned, and others, under the Pretence and Colour of promoting her Majesty's Service, to defraud her Majesty of the Public Money, which he was entrusted with the Management of for the Support of the Honour and Dignity of the Crown.

ARTICLE IV.

That whereas the Revenues arising to the Crown from the hereditary Excise and Post-Office, or some Parts thereof, were, by vertue of Letters Patents of the late King *James* the Second, charged with and made liable to certain Annuities or yearly Sums, in Trust for, or to the Use of *Mary*, the Consort of the said King *James* the Second, but the said Revenues were afterwards, by several Acts of Parliament, granted and settled for the Support of the Royal Household, and of the Honour and Dignity of the Crown; or for other public Uses, without any saving or exception of the said Letters Patents. And whereas by an Act made in the Twelfth Year of her late Majesty's Reign, the Sum of Five hundred thousand Pounds was granted to her late Majesty for the Discharge of divers Arrears of Salaries, Diet-Monies, and other Allowances, and sundry Debts for Pre-emptions, Provisions and other Causes, which had been then incurr'd and grown due to her late Majesty's Servants, Tradesmen and others, and were occasion'd by several extraordinary Expences since the Act for the better Support of her Majesty's Household, and of the Honour and Dignity of the Crown. And the said Sum of Five hundred thousand Pounds was expressly appropriated to the Uses aforesaid, in Aid of the said Revenues or Branches which were appointed for the Support of her Majesty's Household, and of the Honour and Dignity of the Crown. And whereas by an Act made in the Thirteenth and Fourteenth Years of his late Majesty King *William* the Third, it was Enacted, that for preventing traitorous Correspondence between his Majesty's Subjects and the pretended Prince of *Wales*, or his Adherents, that if any of the Subjects of the Crown of

England, from and after the first Day of *March*, One Thousand Seven hundred and One, should within this Realm, or without, hold, entertain, or keep any Intelligence or Correspondence in Person, or by Letters, Messages, or otherwise, with the said pretended Prince of *Wales*, or with any Person or Persons employed by him, knowing such Persons to be so employed, or should by Bills of Exchange, or otherwise, remit or pay any Sum or Sums of Money for the Use or Service of the said pretended Prince of *Wales*, knowing such Money to be for such Use or Service, such Person so offending being lawfully convicted, should be taken, deem'd, and adjudg'd to be guilty of High-Treason, and shall suffer and forfeit as in Cases of High-Treason. He the said *Robert Earl of Oxford* and *Earl Mortimer* having, by the means of the said *Matthew Prior*, held a private and unlawful Correspondence with the said Consort of the late King *James* the Second, then residing in *France*, and being determin'd secretly to promote, as far as in him lay, the Interest of the Pretender, but yet contriving to avoid the said Penalty of High-Treason: And the said Consort of his late Majesty King *James* the Second having empower'd *Abbot Gaultier* (a Popish Priest, and busy Emiffary between *Great Britain* and *France*, during the said private and separate Negotiations of Peace, and who was particularly entrusted as the common Agent between the Ministers of *Great Britain* and *France*, in transacting the most secret Affairs relating to the Pretender) to concert with the said *Robert Earl of Oxford* and *Earl Mortimer* the settling the Payment and Remittance of a very great yearly Sum out of her Majesty's Treasure into *France*, under colour and pretence of the said Letters Patents; and the said *Robert Earl of Oxford* and *Earl Mortimer* having held frequent clandestine Conferences with the said *Abbot Gaultier*, on the Subject aforesaid, and having, by his evil Counsels, sacrificed to *France* the common Interests of *Europe*; and being resolv'd that the first Fruits of the Peace with *France* should be an Offering made, by his immediate Procurement, to the nearest and most avowed Adherent to the Pretender, tho' at the great Expence of the Honour and Safety of her Majesty and her People, did, soon after the Conclusion of the Peace with *France*, agree and undertake to procure the Payment of the yearly Sum of Forty seven thousand Pounds and upwards, to or to the Use of the said Consort, during her Life; and in execution of his said Purpose did afterwards, on or about the 23d of *December*, One Thousand Seven Hundred and Thirteen, being then Lord High Treasurer of *Great Britain*, and of her Majesty's Privy Council, advise her late Majesty to sign a Warrant to himself, in the Words or to the Effect following, *viz.* *Anne R. Whereas our late Royal Father King James the Second, by Letters Patents under his Great Seal, bearing date on or about the 28th Day of August, One Thousand Six Hundred and Eighty Five, did Grant unto Lawrence Earl of Rochester, Henry Earl of Peterborough, Sidney Lord Godolphin, Robert Worden, Esq; and Sir Edward Herbert, Kt. (who are all since deceas'd) divers Annuities, or yearly Sums, amounting to Thirty seven thousand three hundred and twenty eight Pounds, Thirteen Shillings and Seven Pence to hold to them and their Heirs, during the Life of his then Royal Consort Mary, now Queen Dowager, in Trust for her; and by other Letters Patents, bearing date on or about the 3d of December, One Thousand Six Hundred Eighty Six, did also grant unto the said Queen a farther Pension or yearly Sum of*

Ten Thousand Pounds to hold during her natural Life, all which were made payable in such a manner as in the said several Letters Patents is more fully exprest. Our Will and Pleasure now is, and we do hereby Direct, Authorize and Command, that you cause Payment to be made to the Heirs of such of the said Trustees as was the longest Liver of so much as since the 24th Day of March last, 1713, is incurred or grown due on the said Annuities or yearly Sums, amounting to Thirty seven thousand three hundred twenty eight Pounds, thirteen Shillings and Seven Pence, and to the said Queen Dowager or her Assigns, of so much as since the said 25th Day of March last, is incurred or grown due on the said Annuity of ten thousand Pounds, according to the purport of the several Grants, or Letters Patents above recited, as also of what shall hereafter become due and payable upon the said several Annuities Quarterly, during the Life of the said Queen Dowager; and for so doing, this shall be your Warrant. Given at our Court at Windsor-Castle, the twenty third Day of December, One Thousand Seven Hundred and Thirteen, in the Twelfth Year of our Reign. And did afterwards, on or about the twenty fourth of December following, sign a Warrant to the Auditor of the Receipt of her Majesty's Exchequer, requiring him to make and pass Debentures for paying to such Person or Persons as is, are, or shall be authorized to receive the same, the Sum of nine thousand three hundred thirty two Pounds, three Shillings and four Pence three Farthings, for one Quarter, incurred upon the said several yearly Sums therein mentioned, from Lady-Day One Thousand Seven Hundred and Thirteen, to Midsummer following, and appointed the same to be satisfied out of the Sum of five hundred thousand Pounds, appropriated by an Act passed the then last Session of Parliament, for or towards Payment of such Debts and Arrears as were therein mentioned. And another Warrant to the said Auditor to make and pass Debentures for paying to the said Queen, or to her Treasurer or Receiver, the Sum of two thousand five hundred Pounds for one Quarter, incurr'd on the said Pension of ten thousand Pounds per Ann. from Lady-Day, One Thousand Seven Hundred and Thirteen, to Midsummer then last past, and appointed the same to be satisfied out of the Sum of five hundred thousand Pounds, appropriated by an Act passed the then last Session of Parliament, for or towards Payment of such Debts and Arrears as were therein mentioned. And the said Robert Earl of Oxford and Earl Mortimer, on or about the twentieth of July, One Thousand Seven Hundred and Fourteen, being then Lord High Treasurer of Great Britain, and of her Majesty's Privy Council, having corruptly and deceitfully, in further Violation of his Oath, and his high Trust, advised her late Majesty to sign a Warrant, directing the Payment of one thousand Pound Sterling to Daniel Arthur, Esq; for Monies expended by him for her Majesty's special Service, and the same being accordingly issued and received by him the said Arthur out of her Majesty's Treasure, he the said Robert Earl of Oxford and Earl Mortimer being then Lord High Treasurer of Great Britain, did give private Direction to the said Arthur to pay the said Sum of one thousand Pounds to the said Abbot Gualtier, or to his Use, pursuant to which Direction the said Arthur did pay or cause to be paid the said Sum of one thousand Pounds to the said Abbot Gualtier, or to his Use; whereby the said Robert Earl of Oxford and Earl Mortimer did most wickedly betray the Honour of her late Majesty, and the Imperial

Crown of these Realms, in advising her, under Colour of the said Letters Patents, and without the Advice of her Council or her Parliament, to direct the issuing of the Revenue, provided by Parliament for the Support of the Honour and Dignity of the Crown, to the Use and Benefit of the open and avowed Adherent of the Pretender; and did not only defraud her Majesty of the said Sum of one thousand Pounds, but did most arbitrarily, illegally, and corruptly advise the Embezzlement and Misapplication of so much of the said Sum of five hundred thousand Pounds, in Contempt and Defiance of the express Appropriation of an Act of Parliament.

ARTICLE V.

That whereas by the antient and undoubted Laws of this Kingdom, no Person, being a natural born Subject of this Realm, or within any of the Dominions thereunto belonging, and having committed and being under the Guilt of High Treason, ought to be receiv'd within this Kingdom, as a public Minister, or with any Character from any Foreign Prince, State, or Potentate. And whereas some time in the Year One Thousand Seven Hundred and Thirteen, one Patrick Lilesh, stiling himself, and commonly known by the Name of Sir Patrick Lawless, an Irish Papist (who had served with the late King James the Second in the War in Ireland, against his late Majesty King William the Third of ever glorious Memory, had follow'd the said King James into France, and continu'd in the most open and avowed manner in his Interests and Service, and in Rebellion against his said Majesty King William, and had bore high Commission against, and had been in open Arms against her late Majesty Queen Anne in the late War in Spain) did come into this Kingdom, and pretended to have and did take on himself the Character of a Minister sent from King Philip of Spain, to her late Majesty, to treat of Matters of the greatest Importance to the Honour and Safety of her Majesty and her Kingdoms; and having given notice of the same to Robert Earl of Oxford and Earl Mortimer, then Lord High Treasurer of Great Britain, and of her Majesty's Privy Council, and who then assumed to himself the supreme Direction in her Majesty's Councils; he the said Robert Earl of Oxford and Earl Mortimer was not only wanting in his Duty to her Majesty, in not advising her Majesty against receiving and admitting the said Lilesh aliàs Lawless in the Quality aforesaid, but did, together with other false and evil Counsellors, advise her Majesty to receive and admit him as a Minister from his said Catholic Majesty; and the said Earl did presume frequently too meet, confer and negotiate the most important Affairs of the Nation with the said Lilesh aliàs Lawless in the Quality aforesaid. And the better to conceal his said illegal and dangerous Measures from her said Majesty, he the said Robert Earl of Oxford and Earl Mortimer was privy to, consenting, and advising that the said Lilesh aliàs Lawless should be introduced to her said Majesty, and should be received and treated by her Minister, under the false and disguised Name of Don Carlo Moro. And the House of Lords, some time in the Month of April, One Thousand Seven Hundred and Fourteen, having notice of the said dangerous Attempt of the said Lilesh aliàs Lawless, on or about the Ninth of the said Month, made an humble Address to her Majesty, that she would be graciously pleased to issue her Royal Proclamation, commanding all proper Officers and Magistrates to make diligent Search for, and to apprehend

prehend all Popish Priests, and to put the Laws in Execution against them; and likewise to enquire after and apprehend all such Persons as have serv'd in Arms against her Majesty, or their late Majesties King *William* and Queen *Mary*, and who were then within the Kingdom, contrary to Law, to the End that they might be brought to Justice. To which her Majesty was graciously pleas'd to return an Answer to the Effect following, *viz.* That she would give Orders pursuant thereto, and a Proclamation did accordingly issue. And on the said ninth Day of *April*, the House of Lords (having under their Consideration what further Security could be provided for strengthening the Protestant Succession in the House of *Hanover*) came to the following Resolution, *viz.* *That no Person, being a Natural born Subject of Great Britain, or within any of the Dominions thereunto belonging, and who having traiterously serv'd against her Majesty, ought to be receiv'd as a public Minister, or with any Character within this Kingdom.* Notwithstanding which, he the said *Robert Earl of Oxford* and *Earl Mortimer*, having no regard to the Safety of her Majesty's Person, or to the Security of the Protestant Succession; and setting himself in utter Defiance not only of the said Advice and Resolution of the House of Lords, but of her Majesty's Assurances to that House of Parliament, and of her Royal Authority and Command, by her Proclamation under the Great Seal: Instead of doing what in him lay to have apprehended and brought, or causing the said *Lilesh aliàs Lawless* to be brought to Justice, did afterwards, on or about the Fifteenth Day of *March*, One Thousand Seven Hundred and Fourteen, most wickedly and traiterously advise her Majesty to sign a Warrant, directing the Payment of one thousand Pounds Sterling to *Daniel Arthur*, Esq; for special Services, which being accordingly issued and received by the said *Arthur*, he the said Earl did privately and corruptly direct the said *Arthur* to pay the same, and accordingly the said one thousand Pounds was paid to the Use of the said *Lilesh aliàs Lawless*: And the said *Robert Earl of Oxford* and *Earl Mortimer* did at other times, in a fictitious and scandalous manner, direct the Payment of other considerable Sums of Money, out of her Majesty's Treasure, to the said *Lilesh aliàs Lawless*, which were accordingly paid to him; altho' it was notorious, that the said *Lilesh aliàs Lawless* had not only traiterously serv'd in Arms against her Majesty, but had been the Minister or Agent of the Pretender at the Court of *Madrid*; and was under strong Suspicions of being sent into *England*, tho' under the Pretences aforesaid, secretly to promote the Interest of the Pretender in these Kingdoms. By all which corrupt and evil Counsels he the said *Robert Earl of Oxford* and *Earl Mortimer* did most basely and ungratefully expose the Person of her Sacred Majesty, did what in him lay to enervate and render ineffectual the Advice of Parliament, and her Majesty's most solemn Declarations, in a matter of the nearest Concern to her Majesty and Kingdoms, and by countenancing, in the most corrupt and scandalous manner, the secret Emissaries of the Pretender, did greatly encourage his open Adherents, to the apparent Danger of the Protestant Succession to the Imperial Crown of these Realms.

ARTICLE VI.

That whereas her late Majesty Queen *Anne*, after several unsuccessful Attempts, in Conjunction with her Allies, to establish his present Imperial Majesty on the Throne of *Spain*, being inform'd, that the People of *Catalonia* were inclin'd to cast off the Yoke

impos'd upon them by the *French*, and to return to the Obedience of the House of *Austria*; and her Majesty being desirous to maintain and improve that good Disposition in them, and to induce them to put the same speedily in Execution, did send *Milford Crow*, Esq; to them, with necessary Powers and Instructions to carry on so great a Work, for the Advantage of her Service, and the Good of the Common Cause; and to that End to treat with the *Catalans*, or any other People of *Spain*, about their coming into the Interest of King *Charles* the Third, his present Imperial Majesty, and joining with her Majesty and her Allies against the Common Enemy; and her Majesty, after her gracious Assurances to assist them with Men and Money, was pleas'd to authorize her said Minister to give them her utmost Assurances, to procure the Establishment of all such Rights and Immunities as they had formerly enjoy'd under the House of *Austria*; and that for their further Satisfaction, she had sent for Powers from King *Charles* the Third, for confirming the same, and was willing to become Guarantee that it should be done: Nevertheless on this express Condition, that they should receive the said King *Charles* as lawful King of *Spain*, and utterly renounce the House of *Bourbon*. And, together with the said Instructions, her Majesty was pleas'd to sign and cause to be deliver'd to her said Minister, Credential Letters to the Nobility, Magistrates, and all other Officers Civil and Military of *Catalonia*, desiring them to depend on the Promises he should make them in her Name. And in her Majesty's Instructions to the Earl of *Peterborow* and Sir *Cloudeſly Shovel*, in or about the Month of *May*, One Thousand Seven Hundred and Five, they are ordered to use their utmost Endeavours to induce the *Catalans* to join with them in their Undertaking, and to assure them of her late Majesty's Support, and to promise them, in the Queen's Name, that she would secure them a Confirmation of their Rights and Privileges from the King of *Spain*, that they might be settled on a lasting Foundation to them and their Posterity. And in case Persuasions should not prevail, and the *Catalans* should not make a suitable Return to those kind Offers, they were ordered to annoy their Towns on the Coasts of *Spain*, and to reduce them by Force. And, in Conformity to these Instructions, a *Manifesto*, or Declaration was prepared, by the Privity and Advice of *Robert Earl of Oxford* and *Earl Mortimer*, then one of her Majesty's principal Secretaries of State, and deliver'd to the said Earl of *Peterborow*, full, on the one Hand, of the Assurances aforementioned, and on the other hand, of Menaces to them, in case they declined her Majesty's Overtures, which *Manifesto* was afterwards published by him the said Earl of *Peterborow* in *Catalonia*: And whereas the Nobility, Clergy, and the whole Principality of *Catalonia*, and the Inhabitants of the Isle of *Majorca*, relying on the Faith of those Royal Assurances, did utterly abandon the House of *Bourbon*, and acknowledged King *Charles* the Third, his present Imperial Majesty, for their lawful Sovereign, and did join their Arms with those of her Majesty and her Allies, against the Duke of *Anjou*; and it having pleas'd Almighty God so far to bless her Majesty's pious and generous Undertaking, as by most signal Successes, in a short time, to deliver the Principality of *Catalonia* from the heavy Yoke of *French* Bondage; and great Supplies having been granted by Parliament, for the reducing the whole Kingdom of *Spain* to the

Obedience of the House of *Austria*; the Arms of her Majesty and her Allies were attended with vast Successes, having twice entered the Capital City of that Kingdom, and obtained many other signal Conquests, to the great Advantage of the Common Cause: And thro' the whole Progress thereof, the Bravery and Firmness of the *Catalans* being always remarkable, thereby, as well as from the repeated Assurances given to them from time to time, in her Majesty's Name, by every General and Minister sent from *Great Britain* to *Spain*, the Hearts of that brave People were united under the strongest Tyes of Affection and Gratitude to her Majesty; and they were justly held in the strictest Dependence on the continuance of her Royal Protection; he the said *Robert Earl of Oxford* and *Earl Mortimer*, being an Enemy to the Common Liberty of *Europe*, and having traiterously enter'd into Conspiracies for subjecting the whole *Spanish* Monarchy to the House of *Bourbon*, and designing most maliciously the utter Ruin and Destruction of the antient Rights, Liberties and Privileges of the *Catalans*, who had made so glorious a Stand for the Preservation of them, did, together with other false and evil Counsellors, form a most dishonourable, wicked, and cruel Contrivance, not only for abandoning the *Catalans* to the Fury and Revenge of the Duke of *Anjou* and his Adherents, but for the final Extirpation of all their Rights, Liberties, and Privileges. And in Execution of that his Intention, during the private, separate, and pernicious Negotiation of Peace, which was carry'd on between him and the Ministers of *France*, and before any Negotiation of Peace was set on Foot, in due Form of Law, between the Crowns of *Great Britain* and *Spain*, did advise her Majesty to give Directions to the Lord *Lexington*, her Ambassador to the Court of *Spain*, to acknowledge the Duke of *Anjou* King of *Spain*, but was greatly wanting in his Duty to her Majesty, in not advising her to give Instructions to her said Minister, at the same time peremptorily and absolutely to insist on the securing the *Catalans* Liberties at the Conclusion of the Peace. And altho' the private, separate and treacherous Practices of him the said *Robert Earl of Oxford* and *Earl Mortimer*, and others, in Combination with the Ministers of *France*, did afterwards, on or about the Fourteenth of *March* One Thousand Seven Hundred and Thirteen, necessitate his present Imperial Majesty to conclude a Treaty for the evacuating *Catalonia*, (whereof her Majesty was Guarantee) without any express and positive Stipulation for the *Catalans* Liberties, (his Imperial Majesty relying, in that respect, on her Majesty's Declaration, to interpose for them in the most effectual manner, and on the Promises of the *French* King to join his Endeavours for the same Purpose.) And altho' her sacred Majesty did, both before and after, frequently declare by her Ministers in *Spain*, that she thought herself under the strongest Tyes of Honour and Conscience, not to abandon a People whom the Necessities of the War had obliged her to draw into her Interest. And tho' the *French* King did not join his Endeavours for the Purposes aforesaid; he the said *Robert Earl of Oxford* and *Earl Mortimer*, together with other false and wicked Counsellors, having from time to time amused and deceived the distress'd *Catalans*, with groundless Hopes of her Majesty's effectual Interpositions in their Favour, thereby engaging them in a more obstinate Defence of their Territories against the Duke of *Anjou*, was not only highly wanting in his Duty to her Majesty, by not doing what in him

lay, as a faithful Minister, to have prevented the Conclusion of the Treaty of Peace with *Spain*, till just and honourable Conditions were secured for the *Catalans*, but did falsely, maliciously, and treacherously advise her Majesty to conclude a Peace with the King of *Spain*, without any Security for the antient and just Rights, Liberties and Privileges of that brave, but unhappy Nation. And did further advise her Majesty to send Sir *James Wisbart*, her Admiral, with a large Squadron of Men of War, at a great Expence, to favour the said King of *Spain* in the Siege of *Barcelona*, the Capital City of *Catalonia*, and with express Instructions, that in case the Inhabitants of *Majorca* should refuse the Terms that should be offer'd them by the Duke of *Anjou*, to employ his Squadron, in countenancing and assisting all Attempts that should be made, for reducing them to a due Obedience. By which most vile and detestable Counsels, her sacred Majesty, contrary to her most pious Intentions, the Faith of Nations, and the Duties of Religion, and Humanity it self, and contrary to her solemn and repeated Assurances, was prevailed on to abandon a distressed People, drawn in, and engaged by her own Invitation, into an open War with the Duke of *Anjou*, for the Preservation of the Liberties of *Europe*, and the Commerce of *Great Britain*. And the Persons, Estates, Dignities, Rights, Liberties and Privileges of the *Catalans* were given up as a Sacrifice to the implacable Resentment of their enraged and powerful Enemy; and the Honour of the *British* Nation, always renown'd for the Love of Liberty, and for giving Protection to the Asserters of it, was most basely prostituted; and a free and generous People, the faithful and useful Allies of this Kingdom, were betray'd, in the most unparallel'd manner, into irrevocable Slavery: And, in Consequence of which most dishonourable and perfidious Councils, the most execrable Hostilities, Burnings and Plunderings were committed upon them, throughout their whole Province, without sparing the Effusion of innocent Blood, and without the Distinction of Age or Sex; and that unfortunate People were afterwards forc'd to undergo the utmost Miseries of a Siege in their Capital City of *Barcelona*; during which great Multitudes of them perished by Famine and the Sword, many of them have since been executed: And great Numbers of the Nobility of *Catalonia*, who were for their Constancy and Bravery, in Defence of their Liberties, and for their Services in Conjunction with her Majesty and her Allies, had, in all Honour, Justice and Conscience, the highest Claim to her Majesty's Protection, are now dispersed in Dungeons, throughout the *Spanish* Dominions; and not only the *Catalan* Liberties extirpated, but by those wicked Counsels of him the said *Robert Earl of Oxford* and *Earl Mortimer*, *Catalonia* it self is almost become desolate.

All which Crimes and Misdemeanours were committed and done by him the said Earl against our late Sovereign Lady the Queen, her Crown and Dignity, the Peace and Interest of this Kingdom, and in Breach of the several Trusts reposed in him the said Earl.

And he the said *Robert Earl of Oxford* and *Earl Mortimer* was either Commissioner of the Treasury, or Lord High Treasurer of *Great Britain*, and one of her Majesty's Privy Council, during the time that all and every the Crimes before set forth were done and committed.

For which Matters and Things, the Knights, Citizens and Burgeses of the House of Commons in

in Parliament assembled, do, in the Name of themselves, and of all the Commons of *Great Britain*, further impeach the said *Robert Earl of Oxford* and *Earl Mortimer* of other High Crimes and Misdemeanours in the said Articles contained. And the said Commons by Protestation, saving to themselves the Liberty of exhibiting at any time hereafter any other Accusations or Impeachments against the said Earl, and also of replying to the Answers which the said *Robert Earl of Oxford* and *Earl Mortimer* shall make to the Premises, or any of them, or to any Impeachment or Accusation that shall be by them exhibited, according to the Course and Proceedings of Parliament, do pray, that the said *Robert Earl of Oxford* and *Earl Mortimer* be put to answer all and every the Premises; and that such Proceedings, Examinations, Trials and Judgments may be upon them, and every of them had and used, as shall be agreeable to Law and Justice.

L. H. Steward. Read the Answer to the Impeachment.

The Clerk reads the Answer.

The ANSWER of Robert Earl of Oxford and Earl Mortimer, to the Articles exhibited by the Knights, Citizens and Burgesses in Parliament assembled, in the Name of Themselves, and of all the Commons of Great-Britain, in Maintainance of their Impeachment against him for High-Treason, and other High-Crimes and Misdemeanours, supposed to have been by him committed.

THE said Earl, saving to himself all Advantages of Exception to the said Articles, and of not being prejudiced by any Words, or want of Form in this his Answer; and also saving to himself all Rights and Privileges belonging to him as one of the Peers of this Realm, for Answer to the said Articles saith: He admits many solemn Treaties and Alliances have been formerly entered into, between the Crown of England, and other Princes and Potentates of Europe, for their mutual Security, and to prevent the immoderate Growth of the Power of France, which might prove dangerous to the neighbouring Princes and States; and that therefore it was laid down as a fundamental Principle and Maxim of Union amongst the Allies, *That France and Spain should never come and be united under the same Government, and that one and the same Person should not be King of both those Kingdoms*; and he apprehends, that the principal View and Aim of the Allies was to settle and maintain an equal Ballance of Power in Europe; and, since the Conjunction of Spain to the Dominions of France might possibly ensue from the Duke of *Anjou's* being possessed of that Crown, the dispossessing him was desir'd, as the most likely Means to prevent that Conjunction; and for the same Reason the Union of Spain with the Empire must have been equally fatal, and the Prevention of it equally the Design of the Alliance; nor could the Continuance of Spain in the House of *Bourbon* be in any Respect prejudicial to the Allies, if the Union of that Crown with France could be prevented. As new Dangers of such Union have been apprehended, new Treaties and Stipulations have been entered into among the Allies, to obviate such Dangers, and particularly the Treaty for an intended Partition seems to have been concluded upon that View; and though he acknowledges the Wisdom of Parliament in condemning that Treaty, as prejudicial and fatal in its Consequences to *England*, and the Peace of *Europe*, yet,

he presumes, it was not condemn'd, because Part of the Dominions of the Crown of *Spain* were thereby allotted to the House of *Bourbon*; but because such considerable Parts of those Dominions, as the Kingdoms of *Naples* and *Sicily*, the Province of *Guipuzcoa* and other Territories were allotted to that Branch of the House of *Bourbon*, to whom the Crown of *France* was to descend, which might have been a great and dangerous Addition to the then formidable Strength of that Crown; and because it was made against the repeated Remonstrances of *Charles the Second*, then King of *Spain*, who declared by his Ambassador, *That such Partition-Treaty could have no other Effect, than to force Spain to throw itself into the Arms of France, to prevent the dismembring of the Spanish Monarchy.* And, that it had this Consequence, appear'd upon the Death of that Prince, who seems to have been induced by that Consideration to bequeath the entire Monarch of *Spain* to the Duke of *Anjou*, a younger Branch of the House of *Bourbon*; who accordingly, upon the Demise of the said King *Charles the Second*, took Possession of the Monarchy of *Spain*. But this Accession of the Duke of *Anjou* to the Crown of *Spain* did not produce the Alliance, in the Article mentioned, between *Leopold*, then Emperor of *Germany*, his late Majesty, King *William the Third* of ever-glorious Memory, and the States-General, as immediately necessary at that Juncture: For King *William*, as well as the States-General, acknowledged the Duke of *Anjou* as King of *Spain*; thereby allowing, that the Duke of *Anjou's* Enjoyment of the Monarchy of *Spain*, while he was but a younger Branch of the House of *Bourbon*, was not destructive of the Liberties of *Europe*, or the Preservation of a due Ballance of Power. And afterwards, when the *French King* had seiz'd the *Spanish Netherlands*, King *William*, by Advice of Parliament, came into the Assistance of the States, as an Auxiliary only, by sending, upon their Request, Ten Thousand Men, which *England* was obliged by Treaties to furnish, in Case the States were attacked; after which, many Conferences passed at the *Hague* betwixt the Ministers of *England* and the States, and those of *France*, in order to find out some Expedient, by which, upon a reasonable Division of the Dominions of *Spain*, a new War might be prevented; and the States, in the Course of those Conferences, often asserted, *That, though they had acknowledged Philip King of Spain, yet such an Acknowledgement was not contrary to the Demand of a reasonable Satisfaction to be given to the Emperor for his Pretensions to the Spanish Succession*; which was, in Effect, to declare, *that the Satisfaction demanded for the Emperor was such, as would leave King Philip in Possession of Spain.* But those Conferences broke off, about *August*, One Thousand Seven Hundred and One, without Effect; and in *September* following, King *William* entered into the Grand Alliance with the Emperor, and the States-General; whereby it was agreed, *That, in the first Place, Endeavours should be used by amicable Means to obtain the Satisfaction desired for the Emperor, who probably, at that Time, would have accepted a very easy Composition for his Pretensions: But when the French King acknowledged the Pretender as King of England* (which not long after happened) his Majesty King *William*, and the Parliament of *England*, justly provoked by this Affront, resolv'd to enter into the War which had been begun by the Emperor alone, in *Italy*, the Year before; and the late Queen mentions this Indignity, as the chief

chief Motive of her engaging in it, as appears by her Declaration of War against *France* and *Spain* in *May*, One Thousand Seven Hundred and Two. The said Earl admits the several Treaties set forth in the Preamble to the said Articles, and that such Advice was given by Parliament, and such Speeches were made from the Throne, as in the said Preamble are mentioned; but, for more Certainty, begs leave to refer himself to the very Treaties, Addresses of Parliament, and Speeches, when they shall be produced: And he humbly hopes, your Lordships will allow him to observe, that those Treaties manifestly shew, that the Design of the Allies, in endeavouring the Recovery of *Spain* from the House of *Bourbon*, was to prevent the Union of those two Potent Kingdoms in one and the same Person. In the Grand Alliance in One Thousand Seven Hundred and One, the avow'd Ends are, the procuring an equitable and reasonable Satisfaction to his Imperial Majesty for his Pretensions to the *Spanish* Succession, the Security of the Dominions of the King of *Great Britain*, and States-General, with the Navigation and Commerce of their Subjects, and the preventing the Union of *France* and *Spain* under the same Government. And the Territories and Provinces, pointed out in the Fifth Article, were the farthest Views of that Alliance; whereby it was thought, his Imperial Majesty would receive the utmost Satisfaction, which he could reasonably demand, for his Pretension to the *Spanish* Succession. No mention is made of the Recovery of the whole Monarchy of *Spain* to the House of *Austria*, either in the Grand Alliance, or in the Defensive one made the same Year between his Majesty King *William* and the States-General: And when, in the Treaty between the Emperor, the Queen of *Great Britain*, and the States-General, on the one Part, and the King of *Portugal* on the other, about *May*, One Thousand Seven Hundred and Three, it was concerted to place Archduke *Charles* the present Emperor, upon the Throne of *Spain*, he was then but a younger Branch of the House of *Austria*; and there is great Reason to believe that the Queen, as well as other Princes of *Europe*, and, in particular, the King of *Portugal*, did not think a Treaty to procure the Crown of *Spain* for the Arch-duke, when a younger Branch of the House of *Austria*, did lay an Obligation of procuring that Monarchy for him, when he became first of that House, and was elected Emperor; since the Imperial and Hereditary Dominions, join'd to the whole *Spanish* Monarchy, would have given such an Excess of Power to one Prince, as would have been formidable to *Europe*, and a Means to destroy that Ballance of Power which her Majesty in all her Treaties, had constantly labour'd to preserve: And it is a known and an allow'd Rule by the Law of Nations, in Reference to Leagues between Princes, that if there happens a material Change in what was the principal Ground and Cause of the Treaty, the Obligation thereof ceases. If therefore, in the Preliminary Articles in One Thousand Seven Hundred and Nine, and afterwards in the Conferences at *Gertruydenberg*, a Cession of the *Spanish* Monarchy to King *Charles* the Third, who was then younger Brother to the Emperor, was thought reasonable to be insisted on; yet the said Earl humbly submits to your Lordships great Judgment, whether there was equal Reason for insisting on such Cession, when King *Charles* the Third was become Head of that House, and had Possession of the Empire and all

the hereditary Countries of *Austria*, as a Condition, without which no Peace should be made. The States-General were so far from admitting, or yielding that the Monarchy of *Spain* should in all Events be given to the House of *Austria*, that he, the said Earl, hath heard, they refus'd to admit it to be inserted as a Condition of their Barrier-Treaty, when propos'd by her Majesty's Ambassador at the *Hague*, and chose rather to put a Stop to the Proceedings of that Treaty, and hazard the Advantages they thereby expected, than comply with that Proposal. The Advice of Parliament is of great Weight, to which her late Majesty always gave, and he the said Earl always paid, a just Regard; and he doubts not but the House of Peers had proper Inducements when they gave their Advice to the Throne, *That no Peace could be safe, honourable, or lasting, so long as the Kingdom of Spain and the West-Indies continued in the Possession of any Branch of the House of Bourbon.* But, if he may be permitted to offer his humble Conjecture concerning the Motives of that Advice, he conceiveth it might proceed from an Apprehension of a future Union of those two Crowns as likely to ensue, in Case *Spain* should continue in the Possession of any who might become Heir to the Crown of *France*, and that even the Conjunction of the Empire and *Spain* would be less dangerous than such a Union. But when her Majesty communicated to her Parliament, the Sixth of *June* One Thousand Seven Hundred and Twelve, the Terms upon which a Peace might be made, and thereby inform'd them, *That France had been brought to offer, that the Duke of Anjou should, for himself and his Descendants, renounce for ever all Claim to the Crown of France; and at the same time the Succession of the Crown of France was to be declared, after the Death of the then Dauphin and his Sons, to be in the Duke of Berry and his Sons, in the Duke of Orleans and his Sons, and so on to the rest of the House of Bourbon; and that the Succession to Spain and the West-Indies, after the Duke of Anjou and his Children, was to descend to such a Prince as should be agreed upon at a Treaty of Peace, for ever excluding the rest of the House of Bourbon;* both Houses of Parliament, by their respective Addresses to her Majesty, in the same Month, expressed their entire Satisfaction: And as the House of Commons desired her Majesty to proceed in the Negotiations then depending for obtaining a speedy Peace; so that the House of Lords assured her Majesty, *That they entirely relied on her Majesty's Wisdom to finish that great and good Work.* And after her Majesty had concluded a Peace on those Terms, both Houses of Parliament severally congratulated her Majesty on the Conclusion of the Peace; and also join'd in an Address of the Twenty-second of *April*, One Thousand Seven Hundred and Fourteen, expressing their just Sense of her Majesty's Goodness to her People in delivering them by a safe, honourable, and advantageous Peace with *France* and *Spain*, from the heavy Burthen of a consuming Land-War, unequally carried on, and become at last impracticable. He the said Earl acknowledg'es, that her Majesty was pleas'd about *August*, One Thousand Seven Hundred and Ten, to re-admit him, among others, to a Place in her Council, and to require his Service in Offices of Trust; to which he submitted purely in Obedience to her Majesty's Commands, with great Reluctance from the Prospect of the Difficulties with which he was likely to struggle. But as he never ask'd any Employment, nor us'd any wicked Arts, or base Insinuations, to obtain the same from her

her Majesty; so in all Employments, with which her Majesty was pleased to honour him, he sincerely endeavoured to discharge his Duty with the utmost Integrity, having always, with the truest Zeal, desired and endeavoured, as far as he could, to promote the Honour and Service of her Majesty, whose Aim he knew to be the Welfare of her Kingdoms, in the first Place, and as far as she judg'd it consistent with that, the common Good of her Allies. In or about the Month of *September*, One Thousand Seven Hundred and Ten, her Majesty (whose undoubted Prerogative it was) thought fit to dissolve the Parliament then in being, and to call a new One. In the Year One Thousand Seven Hundred and Eleven, Propositions were made by *France* to her Majesty for a Peace, without the Contrivance or previous Knowledge of the said Earl: Her Majesty, out of her Affection for her People, having it much at her Heart to establish Peace in her own Days, expressed her Concern for the Disappointment of former Negotiations, and her earnest Desire to put a speedy End to the War, and to ease her Subjects from the heavy Burthen of their Taxes. The said Earl doth acknowledge, that he thought a Peace was very much for the Interest and Advantage of *Great Britain*: And, in his humble Opinion, the most favourable Juncture for obtaining advantageous Terms of Peace, was immediately after the signal Victories gained by her Majesty's Arms, in the Year One Thousand Seven Hundred and Six. For, after the Reduction of the Dominions of the Electors of *Bavaria* and *Cologne*, with other important Conquests in *Germany*; after the entire Destruction of Three great Armies of *France*, in *Flanders*, *Spain*, and *Piedmont*; after the Allies had recovered the *Spanish Netherlands*, *Milan*, and other Territories in *Italy*; it might have been hoped, from the great Distress in which the Enemy then was, a just and reasonable Peace would have been obtained; since so much was at that Time gained from the Enemy, and so much more in all Probability would have been yielded by them, as would have fully answered the Ends of the Grand Alliance. Peace was at that time sought by the Enemy; and the said Earl, who had the Honour to be one of the Principal Secretaries of State, owns he then advised the accepting of it. And he humbly begs leave to observe, that the War had been continued upon so unequal a Foot, that the Burthen of it annually encreased, and, at the Time when these Proposals were made by *France*, was become almost insupportable. It had indeed been stipulated by the Grand Alliance, that the Allies should insist one another with all their Forces, according to a Specification to be agreed on in a particular Convention for that Purpose: But it doth not appear any such Convention was made, otherwise than as the House of Commons were inform'd by one of the Principal Secretaries of State to his late Majesty King *William*, that by the Proportions adjusted with the States, *England* was to furnish two Parts of five by Land, and the States the other three; and *England* was to furnish five Parts of Eight by Sea, and the States the other three: But the States not always allowing themselves to be under an Obligation to furnish such Proportions, gave Occasion to *England's* bearing an unequal Part in the War, with respect to the Allies. The States had that prudent Regard to the frugal ordering of their Affairs, that they frequently insisted they ought not to be pressed beyond their Ability, and made themselves the sole Judges of what came

within the Compass of it, and by that means avoided the supplying any Quota, or Proportion, which they thought improper for them to furnish. In the mean time the Charge of the War was greatly increased upon the Subjects of *Great Britain*: In the Year One Thousand Seven Hundred and Two, it was under Four Millions; from thence it gradually increased till the Year One Thousand Seven Hundred and Six, the Charge of which Year amounted to above Five Millions and an Half; and still advancing, till the Year One Thousand Seven Hundred and Eleven, it was then grown to near Seven Millions; and, at the same time, there was a Debt contracted, not provided for by Parliament, amounting to Seven or Eight Millions; the very Interest of which, and other Debts, wherein the Nation was involved, amounted to Three Millions *per Annum*; and the Revenues of *Great Britain* were under such Anticipations, that it was found difficult to raise above Two Millions and an Half for the growing Service, to be paid within the Compass of the Year. So that, when the Duties and Difficulties upon Trade, and the Continuance of the Taxes upon Land, which had lain so heavy above Twenty Years, are consider'd, the said Earl believes it could not be thought for the public Interest to prolong the War, without an absolute Necessity. During this Time the States had managed with so good Oeconomy, that the said Earl hath not heard of any additional Duty laid by them upon Trade, from the Year One Thousand Seven Hundred and Two, to the Year One Thousand Seven Hundred and Eleven. And what Acquisitions were made upon the Continent, during the Continuance of the War; tho' at the Expence of *British* Blood and Treasure, accrued to the Share of the Allies; and the *Dutch*, being under no Prohibition of Commerce with *France*, had a further Advantage of the *British* Merchants, in respect to a free Trade. Altho' the Princes of the Empire were engag'd by previous Treaties to furnish their Quota's to the common Cause, yet when they were often pressed to do it, they alledg'd in Excuse, *That those Troops which they were obliged to furnish at their own Expence, were in the Pay of the Crown of Great Britain.* The Emperor left it to her Majesty to provide for those Troops, which by the *Portugal* Treaty, in the Year One Thousand Seven Hundred and Three, he was to furnish. The King of *Portugal* not only neglected the Proportion of Twelve Thousand Foot and Three Thousand Horse, which by the said Treaty he was to provide at his own Expence, but even refused to permit the Eleven Thousand Foot and Two Thousand Horse, for which he had a Subsidy from her Majesty, to be paid by Musters, according to an Article of that Treaty; and, when pressed to furnish his full Number of Troops, alledged his Inability, for want of that Part of the Subsidies which the States ought to have paid him: So that almost the whole Charge of the War in *Spain* was left upon her Majesty; the States having sent few or no Troops thither, after the Battle of *Almanza*; and all the other Allies being likewise defective in their Proportions. This was the Condition of Affairs, with respect to the Charge of the War; nor did there appear, from the then Situation of Affairs, any more promising Prospect, with regard to the Event: For, although it had pleased God to bless her Majesty's Arms with wonderful Success, at which the said Earl, most sincerely rejoic'd, yet it did not appear, that after the Year One Thousand Seven Hundred and Six, our Successes in
other

other Parts had countervailed our Losses in *Spain*; for after two great Battles, wherein we had been there defeated, after our Forces had been twice obliged to retire from *Madrid*, and after the taking the *British* Troops at *Brihuega*, the Recovery of *Spain*, (which was the main Article that retarded the Conclusion of the Peace at *Gertruydenberg*) seemed almost desperate, especially since the *French* in the Year 1711, by their plentiful Vintages and Harvests, had well nigh recovered the Effects of the Famine; and since some of the Allies at the same time made pressing Instances for recalling part of their Troops, as they had done frequently during the course of the War; from whence it appears how just the Grounds were, upon which both Houses of Parliament represented to her Majesty, *That the War had been unequally carried on, and was at last become impracticable.* And the said Earl humbly hopes, he shall not be thought to have designed any Disservice to his Country, if, in such a Condition of Affairs, he did not dissuade her Majesty from hearkening to the Overtures of Peace made to her from *France*; or if, during the Negotiations, he endeavoured, by Corresponding, with her Majesty's Knowledge and Approbation, in any Courts concern'd therein, to rectify any Mistakes, or contribute in any Measure towards the Conclusion of a general Peace. But the said Earl believes, that, in all the Negotiations towards such Peace, the Allies had such Knowledge and Communication of all Measures therein taken by her Majesty, as the Treaties her Majesty was engaged in required: That the Propositions transmitted from *France* about *April* 1711, were immediately communicated to the Pensionary and Ministers of *Holland*: That her Majesty did at the same time, assure them of her Resolution to act in Concert with them, in making Peace as in making War. That when the States had expressed their Desires to be equal with those of *Great Britain* for a general and lasting Peace, and had declared, that they were ready to join in proper Measures to procure it, and desired *France* might explain itself more particularly upon the Points contain'd in those Propositions; her Majesty endeavour'd to obtain such Explanations, and afterwards communicated them to the States: And if her Majesty thought it not expedient to proceed in the Method of a Preliminary Treaty, which had prov'd so ineffectual in the Year 1709 and 1710, but thought it might be sufficient, upon Articles sign'd by a Minister of *France*, by his Sovereign's Command, to open Conferences for a Peace; the said Earl humbly hopes, that this Proceeding will appear to be so far from being an unreasonable Deviation from the Methods of former Transactions in that kind, that it will be justified by many Precedents of such Treaties. The said Earl can affirm, that, during the whole Negotiation, so far as he was concerned, he acted with a sincere Intention to obtain a general Peace for the Welfare and Honour of her Majesty and her Kingdoms, and such as might give reasonable Satisfaction to her Allies, and answer all the Obligations her Majesty was under, by any Treaties with any of the Confederates; and is not conscious to himself that he hath, in any respect, transgressed that Duty, which, as a Privy Counsellor, or Officer of State, he did owe to her Majesty, or to the Public. He is not insensible that many of the Articles, wherewith he stands charged, are complicated with such Circumstances, Aggravations and Inferences, as may render it difficult for him

to acknowledge some Facts alledged, without acknowledging, or seeming at least to acknowledge those Circumstances or Inferences. And, as he is not conscious to himself of being guilty of any Crime he stands charged with, so he takes it to be agreeable to the common Course of Proceedings of this Nature, and to your Lordships Justice, that he should not admit any Circumstances which may tend to the Accusation of himself. He therefore begs leave that he may be allowed to distinguish between the Acts themselves, and the Inferences drawn from them; and that wherever he acknowledges any Fact, he may not be understood to acknowledge those Consequences which are in the Articles deduced from it, unless it shall appear that that Consequence was the Aim and Design of the said Earl, or is the necessary Result of any Act he hath done.

In answer to the First Article, the said Earl saith, that he always had the greatest Regard to the Honour and Safety of her late Majesty and her Kingdoms, to all the Engagements she was under to the Allies of this Nation, and to the common Liberties of *Europe*, that he never was devoted to the Interest or Service of the *French* King; that he is not conscious to himself of having acted, whilst he had the Honour to be her late Majesty's *High Treasurer*, or one of her most Honourable Privy Council, contrary to his Oath, or in Violation of his Duty, and Trust, or with Disregard to, much less Defiance of any Treaties in the said Article mentioned, the Advices of Parliament, her Majesty's Declarations from the Throne, or any mutual Assurances which had been made or renewed between her Majesty and the States to act in perfect Concert with each other in making Peace as in making War: And he utterly denies, that in or about the Months of *July* or *August* One Thousand Seven Hundred and Eleven, or at any other Time, he did form any Contrivance or Confederacy to set on Foot a private, separate, dishonourable or destructive Negotiation of Peace between *Great Britain* and *France*; nor doth he know of any such Contrivance or Confederacy formed by any of her Majesty's Privy Council, or that such Negotiation was at any time set on Foot. But the said Earl saith, he doth believe, that about the Month of *April* One Thousand Seven Hundred and Eleven, her late Majesty did receive from *France* some Proposals, in order to set on Foot a Treaty for a general Peace, signed by Monsieur *de Torcy*, Secretary of State to the most Christian King, which, as he believes, were immediately communicated by her Ambassador in *Holland* to the States-General: Whereupon, as he has been informed, they thanked her Majesty for her Confidence in them, declared themselves to be weary of the War, and ready to join in any Measures her Majesty should think proper for obtaining a good Peace, and that they hoped her Majesty would bring the *French* to explain more particularly the several Points contained in the above-mentioned Proposals, or to that Effect; and that after such Request her Majesty sent *Matthew Prior*, Esq; to the Court of *France*, in order to obtain as full and ample an Explanation as he could of the first general Offers: But the said Earl denies that he did advise her Majesty to send the said Mr. *Prior* to the Court of *France*, to make Propositions of Peace, without communicating the same to her Allies; or that the said Mr. *Prior* did,

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by his Advice or Privity, communicate any Propositions to the Ministers of *France*, wherein the Interests of *Great Britain*, or the common Interest of *Europe* were betray'd; nor doth the said Earl know, that the said Mr. *Prior* had any Power to communicate Propositions to the Ministers of *France*, which betray'd either the Interests of *Great Britain*, or the common Interest of *Europe*. Therefore the said Earl insists, that there is no Ground to charge him with the treacherous or pernicious Contrivances in this Article mentioned. And if any Article was inserted in any Propositions to be communicated by the said Mr. *Prior*, that the Secret should be inviolably kept till allowed to be divulged by the mutual Consent of both Parties; yet the said Earl denies that such Article was inserted by his Advice; and if any such there was, he cannot however believe it was designed to exclude her Majesty's Allies from their just Share in the said Negotiations, and hopes he may be allowed to observe, that in case any Instructions were given for not divulging Propositions which concerned *Great Britain* in particular, the same were far from manifesting such Design as is before-mentioned, since it is well known to be the undoubted Right of every Member of a Confederacy to demand particular Advantages for themselves, not inconsistent with their Alliances, and which are not to take place but on the Conclusion of a General Peace: And it has been usual for those to whom the first Overtures of Peace are made, to make Demands for themselves in the first place; as the States particularly did in the Negotiations at the *Hague* in the Year One Thousand Seven Hundred and Nine, and at *Gertruydenberg* in the Year One Thousand Seven Hundred and Ten. And though he apprehends that an Agreement not to divulge the Propositions without the mutual Consent of both Parties, could not be to the Prejudice of the Allies; yet he believes, that in order to prevent any unreasonable Jealousies among them, even those Propositions which related to *Great Britain* in particular, were communicated to them; and that it will likewise appear, that the Propositions signed by Monsieur *de Torcy*, and transmitted in the Month of *April* One Thousand Seven Hundred and Eleven, in the said Articles mentioned, whereby it is said, the *French King* offered to treat with the Plenipotentiaries of *England* or *Holland* alone, or jointly with those of the Allies, at the Choice of *England*, were Proposals relating only to the manner of Treating, when the Conferences should be opened; and that her Majesty was so far from taking upon her to treat singly for the Allies, that she chose to have all the Parties admitted to the Congress, where they might have an Opportunity of treating and adjusting their respective Interests; that being, in her Opinion, the fairest Method of proceeding, most advantageous to the Confederates, and most likely to prevent Jealousies and Discords among them. And the said Earl saith, that he doth not know that any Negotiation of Peace was contriv'd or set on Foot by any Persons employ'd in her Majesty's Service, which was in any respect more advantageous to *France* than *France* had asked, or which had a Tendency to give the Enemy a Power to create Misunderstandings between her Majesty and her Allies, or to destroy the Confidence between them.

In answer to the Second Article, the said Earl

saith, that he believes Monsieur *Mefnager*, a Subject of the *French King*, did some time in the Year One Thousand Seven Hundred and Eleven, with her Majesty's leave, come into the Kingdom of *Great Britain*, and bring with him a Letter from the said *French King* to her late Majesty, acknowledging her Majesty Queen of *Great Britain*, and likewise expressing a Desire to re-establish Peace with her, and that he was furnished with full Powers from the said *French King* for that Purpose. The said Earl further saith, that it hath been the usual and allowed Practice in most Nations, especially in *England*, for Privy Counsellors by verbal Orders from the Sovereign to confer within the Realm with Ministers of foreign Princes, and he conceives such Practice to be agreeable to the Laws of this Realm: And that full Powers are usually granted to Ministers who are sent abroad for the Justification of Persons with whom they shall treat, rather than to justify such Ministers themselves. And the said Earl denies, that he did in the Month of *September* One Thousand Seven Hundred and Eleven, or at any other time, secretly and unlawfully, or without Authority, confer or treat with the said *Sieur Mefnager* on the Negotiations of Peace between *Great Britain* and *France*, or that he did advise or promote the making a private and separate Treaty or Agreement between the said Crowns: But he hath been informed, and doth believe, that there was a Paper stiled, *The Answer of France to the Preliminary Demands of Great Britain more particularly*, signed by Monsieur *Mefnager* only, to which was subjoined a Declaration of the Queen's Acceptance of those Preliminary Articles, as Conditions his most Christian Majesty consented to grant, which were to be reduced into the usual Form of Treaties, and explained after the most clear and most intelligible manner, to the common Satisfaction of *Great Britain* and *France*, and this only in case of a general Peace: And this Declaration, or some other Declaration to the like Effect, he believes might be signed by the Lord *Dartmouth* and Mr. Secretary *St. John*, as in the said Article is set forth. But the said Earl must crave leave to submit it to the Judgment of your Lordships, whether a Paper of that sort (if any such there was) containing Offers from *France*, which were not to take effect but in case of a general Peace, can be called a separate Treaty. He believes the Allies had early Knowledge and Participation of the said Proposals from the Ministers of *Great Britain*; but denies that the Interests of *Great Britain* were thereby given up to *France*, or the Duke of *Anjou* admitted to be King of *Spain*; since in the Declaration annexed to the said Proposals he believes it is expressed, that her Majesty might in Justice expect the Securities and Advantages mentioned in those Proposals, what Prince soever he should be to whom the Monarchy of *Spain* should be allotted; and the said Earl, recollecting as well as he can what were her Majesty's Views at that time, is persuaded that her Majesty had then a Prospect, that the Monarchy of *Spain* would fall to the Share of another Prince. The said Earl denies, that by his Privity, Consent, or Advice, any private or separate Treaty or Agreement, whereby the Interests of *Great Britain* were given up to *France*, or the Duke of *Anjou* was admitted to be King of *Spain*, was agreed, concluded, and signed by the *Sieur Mefnager* on the part of *France*, and by the Lord *Dartmouth* and *Henry St. John*, or either

either of them, in Behalf of her late Majesty; much less did the said Earl, at any Time, assume to himself Regal Power, or take upon him to meet and treat with the Enemy without Authority from her Majesty, or do any thing to subvert the ancient and established Constitution of the Government of these Kingdoms, or introduce any illegal or dangerous Methods of transacting the Affairs of State. And the said Earl further saith, that he did never aim at, or endeavour by any separate Treaty to dissolve or cancel any of those solemn Treaties, in which her Majesty stood engaged to her Allies, nor was he privy to any Treaty, whereby the Queen was brought under a Dilemma, either to submit to the Dictates of *France* in the Progress of this Negotiation, or to lose the Confidence of her Allies.

In answer to the Third Article, the said Earl denies, that to disguise, or carry an any private, separate, or dangerous Negotiations, he did contrive or advise the preparing and forming the Set of General Preliminaries in the Article mentioned, intitled, Preliminary Articles on the Part of *France*, to come to a general Peace; or any other Set of general Preliminaries of like Nature; or that the same should be signed by the *Sieur Mesnager*; or that he did advise her sacred Majesty, that the same should be received by her Majesty: But the said Earl hath been informed, that certain Articles, called Preliminary Articles on the Part of *France*, to come to a general Peace, signed by the *Sieur Mesnager* only, were received by her Majesty, and believes the same might be communicated to the Ministers of the Allies then residing in *England*, as a Ground whereon the Confederates might treat or negotiate concerning a general Peace; but whether the same were communicated as the only Transactions that had been on that Subject, between *Great Britain* and *France*, the said Earl knows not: But since it is termed impious Advice, and contrary to the Duty and Trust of a Minister of State of *Great Britain*, to advise the receiving such Articles; the said Earl, from his Concern for the Honour of her late Majesty's Administration, and the future Welfare of these Kingdoms, doth submit, Whether it is criminal for such Minister to advise the receiving Articles from a Minister of a Prince in War, containing Proposals for giving reasonable Satisfaction to *Great Britain* and all her Allies, and which being signed by the Minister of that Prince only, were not intended to bind any other. And since Preliminary Articles are no essential Step towards a general Negotiation, (there being, as he believes, but few Instances where any Matters of Importance have been settled before the opening of general Conferences) the said Earl doth not conceive, That if any Minister of State had advised her Majesty to accept the Preliminaries or Offers from *France*, said to be signed by *Monsieur Mesnager* the Twenty Seventh Day of *September*, One Thousand Seven Hundred and Eleven, as the Foundation of a Treaty, he had thereby offended against any known Law, since the Proceedings upon such Preliminaries could not be more unsafe than proceeding without any at all. The said Earl denies, that any Treaty, signed by the Earl of *Dartmouth* or *Mr. St. John*, or either of them, on the Part of *England*, and the *Sieur Mesnager* on the Part of *France* (if any such there be) was in-

dustriously concealed from the Allies, her Majesty's Council, or Parliament, by his Advice or Contrivance; or that he dissuaded her Majesty from laying any such Treaty before her Allies, her Council or Parliament; or that he advised her Majesty to receive the said general Preliminaries, or to communicate the same in her Name, or by her Authority, to the States-General, as a sufficient Foundation whereon to open the Conferences of Peace with *France*. The said Earl hath been informed, and doth believe, that there were certain Instructions prepared and signed by her Majesty, and delivered to the Earl of *Strafford*, her Majesty's Ambassador to the States-General, wherein the said Ambassador might be directed to represent to the Pensionary of *Holland*, and such others as should be appointed to confer with him, in such manner as is set forth in this Article, or to the like Effect; but he denies, that the said Instructions were prepared, signed, or delivered by his Advice: Nevertheless the said Earl believes, the said Instructions were well warranted by the Truth of such Facts, as in the said Article are set forth to be contained in those Instructions, since the said Earl hath had credible Information, that after her Majesty had received an Account of the Sense of some Persons in *Holland*, concerning the Overtures made by *France*, for the setting a general Negotiation of Peace on foot, very pressing Instances were made on her Majesty's Behalf, with the Enemy, to explain the first Offers made by *Monsieur de Torcy* more particularly, and to form a distinct Project of such a Peace as they were willing to conclude; and that such Instances had Effect, will appear from the Preliminaries said to be signed by *Monsieur Mesnager*, *September* the Twenty-seventh One Thousand Seven Hundred and Eleven, wherein several Explications are made, and many Particulars of Moment are contained, which were not in the Propositions of *Monsieur de Torcy*: Wherefore the said Earl apprehends, that the Propositions said in this Article to be sent over to *France*, (if any such were sent) were not so general as the Propositions of *Monsieur de Torcy*, nor in any respect ensnaring, or destructive to the Interests of *Great Britain* or the Allies: But yet the said Earl believes that her Majesty, at the same Time she did communicate the said Preliminaries to the States-General, did likewise order her Ambassador to acquaint them, that she judged those Articles did not contain such particular Concessions as *France* would probably be obliged to make in the Course of the Negotiations, or to that Effect. If therefore her Majesty did, for the Good and Ease of her People, endeavour to prevail with her Allies to enter into a Negotiation of Peace, and did communicate the said Preliminaries to them, with that View, the said Earl cannot be induced to believe, that the said general Preliminaries, communicated to the States by her Majesty in manner aforesaid, were calculated to amuse and deceive them; nor doth the said Earl know or believe, that her Majesty's Instructions to her said Ambassador, either in the Particulars aforesaid, or in any other, contained Matters false, prevaricating, or evasive.

And the said Earl must take the Liberty to affirm, that in the late Negotiations of Peace, as well as in all other public Transactions of State, as far as he was concerned, he acted with the highest Regard to the Honour of her Majesty, and with the utmost Zeal for the Welfare both

of her and her People, and is not conscious to himself that he ever gave any Counsels, whereby the Truth and Sacredness which ought to constitute and accompany the Instructions of public Ambassadors to Princes in Friendship and Confederacy, against the common Enemy, were in any wise prostituted, or the Honour of her Majesty and of the Imperial Crown of these Realms in any sort debased or betrayed: And he humbly hopes no Instance can be given, wherein the Royal Hand of her late Majesty was made the Instrument to advance the Interest of the common Enemy.

In answer to the Fourth Article, the said Earl doth not remember what Representations were made by Monsieur *Buys* to her Majesty in relation to the Propositions in the said Article mentioned, but saith, that if any Representations were made, the same were not rendered ineffectual by any Influence of the said Earl: And the said Earl doth admit, that at a Committee of Council there might be made some Declaration in her Majesty's Name to Monsieur *Buys* to the Effect in the said Article mentioned; but doth not admit that any such Declaration was made by him the said Earl, or by his Management or Contrivance. And the said Earl believes, that what was so declared to the said Monsieur *Buys*, was agreeable to Truth, and to the real Sentiments and Intentions of her Majesty; nor doth he know wherein the said Articles, signed by Monsieur *Mesnager*, and accepted by the Lord *Dartmouth* and Mr. *St. John*, if any such were then signed, were inconsistent with such Declaration, or how her Majesty was thereby dishonoured, or her Allies abused, or that any Negotiation entered into with *France* was either dangerous in itself, or fatal in its Consequences.

In answer to the Fifth Article, the said Earl admits, that her sacred Majesty Queen *Anne* did in due Form of Law, and under her Great Seal, constitute the Right Reverend *John* Lord Bishop of *Bristol*, and the Earl of *Strafford* her Plenipotentiaries, with full Powers to meet, treat and conclude with the Plenipotentiaries of the Confederates, and those whom the *French* King should on his part depute for that Purpose, the Conditions of a good and general Peace, that should be safe, honourable, and as far as was possible, agreeable to the reasonable Demands of all Parties, and believes Instructions were prepared and delivered to them, wherein they were instructed, among other Things, to the Effect in the said Article set forth; and is firmly persuaded, that when the said Plenipotentiaries were so instructed to insist, that *Spain* and the *West-Indies* should not be allotted to the House of *Bourbon*, no Treaty had been negotiated and agreed, that *Spain* and the *West-Indies* should remain in a Branch of that House: And he has Reason to believe, that at the Time when the said Instructions were given to her Majesty's said Plenipotentiaries, there was just Ground to believe, that King *Philip* would be induced to abandon *Spain* and the *West-Indies*, and content himself with the Dominions of *Savoy* and the Kingdom of *Sicily*: And he believes he may so far depend on his Memory, as to say, that he heard the late Queen declare, she believ'd the Prospect King *Philip* had of succeeding to the Crown of *France*, would be an Inducement to

him to be easy with that Allotment. And it seem'd probable, that the Addition of the Dominions of *Savoy* to the Crown of *France*, in Case King *Philip* should succeed to it, would be esteem'd by the *French* Court as a Thing more to be desired by them, than that *Spain* and the *Indies* should remain in the Possession of a younger Prince of the House of *Bourbon*, under the Condition of his renouncing the Right he would have to the Crown of *France*, if the eldest Branch should fail. These seem to him to have been her Majesty's Views at the Time when the said Instructions were given to the Bishop of *Bristol* and the Earl of *Strafford*; and he therefore believes, that whoever contrived or prepared the same, did prepare them conformable to her Majesty's real Sentiments, and was far from any Thought or Design to abuse the Royal Authority, delude the States-General, prejudice his Imperial Majesty, or any of the Allies, or to carry on the Measures of *France*: And if King *Philip* afterwards upon Information, that the then *Dauphin* was likely to live, or at the pressing Instances of the *Spaniards*, and Influence of *Spanish* Counsels, or upon any other Motives, refused to accept of *Savoy* and *Sicily*, and chose rather to renounce the *French* Monarchy; he thinks no Person who acts in the Service of the Crown can be safe, if it may be charged on him as a Crime, that he advised Instructions, which by intervening Circumstances afterwards became improper. But he the said Earl doth not admit, that he contrived or prepared the said Instructions, or was consenting or advising to the contriving or preparing of them, or prevailed on her Majesty to sign them; much less that he abused the Royal Authority, to the Delusion of the States-General, or intended the Prejudice of his Imperial Majesty or any of the Allies, or was engaged to carry on the Measures of *France*, or had, when the said Instructions were prepared, negotiated or agreed with the Ministers of *France*, that *Spain* and the *West-Indies* should remain in a Branch of the House of *Bourbon*, or had prevailed on her Majesty to be Party to any private Treaty, wherein the same is necessarily implied. If the Plenipotentiaries were instructed, in Case the Enemy should object, that the Second Article of the Seven, signed by Monsieur *Mesnager*, implied the Duke of *Anjou* should continue on the Throne of *Spain*, to insist that those Articles were binding to *France*, but laid neither the Queen nor her Allies under any Obligation, the said Earl doth not apprehend how an Instruction to her Majesty's Plenipotentiaries, to make a just Answer to a false Inference, that might happen to be drawn by the Enemy from the Words of such an Article, can be interpreted an entering into a Confederacy or Collusion with the Ministers of the Enemy; or that her Majesty's Consent to such Instructions could imply any Design to impose on his Imperial Majesty or the Allies, or to conceal any Negotiations between *Great Britain* and *France*. But the said Earl is confident it will not appear by any of his Actions on the strictest Scrutiny, that he ever entered into any Confederacy or Collusion with the Ministers of the Enemy, or prevailed on the Queen to give her Consent thereto, or had any Designs to impose upon his Imperial Majesty, or any of the Allies, or ever was privy to any secret Negotiations or separate Treaty between *Great Britain* and *France*, whereby either in the before-men-

tioned, or in any other Particulars, any Reproach could be brought on the Crown of these Realms, or any Treaties wherein her Majesty was engaged to her Allies were violated.

In answer to the Sixth Article, the said Earl doth admit, that after the Conferences of Peace between the Plenipotentiaries of the Allies, and those of the Enemy, for negotiating a general Peace were opened, wherein he is persuaded her Majesty and her Ministers did act in perfect Confidence with the Allies, in order to promote their common Interest, and to obtain from the Enemy all just and reasonable Satisfaction; the Progress of the said Negotiation was delayed by Debates, concerning the Enemy's Refusal to give their Answer in Writing to the Demands of the Allies; but he doth not know that any of the Ministers of *Great Britain* did, by any Encouragement or Concurrence, contribute thereunto: And if, during that time, her Majesty thought fit to authorize any of her Ministers to write or negotiate upon any particular Points relating to the Peace, directly from *England* to *France*, in order to facilitate the general Negotiations of Peace, which he the said Earl doth not admit to have been done by his Privy; yet he the said Earl doth not apprehend, that by the Constitution of the Kingdom, or any Law in being, the Queen was debar'd from doing so; or that by constituting the said Plenipotentiaries, she had so far delegated to them her Royal Authority, as to be disabled, without revoking their Commission, to treat or negotiate any Matters conducing to that End, in such other manner as she should think fit. The said Earl saith, that he did not advise, contrive, or promote any private, separate, or unjustifiable Negotiation with *France*, nor doth he know any Negotiation relating to the Peace was carried on without Communication thereof to the Allies. And the said Earl denies that he ever assumed Regal Authority, or that he treated of Peace with *France* in any manner that could be liable to such Imputation, or did promote the Design of the Enemy to the Destruction of the Common Cause of her Majesty, or of her Allies, contrary to the Laws or Constitution of this Kingdom, or in Violation of any of the Alliances her Majesty stood engaged in, or of the Assurances given by her Majesty, or of her Instructions to her Plenipotentiaries; or that any Terms of Peace were by him at any time concerted, prejudicial to the Interest of her Majesty, or her Kingdoms, or Allies, or whereby the good Effects of the general Negotiation were defeated.

In answer to the Seventh Article, the said Earl saith, that he never advised her late Majesty to accept of a Treaty with *France*, on a Supposition that the *Spanish* Monarchy should continue in the Possession of a Branch of the House of *Bourbon*; nor did he advise, or carry on any private or separate Negotiation with *France*, on the Subject of a Renunciation to be made by the Duke of *Anjou*, of the Right he might have to the Kingdom of *France*, and that such Renunciation should be the Security against the Re-union of the two Kingdoms: Or that by his Counsels her Majesty was prevailed on to accept, and finally to conclude and ratify a Treaty of Peace with *France*, wherein the said Renunciation is taken as a sufficient Expedient to prevent the Mischiefs that threatned all *Europe*, in case the Crowns of *France* and *Spain*

should be United upon the Head of one and the same Person: Nor doth he know, that during the said Negotiation, any such Memorial, as in the said Article is set forth, was transmitted by the said Monsieur *de Torcy* to any of her Majesty's Principal Secretaries of State: But he the said Earl doth freely acknowledge, that if he had been called upon to give his Opinion concerning the leaving of *Spain* and the *West-Indies* in the Possession of a Branch of the House of *Bourbon*, and accepting the Renunciation of his Right to the Kingdom of *France* by the Duke of *Anjou*, he doth not at present see any Reason why he might not have been of Opinion for leaving *Spain* and the *West-Indies* to the present Possessor, and accepting the Renunciation, rather than have continued the War so burthensome to the People, and so impracticable upon the Foot on which it then stood, especially since all Endeavours to remove him by Treaties or Force had so long proved ineffectual. And in case any such Memorial as is set forth in the said Article, was sent by any Minister of *France* to the Secretary of the late Queen, he should look upon the same as a Proof of the Earnestness of the Court of *France* to avoid such Renunciation, which might more effectually prevent all possibility of annexing the Crown of *Spain* to that of *France*. But whatever Inducements might be for such a Memorial (if any such was transmitted) the said Earl doth affirm, that he never gave any Counsels by which the Interest of the Common Cause could be betray'd into the Hands of the Enemy; nor doth he think it was possible by any Power and Influence, to engage her Majesty to become Party with *France* in any Deceit; but whatever Credit he at any time had by her Favour, he always used it with the utmost Sincerity for her Service, and the Good of her People.

In answer to the Eighth Article, the said Earl believes, that her late Majesty Queen *Anne* did, on the Seventh Day of *December*, in the Year of our Lord One Thousand Seven Hundred and Eleven, recommend it from the Throne, that Provision might be made for an early Campaign, in order to carry on the War with Vigour, and as the best way to render the Treaty of Peace effectual; and he doth believe, that in order thereto Supplies were granted, and Magazines provided at a great Expence for an early Campaign, and that in pursuance thereof her Majesty might send some General Officers to explain her Intentions to her Allies; and likewise instructed her General the Duke of *Ormond* to declare her Resolutions of carrying on the War, and to concert with the Generals of the Allies the proper Measures for entering upon Action: And he doth believe, that the Confederate Army was provided with all Necessaries: But whether the said Army had approached, or how near they had approached to the Enemy; whether they had any, or what Superiority, as to the number of Troops; or what likelihood there was, that they would have been able, either by Battle or Siege, to have better'd the Affairs of the Allies, or to have facilitated the Negotiations of Peace, the said Earl is not able to say: But it must be obvious to every one, that any Misfortune or Disaster on the part of the Allies, at such a Juncture, must have been fatal to them: And though the Divine Assistance had been very remarkable in the many Victories her Majesty's Forces had obtained, yet her Majesty's
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Piety was so great, that it is not likely she should, without the greatest necessity, have been willing to have tempted that Providence which had been so signal in her Favour, by hazarding the Blood of her Subjects at a time when she had so near a Prospect of the Conclusion of a Peace: And the said Earl believes it might be owing to this Piety of the Queen, and her Knowledge of some important Matters then depending, that Directions were sent to the Duke of *Ormond* (if any such were sent) to avoid engaging in any Siege, or hazarding any Battle till further Orders; which he supposeth her Majesty might do upon any Causes she thought proper, as well as the Deputies of the States, who, as the said Earl hath been informed, have often refused to engage in Siege or Battle, upon such Ground as they alone thought fit, when their own Generals, and the Generals of the other Allies, were of Opinion they had a visible Advantage of the Enemy, and might engage in such Siege or Battle with great Probability of Success. But he doth affirm that the Ministers of *France* never represented to him or to any others, as far as he knows, during any Negotiation, any Apprehensions they had from the Bravery and good Disposition of the Confederate Army; nor was he ever informed of any sure Prospect which it is alleged the Army of the Confederates then had of gaining new Conquests over the Army of *France*, or whereby they would have been enabled to have forced any better Terms of Peace than there was at that time likelihood of: But on the contrary he has been informed, that the Forces of *France* were superior in Number to those of the Confederates, especially in Horse. However the said Earl doth not admit, that he did advise or consent that any Order should be dispatched in her Majesty's Name to the Duke of *Ormond* to the afore-mentioned Effect; nor had he any View or Design to disappoint the Expectations of the Allies, or to give Success to any secret Negotiations with the Ministers of *France*. The said Earl likewise denies, that he did consent or advise that Orders should be sent to the Bishop of *Bristol*, one of her Majesty's Plenipotentiaries then at *Utrecht*, to declare to the *Dutch* Ministers, that her Majesty looked on her self, from their Conduct, to be then under no Obligation whatsoever to them. He doth not know what Alarm the Allies might take, or what Representations they made to the Bishop of *Bristol* of their Dissatisfaction or Consternation, but doubts not the said Bishop would readily represent what they desired, tho' such Representation made by his Lordship, (if any such there was), fell not under the Knowledge of the said Earl, nor doth he admit that any Application of that kind was made to him. And in case the States-General made such Address directly to her Majesty, by a Letter of the Fifth Day of *June*, as in the said Article is set forth, he the said Earl not being acquainted therewith, could neither advise her Majesty to hearken to the Instances therein made, nor to disregard or reject the same. He saith, he never entered into Measures for the Advancement of the Interest of the common Enemy, or countenanced, encouraged, advised, or promoted any Negotiations with *France*, without Participation of the Allies, or contrary to her Majesty's Engagement, or to the Ruin of the Common Cause; nor is he conscious to himself, that he ever gave any Counsels, by which the Progress of the victorious Arms of the Confederates was stopped, or any Opportuni-

ty lost for conquering the Enemy, or which had any Tendency to destroy the Confidence between her Majesty and her Allies, or make the *French* King Master of the Negotiations of Peace, or which could put the Affairs of *Europe* into his Hands.

In answer to the ninth Article, the said Earl denies he was privy or consenting to any Concert with the Ministers of *France* for the separating the Troops in her Majesty's Pay from the rest of the Confederate Army; and not being privy to any such Concert he hopes it will not be imputed to him as any want of Duty, that he did not advise against such a Proceeding. He denies also, that he ever entertained the least Design of imposing upon the Allies any Necessity of submitting to the Terms of *France*, or of leaving the Confederate Army to the Mercy of the Enemy, or that he did consent or advise her Majesty that the Duke of *Ormond* and the Troops in her Majesty's Pay, or such of them as would obey his Orders, should separate themselves from the Army of the Confederates. The said Earl hath been informed, and believes it to be true, that the Imperial General, and some other Generals, did propose to the Duke of *Ormond* in *June* or *July*, in the Year one Thousand Seven Hundred and Twelve, to decamp from the Ground where they lay, and to proceed towards *Landrecy*, in order to form the Siege of that Place, and that the Duke of *Ormond* thought it not proper to consent thereto, and gave notice to the said Generals, that if they decamped they must not expect him to follow them. And the said Earl believes, Instances may be given where Generals of other Potentates in the Alliance have refused to comply with what has been proposed to them by her late Majesty's General. The said Earl hath likewise heard, that, notwithstanding such Notice from the Duke of *Ormond*, the said Generals separated themselves and their Forces from the said Duke, and marched towards *Landrecy* without him, and that the said Duke continued for some time in his former Camp after such Separation: And that the Generals of the Auxiliary Troops paid by her Majesty, although required by the said Duke of *Ormond*, under whose Command they then were, to continue with him, and to obey his Orders, refused so to do. He the said Earl supposes it might proceed from her Majesty's Resentment of that Instance of Disobedience in the Auxiliary Troops to the Commands of her General, that she did not think fit immediately to pay the Arrears of those Forces which had so obstinately withdrawn themselves from her General, and marched without him towards *Landrecy*, as not apprehending herself obliged by any Conventions, or the Provision of any Act of Parliament, so to do. But whatever might be the Causes or Occasions of her Majesty's Resentment, the said Earl saith, that he being in the Office of High Treasurer under her Majesty, could not, by the Duty of his Place, issue out any Monies without a proper Warrant or Authority from her Majesty; and denies that he ever received any Warrant or Authority from her Majesty for issuing any Sum or Sums of Money for, or towards the Pay or Subsidies on account of the said Foreign Troops who had so separated, without which the issuing or directing any Monies for the Payment of them had been a Violation of his Duty. And the said Earl denies, that he did at any time refuse or put

a stop to any such Pay or Subsidies; but on the contrary, when the Ministers of the Princes to whom those Forces belonged did apply for the Payment of the said Troops, the said Earl desired them to make application to her Majesty for the necessary Warrants in order thereunto. And as the said Earl had no Notice of any Separation intended between her Majesty's Forces and those of the Allies before the same was made; so he absolutely denies, that by his Advice or Counsel, or with his Privacy, any such Separation was made: And humbly apprehends that he ought not in Justice to be charged with any Consequences of it. He believes, that the Forces of some of the Allies were engaged in the unfortunate Action of *Denain*, and that the Siege of *Landrecy* was raised, and the Towns of *Quesnoy*, *Bouchain*, and *Doway* were some time after re-taken by the *French Army*: But whether those Disasters might not have been prevented by a Compliance with the Measures her Majesty had taken for the common Good, the said Earl submits to your Lordships.

In answer to the Tenth Article, the said Earl denies that he did carry on, or concert with the Ministers of *France*, a private or separate Negotiation for a general Suspension by Sea and Land between *Great Britain* and *France*; or that he did advise her Majesty to send over *Henry Viscount Bolingbroke* to the Court of *France*; with Powers to settle such Suspension; but hath been informed, and believes it may be true, that about the Nineteenth of *August* One Thousand Seven Hundred and Twelve, *N. S.* a Suspension of Arms was agreed on in *France* by the said Viscount *Bolingbroke* on her Majesty's part for four Months; but whether such Agreements was made without the Knowledge or Participation of her Majesty's Allies, or how far the Terms of Peace were then settled with *France*, either for *Great Britain*, or the Allies, the said Earl is not able to set forth: But from the Information he hath received of that Affair, believes it will appear, that the said Suspension was a Continuation only of a former Agreement for a Cessation of Arms, which had been not only communicated to the Allies, but into which they had been invited; and believes her Majesty might be induced to desire such Cessation, as was usual amongst Princes and States in War during Negotiations of Peace, by which means the *British* Merchants enjoy'd a free Trade, and had an Opportunity of carrying the Merchandizes of other Countries to several Parts of *Europe*, as the *Dutch* had done during the War; and therefore the said Earl doth not conceive that her Majesty, by the said Suspension, did in the least intend the Violation of any Treaties between her and her Allies, or to deprive them of any Assistance to which they were entitled, or expose them to the Insults of the common Enemy: nor doth he discern how these Consequences could ensue, without the Default of the Allies themselves; much less how the Ties of Union and Friendship between her Majesty and them were cut asunder, or her Majesty's Person or Government, or the Safety of her Kingdoms, or the Protestant Succession, were exposed thereby. But the said Earl assures himself, that he shall never stand chargeable with any Consequences of such Suspension which he never advised; nor did he the said Earl ever entertain the least Thought or Design of occasioning the Destruction of the Common Cause of *Europe*,

or hindering her Majesty from resuming the War against *France*, in Conjunction with her Allies, if it had been so thought fit, or of weakening the Union between her Majesty and them.

In answer to the Eleventh Article, the said Earl saith, he believes it to be true, that in or about the Months of *September* or *October* One Thousand Seven Hundred and Twelve, the States General were in Possession of the Town and Fortrefs of *Tournay*; and that her Majesty, in her Instructions of *December* the Twenty Third, One Thousand Seven Hundred and Eleven, to her Plenipotentiaries at *Utrecht*, did direct 'em to insist with the Plenipotentiaries of *France*, in the general Congress, that towards forming a Barrier for the States-General, *Tournay* shall remain to the States; and doth believe the *French King* did at one time incline thereto: But doth not know that her Majesty in her Speech in the said Article mentioned, did declare herself as in the said Article is set forth. The said Earl admits, that until and after the Months of *September* and *October* One Thousand Seven Hundred and Eleven, there was open War between her late Majesty and the *French King*; and that during such War, the *French King* and his Subjects were Enemies to the late Queen: But the said Earl hath been informed, and believes, that full Powers were given by her Majesty, and the States-General of the United Provinces, to their respective Ministers, and by the *French King* to his Ministers, to negotiate and treat of Peace between her Majesty and the States-General, and said *French King*; upon which Negotiations a Peace was afterwards concluded between them; during which Negotiations he hath heard, that the *French King* did insist upon the yielding up the Town and Fort of *Tournay* by the States to him; and the said States-General desired her Majesty's Interposition with the *French King* on their behalf; and that at such Request her Majesty interposed her best Offices on behalf of the States-General, and did at last prevail, that the said Town and Fortrefs of *Tournay* should be, and he believes the same is continued to the States-General as part of their Barrier. But the said Earl absolutely denies that he did design to give Aid, or Succour, or to adhere to the *French King*; or that he did in or about the Month of *October* One Thousand Seven Hundred and Twelve, or at any other time, during the said War, aid, help or assist, or adhere to the said *French King*; or, that he did ever counsel or advise the said Enemy in what Manner, or by what Methods the said Town and Fortrefs of *Tournay*, or either of them, might be gained from the States-General to the *French King*, in Manner and Form as in the said Article is charged. On the contrary, he the said Earl did use his best Offices to preserve the said Town and Fortrefs of *Tournay* to the States-General. But the said Earl saith, that during the Negotiations of the late Peace, he had the Honour to be one of her Majesty's Privy-Council; and whatsoever Counsel or Advice he gave, relating to any Terms of the said Peace, he acted therein as a Privy-Councillor and Minister of State, and no otherwise: And doth insist, that for any Privy-Councillor and Minister of State, during the Negotiations of Peace, to advise or negotiate, concerning the yielding or giving up any Town, Province or Dominion, upon the Conclusion of the Peace, as part of the Terms and Conditions of such Peace, is not High Treason by any

any Law of this Realm; and that such Construction might hereafter deprive the Crown of the Advice and Assistance of several Members of the Privy-Council, in Matters of the greatest Importance, by deterring them from give such Advice as, by their Oaths, and the Duty of their Place, they are obliged to do; would overthrow all means of restoring Amity between Princes, and render the Law, in case of High Treason, uncertain, which by reason of its being the most penal, ought to be most plain; and would be highly dangerous and destructive to the Lives and Liberties of the Subject.

In answer to the Twelfth Article, the said Earl (not admitting that her late Majesty Queen *Anne* stood engaged by Treaties in manner as in the said Article is alledged, but referring himself to the Treaties, when they shall be produced) for answer, denies, that he did in any of the Years One Thousand Seven Hundred and Ten, One Thousand Seven Hundred and Eleven, One Thousand Seven Hundred and Twelve, or at any other time, aid, help, assist, or adhere to the Duke of *Anjou*, in the said Article named, or advise or counsel any of the Enemies of her said late Majesty, or concert with any of them, or promote the yielding or giving up of *Spain* and the *West-Indies*, or any Part thereof to the said Duke of *Anjou*, in Manner and Form as in the said Article is alledged. And the said Earl saith, as in his Answer to the Eleventh Article he hath already said, that during the Negotiations of the late Peace, he had the Honour to be one of her said late Majesty's Privy-Council, and whatever Counsel or Advice he gave, relating to any Terms of the said Peace, he acted therein as a Privy-Counsellor and Minister of State, and no otherwise; and insists as in his Answer to the Eleventh Article he has insisted.

In answer to the Thirteenth Article the said Earl admits, that the flourishing Condition of Trade and Navigation contributes much to the Riches, Power and Strength of these Kingdoms; and believes, that her late Majesty had a just Regard thereto, and a sincere Desire to obtain some Advantages therein for her People; and did make the several Declarations from the Throne set forth in this Article: And that both Houses of Parliament did, from time to time, express their grateful Acknowledgements to her Majesty, for her great Care and Concern for the Welfare of her People; and believes her Majesty might think it reasonable, considering the Share and Burthen she and her People had sustained in the War, that *France* should, in the first Place, adjust the Interests of *Great Britain*, which were to be secured on the Conclusion of a general Peace: But the said Earl doth not know or believe that at the setting on foot, or in the Progress of any Negotiation between the Ministers of *Great Britain* and *France*, it was laid down as a Principle that *France* should in the first place, consent to adjust the Interests of *Great Britain*, to the Intent that the Ministers of *Great Britain* might thereby be enabled to engage the Queen to make the Conclusion of the Peace easy to *France*; nor doth he know that any Concessions were made by the Ministers of *Great Britain*, with intent to promote the Interests of *France* against the Allies; or that any Measures were entered into or concerted between them, in order to strengthen the Hands of the *French*, or to enable

them to impose the Terms of a general Peace. And the said Earl doth absolutely deny that he was engaged, in Concert with *France*, in any Negotiation destructive to his Country, or that he ever had the least Imagination or Thought tending that way, or to the sacrificing the Commerce of *Great Britain* to the Aggrandisement of *France*: But on the contrary, he hath always had the most real and sincere Desires to secure and advance the Commerce of *Great Britain*, and to preserve his Country, in whose Service he hath been always ready to sacrifice himself, and every private Interest whatsoever. And the said Earl is not conscious to himself of any want of Duty, either in not insisting upon, or not procuring the most certain Securities that could be obtained for the Safety and Advantage of the Commerce of these Kingdoms. And the said Earl doth not admit, that he did advise her late Majesty, that any Proposition should be sent by Mr. *Prior* to *France*; or that any private or separate Treaty, or the Preliminary Articles, which are said to be signed the Twenty Seventh Day of *September* One Thousand Seven Hundred and Eleven, should be signed. But the said Earl hath been informed, and believes that in a Paper intitled, *The Answer of France to the Demands of Great Britain more particularly*, it is said, that the entire Restitution of *Newfoundland*, and of the Bay and Streights of *Hudson*, was demanded for the English: And that the *French King's* Answer was, That the Discussion of that Article should be referred to the general Conferences of the Peace, provided the Liberty of fishing and drying of Codfish upon the Isle of *Newfoundland* should be reserved to the French. And the said Earl conceives that Paper was not conclusive, but was to be the Subject of future Conferences, wherein the whole Matter might be entirely considered; and consequently that the entering into Conferences on that Paper, was not the yielding to the *French* the Liberty of fishing and drying Fish on *Newfoundland*, which they insisted on. And the said Earl denies, that he advised the Demands for *Great Britain*, in Point of Commerce, should be made in loose, general, or insufficient Terms; or that he advised the Liberties insisted on by the *French* should be given up to *France*, as in the said Article is alledged: And he believes that when it is considered what Advantages were likely to ensue to the Commerce of *Great Britain* by the *Assiento* Contract, and the Liberty of Trading to the *Spanish West-Indies* by the Cession of *Arcadia*, the Bay and Streights of *Hudson*, the Island of *St. Christopher*, *Newfoundland*, the Island of *St. Peter*, with other adjacent Islands by the Demolition of *Dunkirk*, and the Cession of *Port-Mabon* and *Gibraltar*, it will not be thought the Commerce of *Great Britain* was neglected by her Majesty, in the late Treaties of Peace. And as the said Earl doth not know that *France* was at any time Master of the Negotiations, so he denies that he did engage her Majesty in any private Treaties with *France*, without Security for the Commerce of *Great Britain*; or that he did contrive, with any of the Ministers of *France*, to keep in Suspence any Matter that concerned the said Commerce, or that he was any ways instrumental to the preventing any Advantages of the said Commerce from being settled, or that he endeavoured to elude any thing that had been agreed on in any Negotiations for the Benefit of *Great Britain*. And although the said Earl doth not admit, that he

he advised the Ninth Article of the Treaty of Commerce with *France*, yet he begs leave to observe, that nothing is positively stipulated in that Article, but the whole is conditional, and left to be determined by the Wisdom of Parliament; and hopes it will never be thought an Act of Treachery, to refer any Article of any Treaty to the Judgment and Consideration of Parliament, whatever Judgment the Parliament shall think fit to make thereon. And the said Earl denies, that he advised her Majesty to agree with *France*, that the Subjects of *France* should have Liberty of Fishing, and Drying Fish on *Newfoundland*: But the said Earl believes, that what her late Majesty agreed with *France*, relating thereto, will not seem unreasonable, if it be considered, that the *French* long ago claim'd a Right to, and were in Possession of great Part on *Newfoundland*; and that they were allowed to continue in Possession thereof by the Crown of *England*, in a Treaty made at *Whitehall* in the Year One Thousand Six Hundred and Eighty-Six; and in another Treaty made at *Ryswick*, in the Year One Thousand Six Hundred and Ninety Seven. And the said Earl doth not know that such Agreement of her Majesty is contrary to the express Provision of any Act of Parliament, since he presumes the Act made in the Tenth and Eleventh Years of the Reign of King *William* the Third, intitled, *An Act to encourage the Trade to Newfoundland*, cannot reasonably be intended, or construed to extend to any part of the Island, other than what was at the Time of making that Act in the Possession of the *English*. And the said Earl is informed, that at that Time the Part of *Newfoundland*, where the Subjects of *France* are, by the Treaty of *Utrecht*, allowed the Liberty of Fishing, and drying Fish, was not in the Possession of the *English*. The said Earl denies, that he advised her Majesty to make a Cession to *France* of the Isle of *Cape Breton*; or that he advised her Majesty to consent, that what is agreed in the Treaty of *Utrecht*, concerning the Fishery of *Newfoundland*, or *Cape Breton*, should be made an Article of that Treaty: However, the said Earl doth not know that *Cape Breton* was Part of the Territories of the Crown of *Great Britain*; nor doth he apprehend, that her Majesty, who in her Speech from the Throne declared, that *France* had consented to make an absolute Cession of *Annapolis*, with the rest of *Nova Scotia*, or *Arcadia*, should be understood to speak of *Cape Breton*, which is no Part of that Continent, but an Island distinct from it. The said Earl further saith, he conceives, that the only Advantages in Trade, stipulated for *Great Britain*; did not depend on Conditions to be made good by Act of Parliament: On the contrary, he doubts not to make it appear, that many Advantages in Trade were stipulated for *Great Britain*, in the late Treaties of Peace and Commerce, which have been enjoyed by the Subjects of *Great Britain*, since the Conclusion of the said Treaties, notwithstanding the Parliament hath not thought fit to make any Act to enforce the Ninth Article of the Treaty of Commerce with *France*. And the said Earl denies, that by his Counsels, the good Intentions of her sacred Majesty to have obtained for her People advantageous Terms of Commerce were frustrated, or the Trade or Manufactures of *Great Britain* render'd precarious, or at the Mercy of the Enemy; or any beneficial Branch of Trade

yielded up to the Subjects of *France*. And as the said Earl disowns the being concerned in any Violation of Treaties, or in carrying on the Measures of *France*, or in any Negotiation which could terminate in the Sacrifice of the Commerce of *Great Britain* to *France*; so he observes, with great Satisfaction, the flourishing Condition of the Trade and Navigation of these Kingdoms, since the Conclusion, and by Means of the late Peace, in the great Encrease of the Number and Tonnage of Shipping, of the Exportation of the Woollen Manufactures, the Fish, and other Produce of this Kingdom; in Consequence whereof, the Customs have been greatly advanced, near three Millions of Gold and Silver hath been coined, and the Exchange has been all along in the Favour of *England*, to and from all Parts of *Europe*.

In answer to the Fourteenth Article, the said Earl doth not admit that he formed any Project, or Design, for disposing the Kingdom of *Sicily* to the Duke of *Savoy*, from the House of *Austria*; or that he did advise her Majesty to give any such Instructions to *Henry Viscount Bolingbroke*, as in the said Article mentioned, or to consent to any Treaty wherein a Cession is made of the said Kingdom to his Royal Highness without any Concurrence or Participation of his Imperial Majesty; nor doth he admit that her Majesty was prevailed on, by his Advice, to assist his said Royal Highness with her Fleet, against the Emperor, in order to obtain the Possession of that Kingdom. But in Justification of her Majesty's Proceedings, in relation to the said Kingdom, the said Earl doth beg leave to observe, that by the Grand Alliance, it was agreed, among other Things, that the Confederates should use their utmost Endeavours to recover the Kingdom of *Sicily* out of the Hands of the Enemy; and that the principal Ends for endeavouring the Recovery of *Sicily* were, that his Imperial Majesty might have a reasonable Satisfaction for his Pretension to the *Spanish* Monarchy; and that the Trade and Navigation of the Subjects of *Great Britain* and *Holland* might thereby be better secured. Since therefore the Empire, and Hereditary Countries of *Austria*, were now fallen to *Charles* the Third, who at the Time of that Treaty was a younger Branch of that House: Since several Towns in the *French Flanders*, which were not in the Possession of King *Charles* the Second, at the Time of his Death, together with *Spanish Flanders*, *Milan* and *Naples*, might seem a reasonable Satisfaction for his Imperial Majesty's Pretensions to the *Spanish* Succession: And since the Trade and Navigation of the Subjects of *Great Britain* and *Holland* would be as effectually secured, by the Disposition of the Kingdom of *Sicily* to the Duke of *Savoy*, as if the said Kingdom had fallen to the Share of the Emperor: And greater Difficulties would be likely to arise, in obtaining the Disposition thereof to the House of *Austria*, than to that Duke, in as much as King *Philip* might be more easily induced to yield it to the Duke of *Savoy*, than to so potent a Prince as the Emperor; and there were Grounds to believe that all, or most of the Princes and States of *Italy*, were so apprehensive of the growing Power of the House of *Austria* in *Italy*, that they would suffer any Extremities, rather than submit that *Sicily*, together with *Milan* and *Naples*, should be

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in the Hands of the Emperor, the said Earl doth not discern how any Project to dispose the said Kingdom to that Duke could be thought unjust, dishonourable, or pernicious, or an Act of Injustice to his Imperial Majesty, or Violation of the Grand Alliance: Nor doth the said Earl remember, in what respect it was contradictory to any Declaration of her Majesty, or the Instructions she had given her Plenipotentiaries: And in Case her Majesty thought fit, afterwards, to employ any Part of her Fleet to assist that Duke, her good and faithful Ally, to take Possession of that Kingdom from the Enemy, in Consideration of the said Duke's steady Adherence to the Confederacy, and great Sufferings by such Adherence; he the said Earl is not able to discover why such Assistance might not be given to the said Duke, as well as to any other of her Allies whatsoever. And since it is allowed by this Article, that the then Duke of *Savoy* never made any Application, in order to obtain the said Kingdom for himself, it seems an Evidence at least, that the Person or Persons who advised the late Queen to agree to such Allotment, did not act upon any private Interest, or had any other View than the Preservation of a Ballance of Power in *Europe*, and the Security of the Trade and Navigation of the Subjects of *Great Britain* and *Holland*; and cannot reasonably be thought, upon a fair and candid Interpretation, to have been guilty of betraying the National Faith, or Honour of the Crown, or employing the Naval Power of these Kingdoms, or the Supplies granted by Parliament, against an Ally of this Kingdom.

In answer to the Fifteenth Article, the said Earl saith, he is and always was of Opinion, that the Word of the Sovereign is sacred, and that all Communications from the Throne to Parliament ought to be true, and that it becomes all Ministers of State, as far as in them lies, to maintain the Honour of the Crown, in such Cases, with the utmost Exactness; nor doth the said Earl know that he hath, at any Time, been defective in his Duty, in this Particular, or ever took upon himself any arbitrary or unwarrantable Authority, much less the chief Direction and Influence in her Majesty's Counsels: Nor did he ever prostitute the Honour of the Crown or Dignity of Parliament, by misrepresenting any Part of the late Negotiations of Peace, to deceive either her Majesty, her Allies, her Parliament, or her People; nor did ever prepare, form, or concert, or advise her Majesty to make any Speech or Declaration from the Throne, to her Parliament, that was not conformable to Truth. He believes her Majesty might make several Speeches from the Throne to her Parliament, at the several Times in the said Article mentioned, to which the said Earl refers; and particularly, that her Majesty did on the Seventh of *December*, One Thousand Seven Hundred and Eleven, declare, that her Allies, especially the States-General had, by their ready Compliance for opening a Treaty of a general Peace, expressed their Confidence in her; but the said Earl not admitting there were such Representations as suggested in this Article, begs leave, in Vindication of the Honour of his Royal Mistress, who was a Princess of strict Piety and Truth, to observe, that the States-General sent over Monsieur *Buy*s to her Majesty, with Letters full of Assurances of their Respect for her Person,

and their Resolutions not to separate themselves from her; and likewise signified by him to her Ministers, their Readiness to concur with her Majesty. And the said Monsieur *Buy*s, immediately upon his Arrival at *London*, delivered Passports for the *French* Ministers to come to *Utrecht*; and at a Meeting of several Lords of the Council, shewed his Approbation of sending circular Letters to invite the rest of the Allies to the general Congress: And the said Monsieur *Buy*s exhibited full Powers for preparing and signing a new Treaty, whereby her Majesty and the States should be mutually engaged to each other in making War and Peace, to guarantee the Peace when made, and to invite the rest of the Allies into such Guarantee; all which Matters and Transactions being previous to the Seventh of *December*, One Thousand Seven Hundred and Eleven, her Majesty might justly regard the aforefaid authentic Acts and Assurances, as greater Proofs of the Confidence the States had in her, and of their Readiness to concur with her, than any Representations or Reports before that Time; and that the said Declaration of her Majesty from the Throne was founded upon the strictest Truth. And the said Earl believes, that every one who impartially considers the Steps taken in the late Negotiations of Peace, the Length of the Treaty, the several Letters from one of her Majesty's Principal Secretaries of State to her Plenipotentiary at *Utrecht*, the Ratification of the Engagement signed by her Ministers and Monsieur *Buy*s, the Eighteenth of *December* One Thousand Seven Hundred and Eleven, and her exhorting the States to ratify the same; her pressing Instances to the Princes and States of the Empire, and the many other Acts which were done by her Majesty's Orders during that Transaction for the Service and Satisfaction of her Allies, will readily acknowledge, that her Majesty did her utmost to procure for her Allies, and in particular for his Imperial Majesty, all reasonable Satisfaction; and to unite with them in the strictest Engagements, to render the Peace secure and lasting, agreeable to her Speech of the said Seventh Day of *December*, and her Message of the Seventeenth of *January* following, in this Article mention'd: And if by any extraordinary Demand or groundless Jealousies of any of the Allies, or other Accidents, her Majesty was not able to obtain for them all the Advantages she desired, this will not derogate from the Truth and Sincerity of her Majesty's Expressions. And it is evident her Majesty did procure them so great Satisfaction, that the Allies did all sign the Peace at the same Time with her Majesty, excepting only the Emperor; and even his Interests were so far adjusted, that what remained in dispute was not thought sufficient to delay so great and good a Work: And it is well known the Emperors of *Germany* have frequently declined signing their Treaties of Peace at the same Time with their Allies. But that her Majesty was induced by any Influence of the said Earl to enter into any Negotiation with *France*, exclusive of her Allies; or that the said Earl carried on any such Negotiation; or that the Interest of the said Allies, or in particular of the Emperor, were, by any Practices of his, giving up to *France*, he utterly denies. And when it is considered, that much *British* Blood and Treasure had been spent to recover *Spain* and the *West-Indies* from the House of *Bourbon*, that an expensive

penfive War had for many Years continued, which her Majesty still supplied with new Recruits and redoubled Expence; that her Armies, and those of the Allies, had been beaten in *Spain*; that Prince *Eugene* had declared, that Forty Thousand Men, and Four Millions of Crowns *per Annum* would be necessary for carrying on that War, and that his Master could supply no more than a Fourth Part of that Charge; that it was found by long Experience, how averse the People of *Spain* in general were to submit themselves to the House of *Austria*; that her Majesty discerned the Charge of renewing the War in *Spain* would be a Burthen too great for her Subjects, and that there was little Probability of its being successful: that the hereditary Countries were then, by the Death of the Emperor *Joseph*, fallen to King *Charles*, who was soon after chosen Emperor (by which Event the Interest of the Princes and States of *Europe* were changed;) it cannot be doubted but that her late Majesty had, at the Time when she made the aforesaid Declaration, done her utmost to recover *Spain* and the *West-Indies* by Force of Arms: And the most she could do afterwards, was by way of Negotiation, wherein she insisted with that Earnestness on King *Philip's* quitting *Spain*, that *France* complied with her Majesty's Proposals: But when King *Philip* could not be prevailed on to give up *Spain*, her Majesty thought his Renunciation of the Crown of *France*, as Circumstances then stood, the most practicable, if not the only Method left to prevent the Union of those two Monarchies. But the said Earl doth not think it probable, that the leaving *Spain* and the *West-Indies* to the House of *Bourbon*, was the Foundation of the Preliminary Articles signed by Monsieur *Mefnager*, and of the Declaration annexed, which had been signed by the Lord *Dartmouth* and Mr. *St. John*, with her Majesty's Consent (and which the said Earl supposes is what is called the private Treaty in this Article) since he believes it was then thought more likely that the Crown of *Spain* might fall to some other Prince. And the said Earl doth not observe, how her Majesty can be charged with uttering any Falsity in her Message of the Seventeenth Day of *January*, wherein she takes notice, how groundless the Reports were that had been spread of a separate Peace being treated, for which Report there was not then, nor at any other Time, the least Foundation; since only some few Points were adjusted, relating to the particular Interests of her own Kingdoms, and even those were to have no Effect but upon the Conclusion of a general Peace, and were likewise, before such Conclusion, communicated to the Allies. And the said Earl denies, that thenceforth, or at any Time, there were carried on, by him, any separate Measures with the Ministers of *France*; nor doth he conceive, that the Proposal about the Renunciation was merely speculative, but that it was of such a Nature as would execute itself, and keep the Crowns of *France* and *Spain* more effectually divided than ever; if it be considered, that it did not consist only in a Renunciation to be made by *Philip*, then in Possession of the Crown of *Spain*, of his contingent Right to that of *France*; but that there was a Title to the Crown of *France* thereby given to the Duke of *Orleans*, and after him to the rest of the Princes of the House of *Bourbon*, who could not be presumed to want the Will

nor would be likely to want the Power, to take Possession of the Crown of *France*, by Vertue of such Title, in Opposition to a Prince at such a Distance, and who had solemnly renounced all his Pretensions to it. Nor can the said Earl think, the Declaration of any Minister of *France*, against such Expedient (if any such were made) a sufficient Ground for her Majesty to decline it. The said Earl therefore must beg leave to repeat, that he is not able to discover, from any Thing that appears in those Speeches, that in the Particulars afore-mentioned, or any other, the essential Points relating to Peace and Commerce, or which concerned the Interests, as well of the Allies as of *Great Britain*, were misrepresented by her Majesty; nor doth he know or believe, that any Instance can be given wherein he abused the Favour of his Royal Mistress, to whom he did always bear and pay the most sincere Veneration and Duty; or wherein he did mislead her Parliament into any groundless or fatal Resolution, or prevented their Advice to her Majesty, or obtained their Approbation to any dangerous Practices, or whereby her Majesty could be ever deprived of the Confidence of her Allies, or exposed to Contempt.

In answer to the Sixteenth Article the said Earl doth insist, that by the Laws and Constitution of this Realm, it is the undoubted Right and Prerogative of the Sovereign, who is the Fountain of Honour, to create Peers of this Realm, as well in time of Parliament, as when there is no Parliament sitting or in being; and that the Exercise of this Branch of the Prerogative is declared in the Form or Preamble of all Patents of Honour, to proceed *ex mero motu*, as an Act of mere Grace and Favour; and that such Acts are not done, as many other Acts of a public Nature are, by and with the Advice of the Privy-Council; or as Acts of Pardon usually run, upon a favourable Representation of several Circumstances, or upon Reports from the Attorney-General, or other Officers, that such Acts are lawful or expedient, or for the Safety or Advantage of the Crown; but flows entirely from the beneficent and gracious Disposition of the Sovereign. He farther says, that neither the Warrants for Patents of Honour, the Bills or other Ingrossments of such Patents are at any time communicated to the Council, or the Treasury, as several other Patents are; and therefore the said Earl, either as High-Treasurer or Privy-Counsellor, could not have any Knowledge of the same: Nevertheless, if her late Sacred Majesty had thought fit to acquaint him with her most gracious Intentions of creating any Number of Peers of this Realm, and had asked his Opinion whether the Persons whom she then intended to create, were Persons proper to have been promoted to that Dignity? He does believe he should have highly approved her Majesty's Choice; and doth not apprehend that in so doing he had been guilty of any Breach of his Duty, or Violation of the Trust in him reposed; since they were all Persons of Honour and distinguished Merit, and the Peerage thereby was not greatly increased, considering some of those created would have been Peers by Descent, and that many Titles of Honour were then lately extinct. And the said Earl believes many Instances may be given, where this Prerogative hath been exercised by former Princes of this Realm in as extensive a manner; and particularly

cularly in the Reigns of King *Henry* the Eighth, King *James* the First, and his late Majesty King *William*. The said Earl begs leave to add, that in the whole Course of his Life he hath always lov'd the establish'd Constitution, and in his private Capacity, as well as in all public Stations, when he had the Honour to be employ'd, hath done his utmost to preserve it, and shall always continue so to do.

In answer to the further Articles of Impeachment exhibited against the said Earl: As to the First of these Articles he saith, that he believes, in or about the Month of *January*, One Thousand Seven Hundred and Ten, an Expedition was projected, for making a Conquest of the City *Quebeck*, on the River of *St. Laurence, Canada*, or other Possessions of the *French King* in *North America*; but denies he advised her Majesty either to consent to the making such Expedition, or to give Orders for detaching any Battalions of the Forces in her Majesty's Service in *Flanders*, or to send any such Battalions, or any Squadron of Men of War on the said Enterprize: But having heard that the said Project, or some Expedition of the like Nature, had been some time before considered in a Committee of Council, and afterwards laid aside for that Time, and not being fully apprized of the whole Project, nor so well vers'd in the Affairs of that Part of the World as others, who had more Opportunity of knowing them; and least the Expedition might not at that Time prove so feasible or advantageous as others of better Knowledge in those Matters than himself did expect, he did all that he apprehends his Duty required to prevent the putting the same in Execution, and expressed his Concern at it to some Persons about the Queen. And having so far shewn his Opinion of the said Design at that Time, believes it would not have been thought proper for him to have appeared at the Meetings, where the Methods only of carrying on the Expedition were to be adjusted; of which Meetings there had been but few, before a Misfortune befel him, which confined him to his Bed. But the said Earl denies, that he knew the said Expedition was dangerous or destructive, nor did he hear that it was laid aside formerly by a Committee of Council, as dangerous or impracticable, but only as improper in the Circumstances of Affairs at that Time: Nor doth the said Earl know or believe the said Expedition was set on foot with any design to promote the Interest of the *French King*, or to weaken the Confederate Army in *Flanders*, or to dissipate the Naval Forces of this Kingdom. And when others of her Majesty's Council, better acquainted with that Affair, did judge it to be proper and practicable, he did not think it became him, upon the Strength of his own single Judgment, further to oppose an Expedition, which if it had succeeded, most certainly would have given a great and sensible Blow to the Settlements and Trade of *France* in that part of the World. And the said Earl, with good Reason, is persuaded your Lordships will not think it unfit that her Majesty should take the Opinion of those who better understood Affairs of that Nature; or that your Lordships can judge the said Earl in that respect to have been wanting in his Duty to her Majesty; but hopes it will be rather an Evidence of his Fidelity to the Queen and his Country, that he so far discouraged what in his

own Judgment he was diffident of. However he is satisfied, that those of her Majesty's Council who did approve the Expedition, acted therein with a sincere Desire for the public Good, notwithstanding the ill Success it was attended with; which might chiefly be owing to Delays by contrary Winds, and other unforeseen Accidents. And he doth not believe, that her Majesty's Allies did suffer any Prejudice, or the common Enemy receive any Advantage by the detaching of Forces from *Flanders* to serve on this Enterprize; and is inform'd, that to prevent any such Danger, her Majesty's General who commanded at that Time in *Flanders*, had Orders for providing other Forces in their Place, if he judg'd it necessary. And the said Earl doth acknowledge, that the Sum of twenty eight thousand Pounds, or thereabouts, was demanded at the Treasury about *June* One Thousand Seven Hundred and Eleven, on account of Arms, Accoutrements, Goods, and Merchandize, said to be sent on the said Expedition to *Canada*; but he saith, that he was so far from advising her late Majesty that the said Sum should be issu'd and paid, that on the contrary he put a Stop to the Payment of the same, until he had done all he could at that time to examine into the Expenditure of the said Money: But being then High Treasurer of *Great Britain*, and having receiv'd her Majesty's Orders to pay the said Sum, and not being able, with his utmost Precaution then, to discover any just Cause why it should not be paid; he did afterwards, in Obedience to those Orders, and according to the Duty of his Place, countersign a Warrant to the Paymaster of her Majesty's Forces for the Payment of the same, pursuant to which, he believes the same was issued and received. And as to that Part of the said Article, which charges the said Earl with employing his Arts or Credit to keep the House of Commons from examining that Affair; he begs leave to say, that whatever Suspicions he might entertain in his own Mind, he did not upon Examination find, that there was sufficient Proof to justify the laying them before either House of Parliament. And although he had been inform'd, that the Papers relating to that Expedition, were laid before the last, and have been all along in the Power of the present House of Commons, yet he hath not heard that any Fraud hath been made out in that Affair, notwithstanding the Gentlemen who had them under their Inspection neither wanted Abilities to make the utmost Discoveries, nor could be supposed to be prevented therein by any Influence of the said Earl: And he hopes it will not be imputed to him as a Fault, if he had used any Skill or Credit to keep the House of Commons from examining this Affair at that Juncture, when by an unseasonable Enquiry, before a proper Proof could be had, the Fraud, if any such there were, would be likely for ever to escape unpunished. But the said Earl denies that he ever exercised or had any arbitrary Power or Influence, either in her Majesty's private Council, or the great Council of the Nation, or entertained any Design to prevent the Justice due to the Queen or the Nation, or that any Discovery had been made to him, further than what might give Suspicion to one who was always jealous (as became him) of any Misapplication of the public Treasure. And the said Earl saith, that he is not conscious, that by any Letter or Memorial to her Majesty, he hath acted contrary to his Duty; but humbly hopes he

may be allowed to observe, that it would be a Matter of particular Hardship, and what seems to him inconsistent with the Rules of Government, and without Precedent, if the most secret and intimate Papers and Letters, wrote to that most renowned and pious Princess, her late Majesty, by her own special Command, and for her own private Perusal, should be imputed to any as a Crime; and if any Quotation from any such Letter or Paper could be alledged against the said Earl, he doubts not but there might appear from other of her Majesty's private Papers what would justify him in many Particulars wherewith he is charged, and would give further Proof (if it were needful) how tender and affectionate her Majesty was to all her Subjects.

In answer to the second additional Article the said Earl doth admit, that about *October* One Thousand Seven Hundred and Eleven, her late Majesty did sign a Warrant directed to him, then her Treasurer of *Great Britain*, for the issuing and Payment of the Sum of Thirteen Thousand Pounds to *John Drummond*, Esq; in the Article named; and that on or about the Twenty Fourth of *November* following, in pursuance of the said Warrant, under her Majesty's Sign Manual, he the said Earl did sign a Warrant for the Payment of the said Thirteen Thousand Pounds, but for more certainty, begs leave to refer to the said several Warrants when the same shall be produced: And the said Earl takes the Words [*for special Services of the War*] to have been inserted by Mistake of the Clerks; for he absolutely denies that he gave any Direction for those Words, or any other of like Import, to be inserted: And he believes all the Clerks of the Treasury know, that the Monies which arose from the Sale of Tin were the Queen's proper Money for the Support of her Household, and such Occasions as she should please to direct, and not appropriated to the Services of the War; altho' sometimes it hath been practised that Loans have been taken upon Tin Tallies for the Service of the War, and other public Services, and afterwards repaid to the Civil List, which might possibly give occasion for such Mistake. And the said Earl saith, that having been acquainted with the Services the said *Mr. Drummond* had performed, by Order of the late Earl of *Godolphin*, in borrowing Money upon Tin at a low Interest, the said Earl asked *Mr. Drummond's* Consent that a Sum in Tin-Tallies might be struck in his Name, and with such Consent did direct, that Orders amounting to the Sum of Thirteen Thousand Pounds should be charged in the Register of the Exchequer, on the Monies arising by the Sale of Tin, in the Name of the said *Mr. Drummond*, who afterwards, before his going to *Holland*, endorsed the said Orders at the said Earl's Request, and left them in the Treasury; but how long it was before the said Orders were endorsed, or how long they remained afterwards in the Treasury, the said Earl doth not particularly remember; but doth not acknowledge that the said Orders and Tallies came afterwards to his own Hands, and were disposed for his own Use. But in order to lay the true State of this Affair before your Lordships, the said Earl humbly represents, that upon his first attending the late Queen, after his being wounded, her Majesty had the Goodness to tell him, that she designed him a Sum of Money: Upon which he represented to her Majesty the bad

Condition of her Civil List: But several times after her Majesty asked him, why he did not find a way for receiving the Money she intended him, and bring the necessary Warrant for that Purpose? He still urged the same Reason against it, and for near Six Months made no Step in it, till at last her Majesty was pleased to say, she was resolved to have it done. And as her Majesty had, in Matters of her Bounty, made use of Tin-Tallies for other Persons, she was pleased to mention the same herself, and ordered proper Warrants to be prepared for the Sum which her Majesty of her Royal Bounty intended him: That after her Majesty had so positively signified her Royal Pleasure, to bestow such Mark of her Favour upon the said Earl, the said Tallies and Orders were struck in *Mr. Drummond's* Name, with her Majesty's Knowledge, and at the said Earl's Nomination; and from that time the same were kept under the said Earl's Direction for his Use. And the said Earl was advised, that nothing further was requisite to be done, after the Assignment of the said *Mr. Drummond*, for securing the said Earl's Interest in the said Tallies, till an Accident happened which made it necessary for further Security, to have the said Warrant as a Declaration of Trust, which was accordingly signed by her Majesty, and is to the Effect following.

A N N E R.

W Hereas in the Year of our Lord One Thousand Seven Hundred and Eleven, in Consideration of the many good, faithful, and acceptable Services which before that time had been performed unto us, by our Right Trusty and Well-beloved Cousin and Counsellor Robert Earl of Oxford (then and now our High Treasurer of Great Britain) which Services have tended to the Quiet, Safety, and Prosperity of us and our Realms, tho' the same were accompanied with great Difficulties upon himself, and Hazards to him and his Family. And particularly reflecting upon the impious Attempt made upon his Life: We did then fully resolve, as a particular Mark of our Favour, and of our Gracious Acceptance of the said Earl's Services, to bestow upon him a Sum in ready Money. But the said Earl representing to us, that the Arrears then due to our Servants and Tradesmen, chargeable upon our Civil List, were very great and pressing, we did therefore agree and determine, that the said Earl should have to his own Use the several Sums amounting to Thirteen Thousand Pounds, compris'd in certain Orders of Loans bearing date in or about the Eleventh Day of December One Thousand Seven Hundred and Eleven, in your Name, and charged upon the Register in our Exchequer on the Monies arising by Sale of our Tin, which Orders are not yet in Course of Payment. Now we do hereby declare and make known, that the said several Sums amounting to Thirteen Thousand Pounds, contained in the said Orders, and the Interest thereof due and to be due, are, and shall be the proper Monies of the said Earl of Oxford. And we do hereby direct and authorize you to transfer and Assign the said Orders, and the whole Right and Benefit thereof, to the said Earl and his Assigns, or to such Person or Persons as he shall appoint in that behalf. And in case any the Monies due, or to be due, or payable upon the said Orders shall come to your Hands; in such Case our Pleasure is, that you forthwith pay over the same to the said Earl, his Executors, Administrators, or Assigns, to his and their own Use and Beboof, without any Account to be therefore rendered to us, our Heirs,

Heirs, or Successors. And this our Warrant, or an attested Copy thereof, shall be your sufficient Warrant and Discharge for so doing.

Given at our Court at *Windsor-Castle* the Fourteenth Day of *December*, in the Twelfth Year of our Reign, *Anno Dom. 1713.*

To our Trusty and Well-beloved

John Drummond, Esq;

And the said Earl believes the said Warrant was drawn by Mr. *Lowndes* Secretary to the Treasury, and by what Means the same was omitted to be enter'd in the Treasury he knows not: But upon hearing there was a Discourse about the said Thirteen Thousand Pounds in Tin-Tallies, he sent a Copy of the said Warrant to the Officers of the Treasury, without signifying any Desire to have the same enter'd, well knowing it receiv'd its Authority from the Sign Manual, which wanted no additional Force from any Entry thereof in the Treasury-Books. And the said Earl saith, that her Majesty was pleas'd, of her mere Goodness and Bounty, and of her own free Will to give him the said Sum of Money in Reward of his faithful Services, and for his Sufferings in her Service. And the said Earl saith, that the said Grant, according to the Discount upon those Tallies at that Time, amounted to the Sum of ten thousand Pounds, or thereabouts; wherein he acknowledgeth the great Bounty of her Majesty, and takes notice, that Grants much larger have been made from the Crown to other Ministers of State, while the Necessities of the Crown have been equally pressing. And the said Earl doth not know that in this or any other Part of his Administration, he ever was guilty of any Corruption, or any Breach of his Oath or Trust as High Treasurer of *Great Britain*; or that he did in any Manner abuse her Majesty's Goodness, or make an ill Use of his Access to her Majesty, or embezzle the public Treasure, or did at any time knowingly injure or oppress her Majesty's Subjects; but on the contrary, the said Earl saith, that he managed the public Money in the most frugal Manner, in order to lessen, as much as might be, the Charge of the War; and to ease, if he could, the Commons of *Great Britain* from all grievous Taxes. And in further Vindication of himself against all the Imputations of Avarice or Corruption insinuated in this Article, the said Earl saith, that in every Employment to which he was called by her Majesty's Favour, he was always contended with the accustomed Incomes and Profits of the said Employments, without endeavouring to encrease his Gain by unwarrantable or extraordinary Perquisites; that whilst he was in any Office of Trust about her Majesty, he never abused that Trust in making any Manner of Profit or Advantage to himself, either by the Disposal of Places in his own Gift, or by the Recommendation of Persons to her Majesty for such as were granted immediately by herself; that neither in nor out of Place did he ever receive any Pension from the Crown; that as he came with clean Hands into her Majesty's Service, so went not only with clean but almost with empty Hands out of it, having spent therein most Part of the Profits which accrued to him from the Places he enjoy'd; so that at this Time, notwithstanding all the Advantages he received from them, and the extraordinary Bounty of the Queen to him, in this Article mentioned, he can with great Truth affirm, that his

private Fortune hath received very inconsiderable Addition thereby.

In answer to the Third Additional Article the said Earl saith, that *Matthew Prior*, Esq; being employed by her Majesty at the Court of *France*, Warrants were signed in the usual Form for Payment of several Sums of Money to the said Mr. *Prior*, which he believes from the Twenty Seventh of *August* One Thousand Seven Hundred and Twelve, to the Tenth of *July* One Thousand Seven Hundred and Fourteen, might amount to the Sum of Twelve Thousand Three Hundred and Sixty Pounds, as in the said Article is set forth; and he believes he did pay, or cause to be paid at several Times the said Sums, pursuant to the Authority he had from her late Majesty for that purpose, which he conceives was not only lawful, but a Duty incumbent on him. He further saith, that he doth not know that by any Law there ought to be certain Appointments or Allowances for the Maintenance and Support of Ambassadors, Envoys, Plenipotentiaries, and other public Ministers of the Crown in foreign Courts; but that her Majesty was at Liberty to vary such Appointments, and the Manner of paying them, as she in her Wisdom should think fit, out of any Funds appropriated to the Civil List. He doth believe, that there are several Instances where Persons employed to negotiate Matters of Importance, as Ambassadors or Plenipotentiaries, have been allowed one thousand five hundred Pounds for their Equipage; one hundred Pounds a Week for their ordinary Entertainment, and one thousand six hundred Pounds for Extraordinaries, and likewise further Sums for Services, performed by special Order: And if the said Mr. *Prior* had been paid upon that Foot, he would have been entitled to a greater Sum from the Crown, for the Time wherein he was employed by her Majesty as aforesaid, over and above all Disbursements for special Services. And the said Earl saith, that he takes the said *Matthew Prior* to have been sent by her Majesty into *France* for her Majesty's Service, and in order to carry on the Negotiations of a general Peace; but denies that he was any Creature of the said Earl, or sent by the said Earl into *France*, or that he carried on any Negotiations of the said Earl, or that her Majesty was prevailed on by his Counsels to send the said *Matthew Prior* as her Plenipotentiary to the *French King*, without the Privity of or any Communication with the Allies, or that the said Earl used the least Contrivance for carrying on, or did carry on or promote any dangerous Practices with the Ministers of *France*, or the Enemies of her Majesty or her Kingdoms, or that he did at any Time combine with the said *Matthew Prior* to defraud her Majesty of any Sum of Money whatsoever, under Colour of his Employment; or that the said *Matthew Prior* was sent into *France* with the Character aforesaid; without any settled Appointment or Allowance for any such End; or that he the said Earl did give the said *Matthew Prior* an unlimited Credit, or promise to pay him any Bills whatsoever, other than what he should be duly authorized to pay; or that any Bills of Exchange, in the said Article mentioned, were drawn in pursuance of any such Contrivance. The said Earl saith, that *Thomas Harley*, Esq; having been twice sent by her late Majesty to the Court of *Hanover*, he the said Earl being then High Treasurer of *Great Britain*, paid

or cause to be paid to the said Mr. *Harley* the Sum of five thousand five hundred and sixty Pounds, or thereabouts, by Authority from her Majesty, and according to the Duty of his Office, out of Monies appropriated to the Use of the Civil List. And he believes, that if Mr. *Harley* had received an Allowance in Proportion to what hath been paid to Ambassadors, it would have amounted to a greater Sum. But denies, that the said Sum of five thousand five hundred and sixty Pounds, or any Part of it, was paid without Authority, or for promoting any wicked Purposes of the said Earl, or that he did either illegally or fraudulently issue, direct, or advise the Direction or Payment of any Sum or Sums of Money out of her Majesty's Treasury, to any Person whatsoever, or that he ever entered into any Combination with the Persons abovementioned, or any other Person whatsoever, to defraud her Majesty of any of the public Money which he was entrusted with the Management of.

In answer to the fourth additional Article, the said Earl denies, that he ever held any Correspondence with *Mary* the late Consort of the late King *James* the Second, either by the Means of Mr. *Prior*, or by any other Means whatsoever, or that he ever intended, or had the least Design any way to promote the Interest of the *Pretender*; nor doth the said Earl know or believe that Monsieur *Gaultier*, in the said Article named, was entrusted or employed as an Agent between any of the Ministers of *Great Britain* and *France*, in transacting any Affairs relating to the *Pretender*; and denies that he the said Earl had any Conferences with him the said Monsieur *Gaultier* on that Subject: Nor doth the said Earl know or believe that he the said Monsieur *Gaultier* was empowered to concert with him the said Earl, particularly the settling any Payment or Remittance of the Annuities hereafter mentioned, or any other yearly Sum to be paid or remitted out of her Majesty's Treasury into *France*: Neither had the said Earl the least Design, that any of the Fruits or Advantages of the Peace should be made an Offering to any Adherent of the *Pretender*; nor did he agree or undertake to procure the Payment of the yearly Sum of forty seven thousand Pounds, or any other yearly Sum, to the Use of the said late Consort, during her Life. But the said Earl doth admit, that the late King *James* the Second by Letters Patents under the Great Seal of *England*, bearing Date on or about the Twenty Eight Day of *August*, in the Year One Thousand Six Hundred and Eighty Five, granted unto *Lawrence* Earl of *Rocheſter*, *Henry* Earl of *Peterborough*, *Sidney* Lord *Godolphin*, *Robert* *Worden*, Esq; and Sir *Edward* *Herbert*, Kt. (who are all since deceased) divers Annuities or yearly Sums of Money, amounting to thirty seven thousand three hundred twenty eight Pounds thirteen Shillings and seven Pence, payable out of the Hereditary Duty of Excise, and the Post-Office, and other Revenues in the said Letters Patents mentioned, to hold to them and their Heirs, during the Life of the said Consort, in trust for her: And by other Letters Patents, bearing date on or about the Third Day of *December*, in the Year One Thousand Six Hundred and Eighty Six, also granted unto the said Consort a further Pension, or yearly Sum of ten thousand Pounds, to hold during her natural Life; whereby the said Revenues arising from the Hereditary Excise and Post Office, and other the Revenues in the

said Letters Patents mentioned, became charged with, and were liable to the said Annuities or yearly Sums, as in this Article is mentioned. And the said Earl doth admit, that the said Revenues were by several Acts of Parliament granted and settled during the Life of his late Majesty King *William* the Third, for the Use and Service of his Household and Family, and for other his necessary Expences and Occasions; and after his Demise, during the Life of her late Majesty Queen *Anne*, were appointed to be for the Support of her Household, and of the Honour and Dignity of the Crown; but saith, that in the same Act of Parliament whereby the said Revenues are so appointed, there is a general Saving to all and every Person or Persons of all such Rights, Titles, Estates, Interests, Claims, and Demands whatsoever, of, in, or to, or out of the said Revenues and Hereditaments, or any of them, as they, or any of them had, or ought to have had before the making the said Act, as fully, to all Intents and Purposes, as if the said Act had never been made. And the said Earl doth admit, that an Act of Parliament was made in the Twelfth Year of her late Majesty's Reign, whereby the Sum of five hundred thousand Pounds, for the Causes therein mentioned, was to be applied in Aid of the Revenues or Branches which were appointed for the Support of her Majesty's Household, and of the Honour and Dignity of the Crown, for, or towards the paying and discharging such Arrears of Salaries, Wages, Diet-money, and other Allowances, and such Debts for Emptions, Provisions, and other Causes, as should appear to be due and owing to her Majesty's Servants, Tradesmen, and others. But the said Earl saith, he hath heard that the said late Consort of the late King *James* the Second, esteeming herself to be entitled by the Laws of *England*, by vertue of the said Letters Patents, to the several Sums of Money therein mentioned, did, by Letter of Attorney, empower and authorise the said Monsieur *Gaultier* to demand and receive for the only Use, Benefit, and Behoof, all Sums of Money which from and after the Feast of the *Annunciation* of the Blessed Virgin *Mary*, One Thousand Seven Hundred and Thirteen, were become due and payable upon the several Annuities, amounting to thirty seven thousand three hundred and twenty eight Pounds thirteen Shillings and seven Pence, and the other Annuity or yearly Sum of ten thousand Pounds, and to give Acquittances and Discharges for the Monies he should so receive to her only Use and Behoof as aforesaid; and that thereupon he the said Monsieur *Gaultier* applied himself to her Majesty for the Payment of the Monies which were incurred or grown due on the said several Annuities, from the said Twenty Fifth Day of *March* One Thousand Seven Hundred and Thirteen, and that her Majesty was pleased to sign a Warrant, directed to him the said Earl, being then her Majesty's High Treasurer, or the High Treasurer or Commissioners of the Treasury for the Time being, in the Words or to the Effect in the said Article set forth; but for more certainty refers himself to the said Warrant, when the same shall be produced. And that in Obedience to her Majesty's Commands signified by the said Warrant, he the said Earl did direct two several Warrants to the Auditor of the Receipt of the *Exchequer*, to the Effect in the said Article set forth; but for more Certainty refers to the said several Warrants when the

the same shall be produced. But he denies he advised her Majesty to sign the said Warrant of the twenty third of *December* one thousand seven hundred and thirteen; but when such Warrant was brought to him, and he knew that the Jointure of the said Consort had been confirmed by Act of Parliament; and had heard that by some private Article of Agreement at the Treaty of *Ryswick*, Provision had been made in relation to it; and the Legality of the Demand not being doubted by her Majesty's Council learned in the Law, the said Earl thought it his Duty to pay Obedience to it. And the Sum of five hundred thousand Pounds intended to be raised by the said Act of the Twelfth Year of her Majesty's Reign, together with a great additional Sum in Tallies, being design'd for discharge of her Majesty's Debts, the said Earl thought himself sufficiently authorized to direct that the said Sum of Money mentioned in the said Warrants, which he was advised was a Debt from her Majesty, should be paid out of the said five hundred thousand Pounds: Yet the Sum in the said Warrants mentioned or any part thereof, was not paid out of the said appropriated Sum of five hundred thousand Pounds, or otherwise; but the whole Sum of five hundred thousand Pounds was applied to other Uses for which it was appropriated. And the said Earl humbly hopes, that he hath not hereby betrayed the Honour of her late Majesty, or the Imperial Crown of these Realms, or acted contrary to his Duty. And the said Earl doth acknowledge, that the said Monsieur *Gaultier* coming into *England* with Letters of Credence from the *French* King to her late Majesty, after having resided some time in *England*, her Majesty was pleased, before his Departure hence, to direct a Present should be made to the said Monsieur *Gaultier*, as hath been usual in like Cases to public Ministers: And he believes her said Majesty was the rather inclined to make such Present to the said Monsieur *Gaultier*, because the said Earl hath heard, and takes it to be true, that the said *Gaultier* had been instrumental with the *French* King to obtain the Delivery and Release of those poor Protestants who had suffered aboard the Gallies on account of their Religion, whose Rescue from Slavery her Majesty, out of her known Zeal to the Protestant Religion, and out of her wonted Piety and Compassion to the Confessors in so good a Cause, had much at Heart, and had prevailed therein beyond Expectation; it being what by his Majesty King *William* had been attempted in vain, and was thought by many impossible ever to be obtained: And the good Offices of the said *Gaultier* in that Affair having been very acceptable to her Majesty, she was pleased to encrease his Present in respect thereof, and therefore ordered it to be paid in the same manner as had been done to others, whose Present her Majesty thought fit to augment. And for this end her Majesty, about the time in this Article mentioned, did sign a Warrant directing the Payment of one thousand Pounds Sterling to *Daniel Arthur*, Esq; in the same Article mentioned; to the Intent it might be paid to the said Monsieur *Gaultier* on the account aforesaid. And the said Earl believes the said Monies were issued and paid accordingly, and doth not apprehend he hath therein acted contrary to his Duty.

In answer to the Fifth additional Article, the said Earl doth admit the Sovereign of this Realm

may refuse to receive any natural born Subject who hath committed, and is under the Guilt of High Treason, as a public Minister, or with any Character from any Foreign Prince, State, or Potentate: And that where such Person is known to be guilty of such Crime, it may in most Cases be fit so to do; But the said Earl apprehends that the Sovereign is the proper Judge whom to refuse or receive with such Character. The said Earl believes that a Person styling himself, or commonly known by the Name of *Lilesh* or *Lawless*, did about the Year one thousand seven hundred and twelve, or one thousand seven hundred and thirteen, come into *England* with Letters of Credence to her Majesty from the King and late Queen of *Spain*, and Authority to treat about carrying *British* Merchandizes to the *Spanish West-Indies*; and that her Majesty was pleased to admit such Person with such Letters of Credence; and before his return to *Spain* was pleased to order, for the Use of such Person, the Sum of one thousand Pounds, to be paid out of the Monies appropriated to the Civil List, which the said Earl, in Obedience to such Orders, caused to be paid, and humbly apprehends it was his Duty so to do. But the said Earl believes, that when the said *Lilesh* or *Lawless* was so admitted, he was generally thought to be a natural *Spaniard*, and that from the Advantages of those Licences which he brought for carrying the *British* Merchandizes to the *West-Indies*, he expected much a larger Present: However, the said Earl denies that he knew, or was informed, before the Arrival of the said *Lawless* in *England*, any thing of his coming hither, nor after his Arrival did he see him, or know of his being here before he had been introduced to her Majesty, it being usual for public Ministers to be introduced by those Servants of her Majesty to whose Office it belongs, as matter of Duty and common Dispatch, without consulting therein other Ministers of State. And upon the Notice taken of this Affair formerly in the House of Peers, it appeared that the noble Lord who introduced the said *Lawless* to the Queen, by virtue of his Office, did it as of Course, and did not then know he was other than a Native of *Spain*. And the said Earl saith, that of a long time after he had been so introduced, the said Earl neither knew nor heard that he was other than a natural *Spaniard*: But when the said Person had continued in *England* a considerable time, there was a Rumour, and the said Earl was afterwards informed that he was a Native of *Ireland*, and departed out of that Kingdom in his Youth, and had since been in the *Spanish* Service; but doth not know, nor was informed, that he had committed or been guilty of High Treason, or that he had served the late King *James* the Second in the War in *Ireland* against King *William* the Third, or had followed the said King *James* the Second into *France*, or been in his Interest or Service, or had been in Rebellion against King *William*, or in Arms against the late Queen. And the said Earl having no notice of the said Person's Arrival before his being admitted to her Majesty, nor any Knowledge of any Crime he was guilty of, submits whether it shall be computed to him as any want of Duty, that he did not advise her Majesty against admitting or receiving him in the Character aforesaid, or that he did, by her Majesty's Authority, meet, confer, or negotiate with him concerning any Affairs about which he was authorized to treat (in case he had

had so done, which however the said Earl doth not admit) or that by Authority from her Majesty he paid the said Sum of One Thousand Pounds to the said *Daniel Arthur*, which after came to his Use. But the said Earl doth deny, that he advised her Majesty to sign the Warrant for Payment of the said One Thousand Pounds, or gave any Directions for Payment thereof contrary to what was intended by her Majesty: And the said Earl admits, that some other Sums of Money (which might amount in the whole to Nine Hundred and Fifteen Pounds, or thereabouts) were paid in Satisfaction of Monies advanced to the said *Lawless*, as Part of the Monies agreed to be advanced to his Catholic Majesty by the *Affiento* Contract: But denies that he directed the Payment of any other Monies whatsoever out of her Majesty's Treasury to the said *Lilesh* alias *Lawless*, or knows that any other Monies were paid to him, beside the aforementioned Sum of One Thousand Pounds, and the Monies paid in Satisfaction of what was advanced to him towards the Part due to his Catholic Majesty by the said *Affiento* Contract. And the said Earl never assumed the supreme Direction in her Majesty's Councils, neither was he advising that the said Person should be introduced to her Majesty, or should be received or treated by her Ministers under the disguised Name of *Don Carlo Moro*, or should at all be received as a public Minister here. And the said Earl doth acknowledge, that the House of Lords with commendable Zeal made such Address, and came to such Resolution, and that her Majesty made such Answer, and issued such Proclamation, as in the said Article is mentioned. And as the said Earl had always the highest Regard to the Safety of her Majesty's Person, the Security of the Protestant Succession, and Advice and Resolutions of the House of Peers; so he denieth, that he had the least Knowledge, that the said *Lilesh* alias *Lawless*, had ever been Minister or Agent to the Pretender at the Court of *Madrid*, or the least Suspicion that he was sent into *England* to promote the Interest of the Pretender in these Kingdoms, nor is he conscious to himself, that he hath done any thing to expose the Person of her most sacred Majesty; to enervate or render ineffectual the Advice of Parliament, or her Majesty's Declaration; to countenance any Emissary of the Pretender, or encourage his Adherents, to the Danger of the Protestant Succession as by Law establish'd in the serene House of *Hanover*: But on the contrary is persuaded his Conduct in that Affair is so well known, as not to need any further Justification; but if it should at any Time be thought necessary, he is able to produce those Proofs of it, which are the best Authority in the World for his Vindication.

In answer to the Sixth additional Article, the said Earl hath been informed, and doth believe it may be true, that after several unsuccessful Attempts by her late Majesty, in Conjunction with her Allies, to establish his present Imperial Majesty upon the Throne of *Spain*, Instructions in Writing were given to *Mitford Crow*, Esq; about the Seventh Day of *March*, One Thousand Seven Hundred and Five, taking notice her Majesty had been informed, that the People of *Catalonia* were inclined to cast off the Yoke imposed on them by the *French*, and to return the Obedience of the

House of *Austria*; and that her Majesty, desiring to maintain and improve that good Disposition in them, and to induce them to put the same speedily in Execution, had made choice of him to carry on so great a Work, for the Advantage of her Service, and the Good of the common Cause, as was the making a Treaty with the *Catalans* or any other People of *Spain*, for the Purpose aforesaid: and that the said *Mitford Crow* was thereby impower'd to give the *Catalans*, or other *Spaniards*, Assurances of her Majesty's utmost Endeavours to procure the Establishment of all such Rights and Immunities, as they had formerly enjoyed under the House of *Austria*, and the Confirmation of such Titles as had been conferr'd on any of them by the Duke of *Anjou*: And that for their further Satisfaction, her Majesty had sent to King *Charles* the Third for Powers for confirming the same to them, and was willing, if they insisted on it, to become Guarantee that it should be done. And the said Earl hath been likewise informed that her Majesty, in a Commission granted to the said *Mitford Crow*, expressed, that she thought fit to enter into a Treaty with the Principality of *Catalonia*, or any other Province of *Spain*, on Condition they would acknowledge and receive *Charles* the Third as lawful King of *Spain*, and utterly abdicate the House of *Bourbon*, and join their Forces with her Majesty's; and that her Majesty was pleas'd also to sign and deliver to the said *Mitford Crow*, Credential Letters, directed to the Nobility, Magistracy and other Officers of *Catalonia*, or any other Province of *Spain*, desiring them to give Faith to every thing the said *Mitford Crow* would tell them in her Majesty's Name: And that Instructions were likewise given to the Earl of *Peterborough* and Sir *Cloudesty Shovel*, about the Time and to the Effect in the said Article mentioned; and that a Manifesto or Declaration was afterwards publish'd by the said Earl of *Peterborough*, to the Effect in the said Article set forth: But the said Earl denies, that such Manifesto or Declaration was prepared by his Advice or Privity. And the said Earl believes it may be true, that some Part of the Nobility, Clergy, and Inhabitants of the Principality of *Catalonia*, and also of the Inhabitants of the Island of *Majorca*, did afterwards acknowledge King *Charles* the Third (now Emperor) for their lawful Sovereign, and did join their Arms with those of her Majesty and her Allies against the present King of *Spain*; but by what Motives they were induced thereunto, the said Earl doth not know. And the said Earl doth acknowledge, that for some Time the Arms of her Majesty and her Allies in *Spain* were attended with considerable Successes, in which the Bravery of the *Catalans* appear'd, and the Forces of the Confederates twice enter'd the capital City of that Kingdom: by which signal Conquests, and the great Supplies that have been granted by Parliament for their Assistance, the said People were under the highest Obligations of Gratitude to her Majesty: But the Advantages those Successes had given King *Charles* the Third being lost, her Majesty found the Burthen of that War very heavy to her Subjects, the Conquest of *Spain* for the present Emperor impracticable, and after the Accession of the Empire and Descent of the Hereditary Countries to him, esteem'd inconsistent with the Interest of many of her Allies, and therefore thought it necessary for the Good of her People,

People, and the Tranquility of *Europe*, to enter into Negotiations for a general Peace. But the said Earl denies that he entered into any Conspiracy for subjecting the *Spanish* Monarchy to the House of *Bourbon*, or ever had the least Design of the Ruin or Destruction of any of the Rights, Liberties, or Privileges of the *Catalans*, or that he ever formed any Contrivance for abandoning them to the Fury or Revenge of the Duke of *Anjou*, or his Adherent; or for the Extirpation of any of their Rights, Liberties, or Privileges; or that he advised her Majesty to give Directions to the Lord *Lexington* to acknowledge the Duke of *Anjou* King of *Spain*, before any Negotiation of Peace was set on foot in form of Law, between the Crowns of *Great Britain* and *Spain*. On the contrary the said Earl saith, that by Letters and Papers sent by one of her Majesty's Principal Secretaries of State to the Lord *Lexington*, it will appear, that after her Majesty had hearkened to the Proposals for a general Peace, for the Good of her own People, and her Allies, she used her best Endeavours for obtaining the Liberties of the *Catalans*, at the Conclusion of the Peace, and that his Lordship was directed peremptorily and absolutely to insist thereon: Nor doth the said Earl know or believe, that any Orders were ever sent from or given by her Majesty, to any of her Ministers, to recede from that Demand; or that the said Lord *Lexington* ever desisted from making the utmost Efforts he could for obtaining it. And if from any Measures of the *Catalans*, or of his Imperial Majesty, or from any other Cause, her Majesty's Endeavours had not their full Effect; the said Earl conceives it cannot be imputed to any Neglect of her Majesty, or any Want of Duty in him the said Earl. He believes, that about the Time in the said Article mentioned, his Imperial Majesty did enter into a Convention or Agreement for evacuating *Catalonia*; and that her Majesty, out of Inclination to perform her best Offices to the Emperor, was prevailed on to become one of the Guarantees thereof; but denies, that his Imperial Majesty was necessitated by any Practices of the said Earl to make any such Convention, and is ignorant for what Causes his Imperial Majesty, whom it most concerned, omitted, in such Convention, to make express and positive Stipulations for the Liberties of the *Catalans*. If it proceeded from any Dependence upon the Declaration of her Majesty, to interpose her best Offices on their Behalf, and the Promises of the *French* King to join his Endeavour therein; he is confident it will appear, her Majesty's best Offices were employed in that Affair, when it is considered what repeated Instances she made by her Ministers, and in the most pathetic Manner to obtain for them the Privileges they desired. And that her Majesty, by her earnest Interposition, did obtain a Grant and Confirmation to all the Inhabitants of *Catalonia*, of a perpetual Amnesty and Oblivion of all that was done in the late War, the full Possession of all their Estates and Honours, and a further Grant of all their Privileges which the Inhabitants of both *Castiles* (who of all the *Spaniards* were most dear to the King of *Spain*) enjoy'd, or might at any Time after have or enjoy; whereby the *Catalans*, if they obtained not all the antient Privileges they pretended to, received however in Compensation thereof, the Advantage of trading directly to the *West-Indies*, and other Privileges, to which they

were never before intitled. And the House of Peers, upon Consideration of several Papers laid before them, relating to this Affair, in Pursuance of their Address to her Majesty in that Behalf, expressed their utmost Thankfulness and Satisfaction for her Majesty's repeated and earnest Endeavours for preserving to the *Catalans* the full Enjoyment of all their just and antient Liberties. And it is probable her Majesty had prevailed to obtain for them the antient Privileges and Liberties, in the largest Extent, if they had waited the Event of her gracious Interpositions in their Favour, and not determined to carry on the War by themselves against King *Philip*, after the Emperor had signed the Convention for evacuating their Country, which incensed the King of *Spain* in the highest Degree, and was look'd upon by him as the most obstinate Rebellion. However, the said Earl saith, he never amus'd the *Catalans* with any Expectations whatsoever, nor in any degree contributed to engage them in any obstinate Defence against the Duke of *Anjou*; nor advised her Majesty to conclude a Peace with *Spain* without Security for the antient Rights, Liberties and Privileges of that People; or to send Sir *James Wisbart* with a Squadron of Men of War, for the Purposes in the said Article mentioned: But believes her Majesty might think herself obliged, by being Guarantee to the said Convention, for the evacuating *Catalonia*, to send the said Sir *James Wisbart* into the *Mediterranean* with a Squadron of Men of War, although he knows not the Orders or Instructions given on that Occasion; and humbly apprehends, that he cannot, in Justice, be charged with any Consequences from that unhappy People's Refusal to comply in their Submission to the King of *Spain*, upon the Terms her Majesty had stipulated for them.

Thus the said Earl has laid his Case before your Lordships, wherein he hopes he hath fully answered the several Articles exhibited against him: Yet, lest there should be any Omission in his Answer, which may be made use of to his Prejudice, he says, he is not guilty of all, or any of the Matters contained in the said Articles, or any of them, in Manner and Form as they are therein charged against him; and humbly hopes that your Lordships will excuse any Imperfections, or Defects in the said Answer, with Regard to Expression or Form; and impute whatever of that Kind may appear, to the great Weakness of Body, and ill State of Health which the said Earl now labours, and hath for some Months past laboured under; and that your Lordships will be induced to make all farther due Allowances in his Favour, from the following Considerations, which relate to the Nature of the Charge in general, and the Difficulties with which his Defence of himself, against the Particulars contained in that Charge, is, and must be attended.

Most of the Articles, with which he stands charged, relate entirely to the Negotiations of Peace lately concluded at *Utrecht*; he doubts not but your Lordships will consider, that he must of necessity be under great Difficulties, in giving a full and particular Account of such a great Variety of Facts as are contained in these Articles; that several of these Facts concern Transactions with the Ministers of Foreign States, who cannot be produced as Witnesses in his Defence, be their Testimony never so material; that many

Steps and Proceedings in an Affair of this Nature, where the Interests of several Parties, not only separate from, but some of them also contrary to each other, are to be adjusted, do require great Secrecy and Address in the Management; and that in Treaties between Enemies, such Terms are often proposed, and such Arguments used, as carry a different Appearance from the real Intentions of those that treat: Upon which Accounts, it must be very difficult to set every thing that past in the late Negotiations, with regard to the Enemy, and to the Allies, in a clear Light, and to justify every Step that was taken towards conducting them to the End proposed; especially since the Account of those Transactions, and of the Reasons on which they were founded, cannot, as he conceives, be duly cleared, but by inspecting the entire Series of Letters and Papers, which passed, during the Continuance of these Transactions, and by comparing together such Passages in them, as might give Light to each other, and to the Whole: All which Letters and Papers are (as he is inform'd) now in the Possession of the Honourable House of Commons; nor was it thought fit, upon his humble Application to your Lordships, that he should be indulged with a Copy of them.

He hopes it may not misbecome him, on this Occasion, to observe to your Lordships, that the House of Commons, by being possessed of those Papers, have a fuller View of the whole Progress, and of all the secret Steps of that Negotiation, than perhaps was even in the like Case imparted to any House of Parliament; and they have therefore all the Advantage possible towards forming the Charge against him upon the Articles of his Impeachment; whereas he (the said Earl) being destitute of all Assistance from those Papers, is under great and particular Disadvantages towards making his Defence, in the Points whereof he there stands accused; and he is therefore humbly assured, that, as your Lordships, on the one Side, will not expect from him any such Proofs of his Innocence as can only be drawn from a Perusal of those Papers; so, on the other, you will not admit of all, or any of those Articles, as made good against him, unless the Accusations therein contained, be supported by the clearest and most unquestionable Evidence, of which the Nature of the Facts is capable.

He submits it likewise to your Lordships Consideration, whether in a Negotiation, drawn out into a great Length, where the Advice of all those in high Trust about her Majesty was to be taken, and where several Persons were to be entrusted with the Management of what was agreed upon, he can, with any Colour of Equity, be made answerable for advising and conducting the Whole?

He desires also farther to observe, that every Thing, with which he is charged, was done in the Reign of a gracious Princess, now deceased, who, by Reason of the perfect Knowledge she had of the ill State of Affairs at Home, of the Advances made towards Peace from abroad, and of the Commands, which she at several Times laid on her Servants, had been the best, and indeed could be the only competent Judge, whether she was fraudulently dealt with, led by ill Advice into Measures which she did not direct, and approve, or made an Instrument of sacrificing the Interests of her Kingdoms to the Enemy. It is

with great Grief that he finds such Things suggested, as seem to lay a Stain upon the Character of so excellent a Queen, whose Memory he is confident will be for ever dear to this Country: And therefore he takes leave, in the most solemn Manner, to assure your Lordships, that as far as he knows, or can remember, every thing relating to the Transactions of Peace was communicated to her late Majesty, and maturely considered by her, before any Thing was determined thereupon; nor was any Step taken, but in Pursuance of such Determination.

As to the Peace in general, he the said Earl thinks he has very good Reason to say, that the Queen had nothing more at Heart, than to procure so great a Blessing for her People; and that, when it was obtained, she had this Satisfaction in herself, that she had taken the most proper Measures to justify her Conduct, both toward her Allies and toward her own Subjects: For, upon a Review of her Majesty whole Proceeding, in relation to War and Peace, he believes it will appear, and hath in Part appeared by the Answer of the said Earl, to the said Articles, that, as her Majesty entered further into the War than she was obliged by any Treaties subsisting at the Time of her Accession to the Throne, so she contributed more Men and Money towards the carrying it on afterwards, than she was engaged to provide by any subsequent Treaties: That her earnest Desires of Peace being twice frustrated, when such Conditions might have been obtained, as would have fully answered all the Ends for which War was at first declared; that, all our Successes and Victories ending in the annual Increase of the Charge of *England*, without any further Assistance from our Allies, and her Kingdoms being exhausted to such a Degree (notwithstanding the great Advantages obtained by her Arms) that she was not able to continue the War, upon the Foot it then stood, one Year longer; whilst her Allies refused to continue it, upon those equal Conditions, to which they were by Treaties obliged: She was at last constrained, in Compassion to her People, to hearken to the Overtures of Peace then made her from *France*, without relying further on the vain Hopes of gaining more advantageous Terms, by protracting the War a Year longer. She had carried it on, for some Time, under that Prospect, without reaping the Benefits proposed, even at Junctures that seemed most favourable to her Demands, and to the Pretensions of her Allies: She had indeed, by that means, raised the Glory of her Arms; but she could not think this a sufficient Recompence for the encreasing Miseries of her People; and therefore resolved to lay hold of the Opportunity, then offered to her, of ending the War by a Peace, if it might be obtained upon Terms every way just, safe and honourable: And those who were then employ'd in her Majesty's Councils, thought themselves obliged to second her good Intentions in this Case, and to obey her Commands with all readiness.

The said Earl presumes, on this Occasion, to mention to your Lordships the Saying of as wise a Man, and as great a General as the last Age produced, the Duke of *Parma*; when *France* was in a far lower Condition than now, being almost equally divided between two contending Parties, and *Spain* was at the Height of its Glory, and he himself at the Head of a *Spanish* Army,

Army, supporting one of those Parties, after *Paris* itself had been besieged by the other; it was his Opinion (and the Advice he gave to his Master the King of *Spain*, was grounded upon it) That if *France* were to be got only by reducing its Towns, the World would be sooner at an End than such a War. The Queen seemed at this Time, with better Reason, to frame the like Judgment; and it was therefore her Pleasure, and a great Instance (as the said Earl conceives) of her Wisdom and Goodness, to think of securing a Peace while she appeared able to carry on the War (her Armies being full and numerous) and before the exhausted Condition of her Kingdoms, and the Impossibility, on her Side, of maintaining so disproportioned an Expence, was discovered by her Enemies. At this Juncture the Queen entered upon a Negotiation of Peace, with Circumstances of great Honour to herself; *France* applying to her first, on this Account, previously owning her Title, and acknowledging the Right of the Protestant Succession; two chief Grounds, upon which the Declaration of the last War was built. And to the Allies, it was conducted in the same manner as all Treaties of Peace in Confederacies have ever been, and according to the known Laws of Nations in such Cases; the first Motion, and the several Steps of it, as fast as they ripened into Proposals fit for Consideration, being without delay communicated to the States-General.

By the Terms of this Peace, as all reasonable Satisfaction and Security due to any of the Allies, by Treaty, were obtained for them by the Queen, and their just pretensions effectually supported; so larger Advantages were actually procured for *Great Britain* in particular, than ever had been demanded before, in any Treaty, or Negotiation between this and any other foreign State. The said Earl craves leave, on this Occasion, to appeal to your Lordships, whether all the Ends for which the War was entered into have not, by this Treaty, been fully attained? Whether it does not appear, by the best of Proofs, Experience, that the Kingdoms of *France* and *Spain* are by the Conventions of this Treaty most effectually separated? And whether any other Expedient could have been so successful to this purpose, as that whereby it is now happily brought about? Whether the Ballance of Power in *Europe* be not now upon a better Foot than it has been for a Hundred Years past? Whether the Advantages that have accrued to *Great Britain*, by this Treaty, do not appear, and have not appeared in the Security of the Protestant Succession, and in his Majesty's peaceable Accession to the Throne, with the universal Applause of his Subjects, in the Additions made to our Wealth by the great Quantities of Bullion lately coined at the Mint, by the vast increase of Shipping, employed since the Peace, in the Fishery, and the Merchandize, and by the remarkable Rise of the Customs upon Import, and of our Manufacture, and the Growth of our Country, upon Export? For the Proof of which Particulars he refers himself to those Offices and Books, wherein an Authentic Account of them is contained.

And as the Terms of the Peace were in these and other Respects manifestly profitable to *Great Britain*: so the said Earl begs leave humbly to remind your Lordships, that they were communicated to the Parliament, and with their Con-

currence, agreed on; that the Peace, thus concluded, was afterwards highly approved by both Houses; that solemn Thanks were rendered to God for it, in all our Churches, as well as in the Churches of the *United Provinces*; and that her Majesty received, on this Subject, the hearty and unfeigned Congratulations of her People, from all Parts of her Dominions.

These being the real Effects, and this a true Representation of her Majesty's Conduct in the Affairs both of War and Peace; the said Earl sees not how he, or any others then in her Majesty's Service, can be justly charged with betraying the Interests of their own Country, and of the Allies, by negotiating and promoting that Peace, which then was, and (as he hath good Grounds to believe) still continues to be very acceptable and advantageous to these Kingdoms. And, if the Peace itself be not condemned, and it be not even charged upon the said Earl as a Crime, that he advised her Majesty to conclude that Peace, (neither of which appear to him from the Articles) he humbly conceives, it is a particular and extraordinary Hardship upon him, that rough Draughts and Essays towards a Peace, with other Preliminary Steps in a Negotiation, all leading to an End, which he looks upon to be just and profitable, and which is not in any of the Articles alledged to be otherwise, should be brought into so many distinct Heads of Accusation against him. For supposing that, in the Process of so nice and difficult an Affair, subject to divers unforeseen Obstructions and Events, any improper Steps had been taken, which the said Earl doth not admit, but altogether, on his Part, denies; yet, if Things were at last conducted to a right Issue, and ended in an honourable and advantageous Peace, there can be (as he conceives) no just Ground to find fault with the Measures made use of to compass it, because they seemed, before the Accomplishment, to have a different Tendency; especially if it be considered, that scarce any Peace hath been made by a Confederacy, where less Occasion was administer'd for Jealousy among the several Parties, and less Reason given to complain, that every Nicety, required by the Letter of such an Alliance, was not strictly observed. And therefore he humbly hopes, that no Steps taken for obtaining a Peace, approved by the Wisdom of former Parliaments, shall by any succeeding Parliament be accounted criminal, unless it can be made appear, that those Steps were taken contrary to the Queen's Orders, or upon corrupt Views of private Advantage: But that no Charge of this Nature can be made good against him, he presumes to affirm, with great Assurance; nor does he know of any other Persons, justly chargeable upon either of these Accounts.

And as a further Proof, that those who had the Honour to serve her Majesty in the Negotiations of Peace, acted with upright Views and Intentions, and without being conscious to themselves of any Failure in their Duty, either to their Queen, or their Country; the said Earl craves leave to observe to your Lordships, that they never attempted to cover their Actions from public Censure by any Pardon, or Indemnity, thought they have very good Reason to believe, that, had they judged or imagined themselves to have wanted such Security, it might (through the Goodness of the Queen) have easily been obtained.

Nor can he think it an Observation unfit to be made, that, in few of the Articles which concern the Negotiations of Peace, the Charge is founded on any Breach of the Laws of *Great Britain*; but it is in most of them chiefly on the supposed Infraction of certain Treaties and Alliances with foreign Princesses, or States; and he conceives that such Infractions of Public Treaties, where they do not particularly affect the Interests of *Great Britain*; being cognizable by the Laws of Nations only, and not by those of the Realm, are not wont to be examined into here at home, and prosecuted as Criminal, but upon the Complaint of some Prince or State, pretending by that means to be injured, and lodging such Complaint in some reasonable Time with the Prince, by the Advice of whose Ministers and Servants such Injury is supposed to have been done. But he knows not, that any such Steps have been taken, since the Peace, by any of the Powers concerned: On the contrary, he believes, that all the Allies, except the Emperor and Empire, made their Peace with the Enemy at the same Time the Queen did; and that none of them did afterwards complain to her Majesty (who survived the said Peace a Year and almost four Months) of any Hardships imposed upon them in it; that the Princes of the Empire, who contributed very little to the War, might have concluded their Peace upon reasonable Terms, at the same Time the other Allies did; and would probably have done it, if the Emperor, on his Part, had been willing to sign together with them, which, he is informed, at the Conclusion of any general Peace, has been seldom done; and particularly at the several Conclusions of the Peace of *Munster*, that of *Nimquen*, and that of *Ryswick* was not practised. And he submits it to your Lordships Consideration, whether the Emperor, having had all reasonable and equitable Satisfaction made him for his Pretensions to the Succession of the *Spanish* Monarchy, according to the Terms of the Grand Alliance, could have any just Reason to complain of the Queen's Ministers, or those of her Allies, for concluding a Peace, without insisting (on his Account) upon impossible Conditions; especially, when no Provision is made, or offered to be made, to reimburse her Majesty any Part of those vast Sums she had already expended, in Support of his Pretensions: whilst he failed of supplying his Quota, almost in every Part of the War, notwithstanding his new and great Acquisitions. But whether the Emperor, or any other of the Allies, had any just Ground of Complaint, or not, still the said Earl presumes to insist, that it ought to have been signified to the Queen; who upon such Complaint, had she found any of her Servants justly blameable, as disobeying her Orders, or misleading her by their Advice, into unjustifiable and dishonourable Measures, might have punished them forthwith as their Offences deserved: But nothing of this kind having been done he humbly leaves it to be considered by your Lordships, Whether the Silence of the Powers concerned doth not carry in it a strong Presumption, either that they had no real and just Ground of Complaint, in relation to the Terms of the Peace itself, or at least did not look upon the Minister of the Queen as any ways liable to Blame on that Account; and therefore he must again beg leave to express to your Lordships his Concern, that he should be charged

as a criminal by the Laws of this Land, for supposed Breaches of Treaties with foreign States, which never were complained of, as such, by those States themselves, during the Life of her Majesty.

He desires farther to observe to your Lordships, that where-ever he is charged with carrying on a private and separate Negotiation, 'tis all along understood, with regard only to the States of the United Provinces; no Step, that was communicated to them, being censured, upon this Account: Whereas all the other Allies had, by Virtue of their Treaties with the Queen, a like Right to a Communication of Councils; and her Majesty was under no Stipulation to act more in Concert with any one, than with all of them.

He does indeed allow it to have been most agreeable to Reason, and to the Interests of State, that the Queen should act in a closer Conjunction with *Holland*, than with any other of her Allies, because that, next to *Great Britain*, *Holland* bore the greatest Share in the Charge of the War: But then, he hopes it will be allowed also, that the States being more interested in the Success of the War than *England*, and that *England* having submitted to a greater Share of the Burthen, in order to procure, not only a fitting Security for the States, but such as brought great Advantages to them, though no Benefit to *England*; it was very reasonable for the Queen to take care of the Interest of her own Kingdoms some other Way: And, since the Advantages she demanded from the Enemy, were such as she might obtain without any Prejudice to the States, it was as lawful for her to negotiate this Matter without communicating it originally, and in the first Rise of it, to them, as it was for her, and the States, to concert their mutual Interests together, without the immediate and express Participation of the other Allies; which, being known to be done, without a Design to Defeat any of the main Ends of the Alliance, was never complained of by any of the Confederates.

And as for the Matters concerted previously with *France*, for the particular Interest of *England*, without the original Invention of *Holland*, the State were so far from Protesting against her Majesty's Measures, and condemning her Conduct in this Respect, that their Minister proffer'd several Times, in their Name, to have led the Way, in the most difficult Part of the whole Negotiation, and to have done his utmost to facilitate the Conclusion of it, provided his Masters might have a Share in the *Assiento* Contract, and Trade to the *Spanish West-Indies*; one of those Advantages, which *France* had discovered its Willingness should be allowed previously and entirely to *England*.

These few general Observations the said Earl has thought fit to add in the Close of his Answer to the several Articles of his Impeachment; not only in his own necessary Vindication, but also in Defence of her late Majesty's Conduct in the negotiating and concluding a Peace, the perfecting of which she esteemed the greatest Happiness of the Reign. Upon Review of the Two and Twenty Articles with which he is charged, as he is not conscious of any Offence committed by him, with respect to any one of them, so it is with a particular Concern and Surprise that he reflects on these two, wherein he is accused of High-Treason,

Treason, for endeavouring to procure *Tournay* to *France*, and so deprive the States of that intended part of their Barrier; and for procuring *Spain* and the *West-Indies* to the Duke of *Anjou*, upon his Renunciation of the Crown of *France*, referring himself to what he has said in his Answer to both these Articles, he here further assures your Lordships (and thinks it is sufficiently known both at home and abroad) that his Opinion and Endeavour, as Occasion offer'd, always were for *Tournay's* remaining, as it now does, to the States-General. And as to the latter, he doubts not but that what has lately happen'd in *France*, is a convincing Proof to your Lordships, and to all the World, that the Renunciation was the best Expedient that could have been propos'd towards hindering the two Kingdoms from being united under one and the same Monarch; that that Branch of the Treaty which relates to this Expedient, has fully answer'd its End, and made good the Character given of it by the Queen, *That it would execute it self*; and therefore, that whoever advis'd this Method of separating the two Crowns, was so far from being guilty of any traiterous Design, that he eminently promoted the Welfare of *Great Britain* and the Good of *Christendom*.

The said Earl, with all the Assurances of an innocent Man, begs leave to repeat, that as well in this, as in all other Affairs of State, in which he had the Honour to be employed by her late Majesty, he ever acted according to the best of his Skill and Judgment, with sincere Desires and Intentions to serve the Public, and without any View to his own private Advantage. As he was in several great Stations under her Majesty, he came into all of them by her own special Command, without his seeking or desiring them, and he serv'd her in all with the utmost Respect, Zeal, and Faithfulness. And while he continued in those Stations for many Years, it was with great Wonder and Pleasure that he observ'd, how her Majesty's whole Thoughts, Endeavours, and Time were divided between her Duty to God, and her Love to her People; whose Good and Security she preferred always to her own Ease, and often hazarded her Health, and Life itself to procure it. He knew that the most effectual way for one to recommend himself to her good Opinion, was to act upon the same Principles of Justice, and Love to his Country that she did: And as she abhorr'd the Thoughts of any thing Burthensome or Injurious to her People; so she often express'd herself with the greatest Satisfaction and Delight, when she reflect'd on the Advantages obtained by her for her own Subjects, and the Quiet and Repose she had gain'd for *Europe*, by that just and honourable Peace, for which, as the present Age doth, so Generations to come will, bless the Memory of that Excellent and Renowned Queen.

OXFORD.

L. H. Steward. Read the Replication of the House of Commons.

The Clerk read the Replication as followeth.

The Commons REPLICATION to the Answer of Robert Earl of Oxford and Earl Mortimer.

THE Commons have considered the Answer of Robert Earl of Oxford and Earl Mortimer, to the Articles of Impeachment exhibited against him, by the Knights, Citizens, and Burgeses in Par-

liament assembled; and do with Astonishment observe, that the said Earl, instead of giving a reasonable and pertinent Answer to the just and heavy Charge brought against him by the Commons of *Great Britain*, has presum'd not only to deny his advising and being concerned in any Matters of State, in the Articles charged against him; tho' confess'd to be done under an Administration, wherein he was notoriously the first Minister and chief Director: But has also joined therewith a false and malicious Libel; laying upon his Royal Mistress the Blame of every thing, which, by imposing upon her, he had effected against her Honour, and the Good of his Country; thereby attempting to reflect upon the Honour and Justice of the House of Commons, and to cast an Odium upon their Proceedings against him, as tending to asperse the Memory of the late Queen.

But the Commons are of Opinion, that if it were possible to add to the heavy Load of Guilt, in which the Treasons and other most flagitious Crimes committed by the said Earl, have already involv'd him; this base and ungrateful Attempt, to impute them to his Royal Mistress, must bring such a new Weight of Infamy upon him, and so justly provoke the Indignation of the Commons, that they might think themselves obliged to demand your Lordships immediate Justice, for this unwarrantable Attempt upon the Honour of the late Queen, and the Proceedings of Parliament.

But the Commons being sensible that the Treasons and other Crimes whereof the said Earl stands impeached, and the Necessity of bringing him to speedy and exemplary Justice, require that all Occasions of Delay should be avoided; and not doubting that your Lordships will in due time vindicate the Honour of the late Queen, and of the Commons of *Great Britain*, and the Justice of their Proceedings: The Commons do aver their Charge against the said Earl of Oxford and Earl Mortimer for High Treason, and other High Crimes and Misdemeanours, to be true; and that the said Earl is guilty of all and singular the Articles and Charges therein respectively contained, in such Manner as he stands impeached; and that the Commons will be ready to prove their Charge against him, at such convenient Time as shall be appointed for that Purpose.

L. H. Steward. Robert Earl of Oxford and Earl Mortimer, it has been usual before the Commons proceed, to say something from this Place to Persons in your Lordship's present Condition; partly by way of Exhortation to a reasonable Confidence in the great Honour, Justice, Wisdom, Integrity and Candour of their Judges, their Peers, the House of Lords in Parliament assembled; and partly by way of Direction, to assist them in their Behaviour and Conduct during the course of their Trial.

But considering the many great Offices your Lordship has borne in the State, your long Experience and known Learning in all Parliamentary Proceedings, I cannot but think it would seem improper for me to be speaking to your Lordship in that Manner.

Wherefore I proceed barely to acquaint your Lordship and others whom it may concern, with such Orders as the Lords have made, which 'tis fit should be taken Notice of thus Early in this Trial.

1. Your Lordship, and all other Persons who have Occasion to speak to this Court, must address your Speech to the Lords in general, and not to any Lord in particular.

2. Your Lordship's Council may be present at the Bar, in order to be heard to any Point or Matter of Law, if such shall arise on either of the Articles for High Treason, and that you may make your full Defence by Council, if you think fit, on the Articles for High Crimes and Misdemeanors, as well on Matters of Fact as of Law.

3. That your Witnesses are to be examined on Oath as well to the Articles for High Treason, as those for High Crimes and Misdemeanors.

L. H. Steward. My Lords, the Distance between this Place and the Bar is so great, that I hope your Lordships will excuse me, if I go to the Table for the better hearing of what shall be said during this Trial.

Lords. Ay, ay.

Then the Lord High Steward went down, and seated himself by the Table.

Serj. at Arms. O yes, &c. (as before.)

L. H. Steward. Gentlemen of the House of Commons, you will be pleased now to proceed.

Mr. Stanbope. My Lords, the Distance of the Lord High Steward from this Place, may have been the Occasion, that we have mistaken something that fell from thence; we do therefore desire to avoid all Mistakes (and I believe we might be mistaken) for we understood my Lord High Steward, that Council should be allowed the Prisoner at the Bar, as well to the Defence of the High Treason, as to the High Crimes and Misdemeanors; it is possible we misapprehended his Lordship, but we hope his Lordship will be pleased to explain it to us.

L. H. Steward. To prevent Mistakes, I repeat what I said, and it is this. That Council for the Lord (the Prisoner at the Bar) may be present at the Bar, in order to be heard to any Matter or Point of Law (if any such shall arise) relating to the High Treason, and likewise to make that Lord's full Defence on the Articles of Impeachment of High Crimes and Misdemeanors, as well in Matters of Fact, as Matters of Law.

Mr. Hampden. MY Lords, the Commons of *Great Britain* in Parliament assembled, out of indispensable Duty to their Country, and Zeal for the Preservation of the *common Liberties of Europe*, have brought to your Lordships Bar *Robert Earl of Oxford* and *Earl Mortimer*, late High Treasurer and a Privy Counsellor of this Kingdom, charged with the highest Crimes and Misdemeanors, by him committed and done against the Person, Crown and Dignity of his Sovereign, the Peace and Interest of this Kingdom, and in Breach of the several Trusts reposed in him.

The Commons in their Charge set forth, the many solemn Treaties and Alliances which had been entered into between the *Crown of England*, and other *Princes and Potentates of Europe*, for their mutual Safety, from the Considerations of the common Danger which then threatened all Christendom from the *immoderate Growth* of the *Power of France*.

They likewise take Notice to your Lordships of the prosperous and flourishing Condition which the *Liberties of Europe* were in when, under these Treaties and Alliances, it pleased Almighty God

to bless the Confederate Arms under the Command of their *Great and Victorious General* the *Duke of Marlborough*, with such a Series of Successes, as far exceeded their own Expectations, and by the Wisdom and Unanimity of their Councils, the Glory of the Confederate Arms, and the Reputation of *Great Britain* in particular, was rais'd to a higher Pitch than in any former Age.

That in this prosperous Condition of Affairs, the *Prisoner at the Bar*, with other evil-minded Persons, Enemies to the true Interest of their Country, as well as to the common Liberties and Welfare of *Europe*, did by many wicked Arts an Insinuations obtain Access to her late Majesty *Queen Anne*, got into her Councils and into Places of the highest Trust, to make way for his and their pernicious Enterprizes, form'd a treacherous Correspondence with the *Emissaries of France*, and gave false and destructive Councils to her Majesty.

The particular Articles exhibited by the Commons, to which proper Evidence will be apply'd, contain a Charge.

That this Great Person at the Bar, having no Regard to the Honour or Safety of his Sovereign or these Kingdoms, wherewith he was entrusted, or to the many solemn Engagements with the old and faithful Allies of this Nation, but being devoted to the Interest and Service of the *common Enemy*, did, by private and secret Negotiations in Breach of all *public Faith*, maliciously and wickedly cultivate and improve the Demands of the Enemies of his Country, more to their Advantage than they themselves could have ever hoped for.

That by clandestine and secret Negotiations with the Enemies of *England*, he gave up the particular Interest of his own Country: That he assumed to himself *Regal Power*, and in a time of *open War* took upon himself to meet and treat with the Enemy, without any Authority or Power from his *Sovereign*, and did what in him lay to subvert the *ancient and established Constitution* of this Kingdom.

That he conceal'd the Advice and pernicious Influence whereby he had engaged his Sovereign and prostituted her Honour, which had been raised to the highest Pitch of Glory abroad, and been justly held in Veneration with her Allies; and the Royal Hand was by the wicked Arts of the Prisoner at the Bar, made the Instrument to advance the Interest of the common Enemy.

That by deceitfully amusing the Allies of the Crown of *Great Britain*, and by private, separate and unjustifiable Negotiations, entered into, and carry'd on by the Prisoner at the Bar, a lasting Reproach was brought upon this Nation, and the public Faith of many Treaties, wherein *England* was engaged in the most sacred and solemn Manner, was notoriously Violated, and the faithful Allies of the Crown Amus'd and Deceiv'd.

That the Prisoner at the Bar did in the most fatal Manner impose upon and Delude his *Sovereign* in accepting a pretended Expedient from the Enemy, which the Enemy at the same time declar'd to be Null and Void. *That* the most unjustifiable and destructive Measures were taken by him to dissolve the whole Confederacy, without any Regard to *Religion, Liberty, or the Faith of Treaties*; and in Consideration of his wicked Advice, great Numbers of the Confederate Troops, who had on many Occasions signiliz'd themselves in the Defence of the Cause of *Europe*, were given up as a Sacrifice

Sacrifice to the Fury and Revenge of the Enemy.

My Lords, The Commons in their Charge set forth the particular Measures concerted and taken by the *Prisoner* at the Bar, to complete the Destruction of the Common Cause of *Europe*, and the *Protestant Succession* to the *Crown* of these *Realms*. And they Charge

That the *Prisoner* now before your *Lordships* did traiterously Aid, Assist, and Adhere to the Enemies of his *Queen* and *Country*, and advis'd and promoted the giving up to those Enemies the important *Town* and *Fortress* of *Tournay*, together with *Spain* and the *West-Indies*.

That he Sacrificed the Trade and Commerce of *Great Britain* to its common Enemy without the least Shadow of Advantage procur'd to these Kingdoms, and Betray'd the National Faith and Honour of the *Crown*, employing against his *Imperial Majesty* (the Great and Faithful Ally of this Kingdom) the *Naval Power* of the *Crown*, and the Supplies granted by *Parliament*, in direct Violation of the *Grand Alliance*, and contrary to her Majesty's repeated Declarations from the *Throne*, and her plain and full Instructions to her *Plenipotentiaries* at *Utrecht*.

That he took upon himself to Exercise the most arbitrary and unwarrantable Authority; assuming to himself the chief Direction and Influence in her late Majesty's Councils, and most wickedly prostituted the Honour of the *Crown*, and the Dignity of *Parliaments*, totally depriving her Majesty of the wholesome and necessary Advice of her *Parliament*, and Misrepresenting the most Essential Parts of the Negotiations of Peace, to obtain the Sanction of *Parliament* to his wicked and pernicious Proceedings, thereby fatally Deceiving her Majesty, her Allies, her *Parliament*, and her People, by several false Speeches and Declarations, concerted and advis'd by him, to be made by her Majesty from the *Throne* to her *Parliament* on the Subject of the said Negotiations of Peace; and by such wicked and unexampled evil Council, he did most ungratefully abuse the Favour of his *Royal Mistress*, and by means of her Authority misled her *Parliament* into Groundless and Prejudicial Resolutions; and thereby not only prevented the just Advice of the *Parliament* to her Majesty in that CRITICAL JUNCTURE, but obtained the Approbation of *Parliament* to his MYSTERIOUS and DANGEROUS PRACTICES; and did not only Deprive her Majesty of the Confidence and Affection of her Allies, but Expose her Majesty and her People to the Contempt of the Enemy.

That he has us'd his utmost Endeavours to Subvert the Ancient Constitution of *Parliaments*, the Great and only Security of the Prerogative of the *Crown*, and of the Rights, Liberties, and Properties of the People, and most wickedly attempted to destroy the Freedom and Independency of this Noble House, the great Ornament and nearest Support of the *Crown*; disguising his mischievous Intentions, under pretence of Superior Zeal for the Prerogative of the *Crown*, but by his false Advice her Majesty was depriv'd of the seasonable and wholesome Councils of her *Parliament*, and the Prerogative perverted to the Dishonour of the *Crown*, and the irreparable Mischief to the Constitution of *Parliaments*.

My Lords, The Commons have further charg'd the Noble Lord with Corruptions, in illegally misapplying Monies appropriated by *Parliament*, and

with preventing any Parliamentary Enquiry into the same, to the Reproach and Scandal of *Parliaments* in Breach of his Trust, the highest Abuse of the Goodness of his Sovereign, and the greatest Injustice and Oppression of her Subjects, and that he defrauded her late Majesty of the Public Money with which he was entrusted for the Support of the Honour and Dignity of the *Crown*.

That this Great Person did assume to himself the Supreme Direction in her late Majesty's Councils, and did introduce to her Majesty for a pretended public Minister, a TRAYTOR in Disguise named in the Articles; and gave such Traytor several considerable Sums out of her Majesty's Treasure, in a Fictitious and Scandalous manner; such Person being sent into this Kingdom under false Pretences, secretly to promote the Interest of the PRETENDER, whereby the *Prisoner* at the Bar did ungratefully expose the Person of her Majesty, and notoriously encourage the Adherents of the Pretender, to the apparent Danger of the Protestant Succession to the Imperial Crown of these Realms. And,

Lastly, That this Great Person at the Bar did, by the most false and wicked Councils and Practices, Betray and give up as a Sacrifice to the implacable Resentments of their enrag'd and powerful Enemy, a Free and Generous People, the faithful and useful Allies of this Kingdom, the brave CATALANS: who by the Evil Measures concerted and taken by the *Prisoner* at the Bar, were Betray'd into irrecoverable Slavery, and the Honour of the British Nation, always Renown'd for the Love of Liberty, and for giving Protection to the Distressed Asserters of it, therein most basely prostituted by the pernicious and detestable Council of the *Prisoner* at the Bar.

Thus your Lordships have a View of the Guilt in which the Treasons and other Crimes committed by the *Prisoner* at the Bar have involv'd him: And it is with Astonishment the Commons observe, that his Defence is an Attempt to asperse the Memory of his *Royal Mistress* with the Blame of what was transacted during his Administration, which by imposing upon her he had effected against her Honour, and the Good of his Country; thereby attempting to reflect upon the Justice of the House of Commons, and to cast an Odium upon their Proceedings against him. But we doubt not your Lordships Vindication of the Honour of her late Majesty, and the Proceedings of the Commons in this Prosecution.

The Commons think it their Duty to express their utmost Abhorrence of the traitorous and wicked Proceedings of the *Prisoner* at the Bar, and to shew their Resentment against him, as the Author and Promoter of them.

They have found him Abusing and Betraying the Honour of his *Royal Mistress*, into whose Favour he had insinuated himself for the most destructive and wicked Purposes. They have found him insidiously dividing and weakening Us and our Allies: Betraying our Councils; traiterously giving up our strong Holds, Fortresses and Defences of Europe, and her most Wealthy and Flourishing Countries to the Common Enemy in time of OPEN WAR: And contriving and effecting the Dissolution of the greatest and most noble Confederacy that ever formed and united in Defence of the Protestant Interest, and the glorious Liberties of Europe.

They have found him attempting to deprive these Kingdoms of the only Blessing left to their Hopes, and

and which, by the Providence of God only, they now enjoy the most auspicious Government of his present Majesty, the Greatest and Best of Princes, whose Magnanimity, Wisdom, Piety, and other princely Virtues have fill'd the Imperial Throne of Great Britain with a Lustre unknown in any former Age. In this Attempt the Noble Lord at the Bar wickedly endeavour'd to Defeat us of our happy Prospect of lasting Felicities, in a long Succession of Protestant Princes in the Royal Line of his most Excellent Majesty, the most Illustrious Prince and Princess of Wales, and their Issue, eminently endow'd with all Graces and Accomplishments for making a generous and free People happy: On the Continuance of which Succession, next under God, all that is Dear and Valuable to us entirely depends.

My Lords, The Commons justly Resent and Detest the Reproach brought upon the Faith and Honour of their Country, by the great Evil Minister at the Bar: But they promise themselves your Lordships will ever be a Terror to all Evil Ministers, how Great soever; and that your Lordships can never fail to do Justice to your injur'd Country, upon all Perfidious Counsellors, who lie in wait to destroy our Religion, Laws and Liberties.

Sir Joseph Jekyll. My Lords, by the Commands of the House of Commons, I appear to make good that Part of the Charge against the Noble Lord at the Bar, which is contain'd in the first Article.

Here the Lord Harcourt moved to adjourn to the House of Lords.

L. H. Steward. Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. H. Steward. This House is adjourn'd to the Chamber of Parliament.

And being adjourn'd accordingly, the Lords and others return'd in the same Order they went down.

And the House being Resum'd, this Question was moved and stated,

That the Commons be not admitted to proceed in order to make good the Articles against Robert Earl of Oxford and Earl Mortimer for High Crimes and Misdemeanors, till Judgment be first given on the Articles for High-Treason:

And a Debate ensuing thereupon,

The previous Question was put, whether that Question shall be now put?

It was Resolved in the Affirmative.

And the main Question being accordingly put, viz.

That the Commons be not admitted to proceed, in order to make good the Articles against Robert Earl of Oxford and Earl Mortimer for High Crimes and Misdemeanors, till Judgment be first given on the Articles for High-Treason?

It was Resolved in the Affirmative.

Ordered, That the said Resolution be communicated to the Commons by the Lord High Steward.

A Message was sent to the House of Commons by Mr. Browning and Mr. Orlebar, two Masters of the Court of Chancery, to acquaint them, that the Lords are now about going down into Westminster-Hall.

The Messengers return'd, and acquainted the House, that they had delivered their Message, and that the Commons were preparing to go immediately into Westminster-Hall.

Then the House was again adjourn'd into Westminster-Hall; and the Lords being there seated, and the House resumed, the Lord High Steward acquainted the Managers for the Commons, that their Lordships had come to a Resolution, that the Commons be not admitted to proceed in order to make good the Articles against Robert Earl of Oxford and Earl Mortimer for High Crimes and Misdemeanors, 'till Judgment be first given on the Articles for High-Treason.

Sir William Thomson. My Lords, the Managers for the Commons conceive it to be the undoubted Right of the Commons to proceed in their own Method in Maintenance of the Articles exhibited by them; and do apprehend that this Resolution of your Lordships may be of such fatal Consequence to the Rights and Privileges of all the Commons of Great Britain, that they cannot take upon them to proceed any further, without resorting to the House of Commons for their Direction herein:

L. H. Steward. Is it your Lordships pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

Then the House adjourn'd to the Chamber of Parliament. And being Resum'd,

The Earl of Oxford was Order'd to be Remanded to the Tower, and to be brought again to the Bar in Westminster-Hall to-Morrow at Eleven o'Clock in the Forenoon, in order to proceed further on the Trial of the said Earl.

Die Martis 25 Junii, 1717.

THE House of Lords being met as usual in the Chamber of Parliament, it was there Ordered, that a Message be sent to the House of Commons to acquaint them that the Lords have Ordered Robert Earl of Oxford and Earl Mortimer to be brought to the Bar of their House in Westminster-Hall this Day at Eleven o'Clock in the Forenoon, in order to proceed further on the Trial of the said Earl.

And a Message was sent accordingly by Mr. Holford and Mr. Lovibond, two of the Masters of the Court of Chancery.

A Message was sent from the House of Commons by Mr. Carter and others, that the Commons having taken into their Consideration their Lordships Resolution communicated to their Managers relating to the Proceedings on the Trial of Robert Earl of Oxford and Earl Mortimer, and being desirous to preserve a good Correspondence between the two Houses, have appointed a Committee to search Precedents upon a matter of this great Importance, and desire that their Lordships will not proceed at the time appointed.

Ordered, That the Messengers of the House of Commons be called in and acquainted, that the Lords having taken the Message of the Commons into their Consideration, their Lordships will not proceed on the Trial of the Earl of Oxford and Earl Mortimer at the time appointed, but will proceed further on the said Trial on Thursday next at Eleven o'Clock in the Forenoon.

Accordingly the Messengers were called in and acquainted therewith.

Ordered, That the Lieutenant of the Tower do take back the Earl of Oxford and Earl Mortimer to the Tower, and do bring the said Earl to the Bar of this House in Westminster-Hall on Thursday next at Eleven o'Clock in the Forenoon, in order

order to proceed further on the Trial of the said Earl.

Die Jovis 27 Junii, 1717.

THE House of Lords being met as usual, a Message was sent from the House of Commons by the Lord *Morpeth* and others, to desire a Conference with the House of Lords, in relation to Proceedings in the Prosecutions of Impeachments. To which the House agreed.

And the Commons were called in and told, that the Lords do agree to a Conference as is desired, and appoint it presently in the *Painted Chamber*.

Then several Lords were named Managers of the Conference.

The House being informed, that the Commons were ready for the Conference, in the *Painted Chamber*.

The House was adjourned during Pleasure, and the Lords named as Managers went to the Conference: Which being ended,

The House was resumed.

And the Lord Privy Seal reported, that they had been at the Conference, and met Mr. *Carter* and other Managers, for the Commons, who delivered to their Lordships a Paper as follows.

The Commons having taken into their Consideration your Lordships Resolution, communicated to their Managers, relating to the Proceedings on the Trial of *Robert Earl of Oxford* and *Earl Mortimer*, and being desirous as far as in them lies to maintain a good Correspondence with your Lordships; have desired this Conference, and have commanded us to acquaint your Lordships, that they conceive it to be the undoubted Right of the Commons to impeach a Peer, either for High-Treason, or for High-Crimes and Misdemeanours, or, if they see Occasion, to mix both the one and the other in the same Accusation.

The Impeachment prefer'd against *Robert Earl of Oxford* and *Earl Mortimer* is one continued Accusation, consisting of High-Crimes and Misdemeanours and also of Charges of High-Treason. The Facts on which the Articles preceding those of High-Treason are grounded are laid together in Order of Time, and follow one another successively, in the manner they were committed.

As the Commons thought this the most natural Method for exhibiting the several Articles against the said Earl, they were all of Opinion that they should proceed in the Proof of these several Facts after the same Method, since it is manifest, that in laying open the Course of such a wicked Administration, the preceding Parts of it give Light to those which follow; and that the Proof of several Articles of the High-Crimes and Misdemeanours would naturally lead to the Proof of those of High-Treason.

Your Lordships received these several Articles of Impeachment without making any Exception against the Form in which they were exhibited. The said Earl made his Answer to them in the same Order, and has no where insisted to be tried in any other Method; so that the Commons are surprized to find a Stop put to their Prosecution, by an Objection which has never been started by the said Earl, and which your Lordships had given them so little Reason to expect.

To this must be added, that as the Commons

only are Masters of the Evidence, and as upon that Account they are best able to determine, in what Method to proceed for the Advantage of the Prosecution, in the Event of which all the Commons of *Great Britain* are so highly concerned.

To which they further add, that they see no Reason, but that your Lordships may as well invert the whole Order of the Articles, as prescribe to the Commons those particular Articles on which they are first to proceed; which will necessarily produce such a Confusion, both in the Facts, and Evidence, as is by no means consistent with that Clearness and Perspicuity in which the Commons think this Affair ought to appear.

The Commons upon examining Precedents, do find divers Precedents of Impeachments for High-Treason and other High-Crimes and Misdemeanours, in the same Accusation; and do not find that the Lords ever objected to such Proceeding, or ever gave Judgment upon any particular Article of an Impeachment before the Commons had gone through, and concluded their Evidence upon all the Articles, or so many of them as they thought fit; and the Commons are at a Loss to conceive what Arguments or Precedents can be brought to support the Resolution of your Lordships, to give Judgment upon one Part of the same Accusation, reserving the other Part for a subsequent Trial, as they are to know what your Lordships mean by admitting the Commons to proceed upon the Articles for High-Crimes and Misdemeanours, after the Judgment is given upon the Articles for High-Treason, supposing the Judgment proper for High-Treason should be given against the said Earl.

For these Reasons the Commons assert it as their undoubted Right to proceed on the Trial of *Robert Earl of Oxford* and *Earl Mortimer*, after the Method in which their Managers were proceeding, when interrupted by your Lordships Resolution.

The Reasons delivered by the Commons at the Conference were read by the Clerk.

And after Debate, and Reading the Resolution of this House communicated to the Commons on *Monday* last, *viz.*

That the Commons be not admitted to proceed in Order to make good the Articles against *Robert Earl of Oxford* and *Earl Mortimer*, for High-Crimes and Misdemeanours, 'till Judgment be first given on the Articles for High-Treason:

The Question was put, Whether to insist on the said Resolution?

It was resolv'd in the Affirmative.

Then it being propos'd that a Committee be appointed to prepare what is to be offered to the Commons at a Conference in communicating to them the Resolution for insisting:

And a Question being stated thereupon,

It was mov'd to add these Words to the said Question, *viz.* [And also to prepare such Reasons as shall be thought proper to be then used in Maintenance thereof.]

And after Debate, the Question was put, Whether those Words shall be added to the said Question?

It was resolv'd in the Affirmative.

Resolv'd upon the Question, and ordered, that a Committee be appointed to prepare what is to be offered to the Commons at a Conference in communicating

municating to them the Resolution of this House for insisting on their Lordships Resolution above-mentioned, and also to prepare such Reasons as shall be thought proper to be then used in Maintenance thereof.

Ordered, That all the Lords present be the said Committee.

Then it being proposed, that the Committee meet immediately. And the same being objected to;

The Question was put, Whether the Committee shall withdraw and sit immediately?

It was resolv'd in the Negative.

Ordered, That the said Committee, or any Seven of them, meet to-morrow at Ten o' the Clock in the Forenoon in the Prince's Lodgings near the House of Peers, and to adjourn as they please.

Ordered, That the Lieutenant of the *Tower* do take back the Earl of *Oxford* and Earl *Mortimer*, and bring the said Earl to the Bar of this House in *Westminster-Hall*, on *Saturday* next at Eleven o' the Clock, in order to proceed further on the Trial of the said Earl.

Die Veneris 28 Junii, 1717.

THE Lords being assembled in their House as usual, a Message was sent to the House of Commons by Mr. *Fellows* and Mr. *Meller*, two of the Masters of the Court of *Chancery*; to acquaint them that the Lords do desire they will continue sitting for some Time.

The Lord *Trevor* reported from the Committee appointed to prepare what is to be offer'd to the Commons at a Conference in communicating to them the Resolution of this House, for insisting on their Lordships Resolution communicated to the Commons on *Monday* last, and also to prepare such Reasons as shall be thought proper to be then used in Maintenance thereof, that the Committee have prepared Reasons accordingly, as follow, *viz.*

Their Lordships, in order to preserve a good Correspondence with the House of Commons (which they shall always endeavour to do as far as lies in their Power) have desired this Conference upon the Subject-Matter of the last Conference, and have directed us to acquaint you, that their Lordships judge it a Right inherent in every Court of Justice, to order and direct such Methods of Proceedings as such Courts shall think fit to be observed in all Causes depending before them, which can have no Influence to the Prejudice of Justice; and where such Methods of Proceedings are not otherwise settled by any positive Rule. The Power of Judicature on all Impeachments being a Right unquestionably inherent in their Lordships, and it not being determined by any positive Rule, whether the House of Commons may proceed to make good the several Articles exhibited for Misdemeanors, in such Order as they shall think fit, before they proceed to make good the Articles exhibited for High-Treason; and there being no Precedent where the Commons upon Trial of any such Impeachments attempted to proceed in the first Place to make good any of the Articles contained in such Impeachment for High-Crimes and Misdemeanours; their Lordships considering the Nature of the Impeachment now depending before them, and the Method wherein the Managers for

the House of Commons were beginning to proceed upon the Trial to make good the first Article thereof, which is a Charge for High-Crimes and Misdemeanours only; and also considering the very different Methods of Proceedings on an Impeachment of a Peer for High-Treason, as well before, as upon the Trial thereof, and the Circumstances attending such a Trial, from the Proceedings on an Impeachment of a Peer for High-Crimes and Misdemeanours, and the known Circumstances attending such a Trial, thought themselves obliged to come to the Resolution communicated to the Commons on the Twenty-fourth Instant, as well for the doing Justice in the Case depending before them, as for the preventing a new Precedent to be made on this Trial, in Consequence whereof a new and unjustifiable Form of Proceeding against a Peer upon an Impeachment for High-Treason and High-Crimes, might be introduced at his Trial upon those Articles in which he is charged for High-Crimes and Misdemeanours only, to the Prejudice of the Peerage of *Great Britain* in all Time to come, *viz.* the Trying a Peer on Articles for High-Crimes and Misdemeanours without the Bar, the detaining in Custody a Peer so accused, and repeated Commitments of him to the *Tower*, during the Time of such Trial, and subjecting a Peer to as ignominious Circumstances on his Trial, on Articles for Misdemeanours, as if he were then on his Trial on Articles for High-Treason: Whereas a Peer on his Trial on Articles for Misdemeanours only, ought not to be deprived of his Liberty, nor sequester'd from Parliament, and is entitled to the Privilege of sitting within the Bar during the whole Time of his Trial: In all which Particulars the known Rule of Proceedings in such Cases may be evaded, should a Peer be brought to his Trial on several Articles exhibited against him on High-Crimes and Misdemeanours and for High-Treason mixed together, and the Commons be admitted to proceed in order to make good the Articles for High-Crimes and Misdemeanours before Judgment be given upon the Articles for High-Treason. Their Lordships have fully considered the Matters offered to them by the House of Commons at the last Conference relating to the Proceedings against *Robert Earl of Oxford* and Earl *Mortimer*; and their Lordships are fully satisfied, that the Resolution they have taken and communicated to the Commons on the Twenty-fourth Instant is just and reasonable; and that the House of Commons are not put under any real Inconvenience thereby in carrying on their present Prosecution. Their Lordships have commanded us to let you know that they do insist on their said Resolution, *viz.* That the Commons be not admitted to proceed in order to make good the Articles against *Robert Earl of Oxford* and Earl *Mortimer* for High-Crimes and Misdemeanours 'till Judgment be first given upon the Articles for High-Treason.

Which Report being read by the Clerk was agreed to by the House.

Then a Message was sent to the House of Commons by Mr. *Fellows* and Mr. *Meller*, to acquaint them, that the Lords do desire a present Conference in the *Painted Chamber*, upon the Subject-Matter of the last Conference.

Ordered, That the Managers of the last Conference be the Managers of this Conference.

The Messengers sent to the House of Commons return Answer, That the Commons will give a present Conference as desired.

The House being inform'd, that the Commons were ready in the *Painted Chamber* for the Conference the Names of the Managers were read : And,

The House was adjourned during Pleasure, and the Lords named as Managers went to the Conference ; which being ended, the House was resumed : And

The Lord Chamberlain reported, that the Managers had been at the Conference, and delivered to the Commons what they were directed.

A Message was sent to the House of Commons by Mr. *Fellows* and Mr. *Meller*, to acquaint them, That the Lords have ordered the Earl of *Oxford* to be brought to the Bar of this House in *Westminster-Hall* to-morrow at Eleven o'Clock in the Forenoon, in order to proceed further on the Trial of the said Earl.

A Message was brought from the House of Commons by Mr. *Yonge* and others, to desire that this House will continue sitting for some Time ; to which the House agreed.

And the Commons were called in and told, That the Lords will continue sitting for some Time, as is desired.

Ordered, That the Lieutenant of the *Tower* do bring the Earl of *Oxford* to the Bar of this House in *Westminster-Hall*, on *Monday* next at Eleven o' Clock, in order to proceed further on the Trial of the said Earl.

Die Sabbati 29 Junii, 1717.

THE House of Lords being assembled as usual in the Chamber of Parliament, a Message was brought from the House of Commons by Mr. *Pelham* and others; to desire a free Conference with this House upon the Subject-Matter of the last Conference.

Ordered, That this House will send an Answer by Messengers of their own. And

The Messengers were called in, and acquainted therewith.

The House proceeded to take the said Message into Consideration. And after Debate, and reading out of the Journal the Proceedings at the several Conferences in the Case of the Lord Viscount *Mordaunt* upon his Impeachment in the Year One Thousand Six Hundred and Sixty-six.

The Question was put, Whether to give a free Conference with the House of Commons, as is desired, upon the Subject-Matter of the last Conference ?

It was resolv'd in the Negative.

Ordered, That a Message be sent to the House of Commons, to acquaint them, that the Subject-Matter of the last Conference concerning a Point of Judicature determined by this House after the Trial began, their Lordships do not think fit to give a free Conference on the Subject-Matter of the last Conference, as is desired by the House of Commons.

And also, that another Message be sent to the House of Commons, to acquaint them, That their Lordships have ordered *Robert Earl of Oxford* and *Earl Mortimer* to be brought to the Bar of this House in *Westminster-Hall* on *Monday* next at Eleven o' Clock in the Forenoon, in order to proceed further on the Trial of the said Earl ;

and Mr. *Holford* and Mr. *Dormer*, two of the Masters of the Court of Chancery, were sent accordingly with the said Messages.

Die Luna 1 Julii, 1717.

THE Lords being assembled in their House as usual, and this Day being appointed to proceed further on the Trial of *Robert Earl of Oxford* and *Earl Mortimer* in *Westminster-Hall*, the House (according to Order) was called over by the Clerk ; and the Names of the absent Lords being set down (pursuant to the same Order) they were again called over, and excused.

A Message was brought from the House of Commons by Mr. *Gibbon* and others, to desire their Lordships to defer going down into *Westminster-Hall* for some Time.

Ordered, That the Messengers of the House of Commons be called in and told, That the Lords have considered their Message, and that their Lordships will defer going down into *Westminster-Hall* for some Time, as is desired.

And the Messengers were called and acquainted accordingly.

A Message was brought from the House of Commons by Mr. *Craggs* and others, to desire a Conference with this House upon the Subject-Matter of their Lordships Message relating to the free Conference desired by the Commons.

To which the House agreed.

And the Messengers of the House of Commons were called in and told, That the Lords do agree to a Conference as desired, and appoint it presently in the *Painted Chamber*.

Ordered, That the Managers of the last Conference be the Managers of this Conference.

The House being informed, That the Commons were ready in the *Painted Chamber*.

The Managers Names were read, and the House was adjourned during Pleasure, and the Lords named as Managers went to the Conference ; which being ended, the House was resumed, and the Lord Privy-Seal reported the Effect of the Conference, which was, that the Managers for the Commons had delivered to their Lordships a Paper, containing as follows, *viz.*

The Commons having taken into Consideration your Lordships Message, *viz.*

That your Lordships did not think fit to give a free Conference on the Subject-Matter of the last Conference, as was desired by the Commons, and they being still desirous, to the utmost of their Power, to preserve a good Correspondence with your Lordships, have ask'd this Conference ; and have commanded us to acquaint your Lordships, that they are very much surprized to find your Lordships deny a free Conference, after your Lordships had already agreed to a Conference desir'd by the Commons on the said Subject-Matter, and after your Lordships have on your Parts also desired a Conference upon the same Subject.

That free Conferences are the most antient and establish'd Methods for adjusting the Differences that have at any Time arisen between the Two Houses, and; as the Commons conceive, is the only Method to preserve a good Correspondence between them on such Occasions, which at this Time is of the highest Importance, because a Misunderstanding on this Account would tend to defeat the Trial of the Impeachment of the Commons.

That

That the Commons conceive clearly, that the Subject-Matter of the last Conference is not a Point of Judicature, but a Point relating only to the Prosecution of the Commons, it having arisen before any Matter of Judgment had come before your Lordships upon the Trial.

For which Reasons the Commons conceive, that your Lordships ought not to have denied them a free Conference upon the Subject-Matter of the last Conference.

Which being read by the Clerk ;

A Message was sent to the House of Commons by Mr. *Orlebar* and Mr. *Browning*, two of the Masters of Chancery, to desire they would continue sitting for some time.

Then the House proceeded to take into Consideration the Matter delivered by the Commons at the last Conference.

And it being proposed to insist on denying a free Conference with the Commons ;

And Debate thereupon ;

The Question was put, Whether to insist on denying a free Conference upon the Subject-Matter concerning which a free Conference was desired by the Commons ?

It was resolv'd in the Affirmative.

Ordered, That a present Conference be desired with the Commons in the *Painted Chamber* on the Subject-Matter of the last Conference, and that the Commons be there acquainted, that the Lords having taken into Consideration the Subject-Matter of the last Conference, their Lordships do insist on denying a free Conference upon the Subject-Matter concerning which a free Conference was desired by the House of Commons.

Accordingly a Message was sent to the House of Commons by Mr. *Orlebar* and Mr. *Browning*, to desire a present Conference in the *Painted Chamber* on the Subject Matter of the last Conference.

The Messengers returned, and acquainted the House, that the Commons do agree to a Conference, as desired.

Ordered, That the Managers of the last Conference be the Managers of this Conference.

Then the House being informed, that the Commons were ready in the *Painted Chamber*, the Managers Names were read. And

The House was adjourn'd during Pleasure, and the Lords appointed Managers went to the Conference ; which being ended, the House was resum'd, and the Lord Privy-Seal reported, that they had been at the Conference, and acquainted the Commons as above directed.

A Message was sent to the House of Commons by the former Messengers, to desire they will continue sitting for some time.

The Messengers being return'd, acquainted the House, that the Commons will continue sitting for some time, as desired.

Then it being mov'd, that a Message be sent to the House of Commons, that this House intends presently to proceed further on the Trial of the Earl of *Oxford* in *Westminster-Hall*.

And it being also mov'd, that the House do now adjourn during Pleasure ;

The Question was put, Whether now to adjourn during Pleasure ?

It was resolv'd in the Affirmative.

The House was accordingly adjourn'd during Pleasure.

The House was resum'd.

A Message was sent to the House of Commons by Mr. *Orlebar* and Mr. *Browning*, to acquaint them, that this House intends presently to proceed further on the Trial of *Robert Earl of Oxford* and *Earl Mortimer* in *Westminster-Hall*.

Then it being proposed provisionally to consider the Form of a Proclamation proper to be made in *Westminster-Hall* for the Appearance of the Prosecutors, if they should not be there present to proceed, in order to make good their Impeachment against the said Earl of *Oxford* and *Earl Mortimer* ;

And thereupon the Proclamation made the Seventeenth of *June*, One Thousand Seven Hundred and One, at the Trial of the Lord *Somers* being read ;

It was agreed by the House, that when the Lords are gone down into *Westminster-Hall*, immediately after the Lords House shall be resumed in *Westminster-Hall*, and Proclamation for Silence made, and Proclamation for bringing the Prisoner to the Bar, if the Managers of the House of Commons shall not be there, Proclamation be likewise made in these Words, *viz.*

Whereas Robert Earl of Oxford and Earl Mortimer stands impeached of High-Treason, and other High-Crimes and Misdemeanours, by the House of Commons, in the Names of Themselves and of all the Commons of Great Britain, all Persons concern'd are to take notice, that he now stands on his Trial, and they may now come forth in order to make good their said Charge.

Then the House was adjourn'd into *Westminster-Hall*, and the Lords being come down into *Westminster-Hall*, and seated in the usual Manner about Five in the Evening ;

L. H. Steward. My Lords, the House is resumed—Make Proclamation for Silence.

Serj. at Arms. O Yes, &c. (as before.)

L. H. Steward. Make Proclamation for the Lieutenant of the *Tower of London* to bring the Prisoner to the Bar.

Serj. at Arms. O Yes, &c. Lieutenant of the *Tower of London* bring forth your Prisoner to the Bar, according to the Order of the House of Lords to you directed.

The Earl of *Oxford* and *Earl Mortimer* being brought to the Bar accordingly, and the Commons not being present.

L. H. Steward. Make Proclamation according to the Order of the House of Lords.

Then the Serjeant at Arms made the following Proclamation according to the said Order of the House of Lords, the Clerk of the House of Lords reading it to him as followeth :

Serj. at Arms. Whereas *Robert Earl of Oxford* and *Earl Mortimer* stands impeached of High-Treason, and other High-Crimes and Misdemeanours, by the House of Commons, in the Name of Themselves and all the Commons of *Great Britain*, all Persons concern'd are to take Notice, that he now stands upon his Trial, and they may now come forth in order to make good their said Charge.

After about twenty Minutes Silence, the Lord *Guilford* mov'd for an Adjournment to the House above.

L. H. Steward. Do your Lordships hear what is mov'd, is that your Lordship's Pleasure ?

Lords. Ay, ay.

L. H. Steward. This House is adjourn'd to the Chamber of Parliament.

And

And being returned in the same order they went down,

The House was resumed.

Then it was proposed, that *Robert Earl of Oxford* and *Earl Mortimer* be acquitted of the Articles of Impeachment exhibited against him by the House of Commons for High-Treason, and other High Crimes and Misdemeanors, and of all things therein contained, and that the said Impeachment be dismissed.

And a Question being stated thereupon, it was moved to leave out these Words (*viz.* and other High Crimes and Misdemeanors;) and thereupon the Question being put,

Whether those Words shall stand part of the Question;

It was Resolved in the Affirmative.

Then the last Question being again stated,

Ordered, That the Question now stated be the Question to be put in *Westminster-Hall*.

Then the Lord High Steward desiring that further Directions might be given concerning the further Proceedings in the Trial of the said Earl in *Westminster-Hall*, it was agreed by the House and Ordered, that in *Westminster-Hall* the Lord High Steward shall read the Question as already stated; and then call to the lowest Baron first, and to every other Lord then present, and ask him his Opinion whether Content or not Content; and that every Lord shall stand up when called to, and give his Vote Content or not Content; and that the Lord High Steward having taken the Votes, shall declare the Majority; and if the Majority answer in the Affirmative, the Lord High Steward is to declare the same, and particularly to the Earl of *Oxford* as soon as he shall be brought to the Bar, and shall immediately pronounce the Judgment of this House in the Form following, (*viz.*) It is considered, ordered and adjudged by the Lords Spiritual and Temporal in Parliament assembled, that *Robert Earl of Oxford* and *Earl Mortimer* shall be, and is hereby acquitted of the Articles of Impeachment exhibited against him by the House of Commons for High-Treason, and other High Crimes and Misdemeanors, and of all things therein contained; and that the said Impeachment shall be, and is hereby dismissed. And shall immediately direct the Lieutenant of the *Tower* then to Discharge his Prisoner.

And after that to Dissolve the Commission.

The House was then again adjourned into *Westminster-Hall*, and being there resumed.

L. H. Steward. Make Proclamation for Silence.

Serj. at Arms. O yes, &c. (as before.)

O yes, &c. Lieutenant of the *Tower of London*, bring forth your Prisoner to the Bar.

L. H. Steward. My Lords, the Clerk acquaints me, that for want of Light in the Passage he could not take an exact List of your Lordships, I therefore desire that he may now take a List of the Lords present.

Then the Clerk took a List of the Lords present.

L. H. Steward. If your Lordships think fit, your Lordships Names shall now be called over.

Lords. Ay, ay.

Then their Names were called over.

Lords. The Earl of *Oxford* is not yet gone from the Bar.

Then the Earl was ordered to withdraw from the Bar. And being withdrawn,

L. H. Steward. My Lords, I shall now state

the Question, upon which your Lordships are to give your Votes; it is this, That *Robert Earl of Oxford* and *Earl Mortimer* be acquitted of the Articles of Impeachment exhibited against him by the House of Commons for High-Treason, and other High Crimes and Misdemeanors, and of all things therein contained, and that the said Impeachment be dismissed.

L. H. Steward. The Clerk should attend near the Lords with Candles, as they give their Votes.

Then the Lord High Steward put the Question to their Lordships, beginning at the youngest Baron, in manner following.

L. H. Steward. My Lord, your Lordship has heard the Question stated, what says your Lordship, is your Lordship Content, or not Content?

The Names of the Lords present, who were all Content, are as follows.

BARONS.

- Newburgh*
- Parker*
- Cobham*
- Carleton*
- Bingley*
- Bathurst*
- Foley*
- Masbarn*
- Lansdowne*
- Trevor*
- Middleton*
- Mansel*
- Montjoy*
- Hay*
- Boyle*
- Harcourt*
- Belhaven*
- Gower*
- Haversham*
- Herbert*
- Asburnham*
- Guilford*
- Stawell*
- Carteret*
- Lumley*
- Osborne*
- Cornwallis*
- Berkeley of Stratton*
- Leigh*
- Bruce*
- Teynbam*
- Compton*
- St. John*
- Hundson*
- North and Grey*
- Willoughby of Brooke*
- Fitzwalter*
- Delawar*
- Willoughby of Erby*
- Abergavenny*

- Landaff*
- Bath and Wells*
- Carlisle*
- Litchfield and Coventry*
- Winchester*
- London.*

VISCOUNTS.

- Castleton*
- Tadcaster*
- Lonsdale*
- Longueville*
- Townshend*
- Say and Seal*
- Hereford.*

EARLS.

- Halifax*
- Bristol*
- Carnarvon*
- Uxbridge*
- Dartmouth*
- Stafford*
- Ferrars*
- Ilay*
- Delorain*
- Orkney*
- Loudoun*
- Buchan*
- Cholmondeley*
- Poulet*
- Greenwich*
- Rockford*
- Plimouth*
- Abingdon*
- Rockester*
- Litchfield*
- Burlington*
- Carlisle*
- Anglesea*
- Cardigan*
- Clarendon*
- Scarsdale*
- Manchester*
- Northampton*
- Salisbury*
- Dorset*
- Pembroke*
- Derby.*

BISHOPS.

- St. Asaph*
- Chester*
- Bristol*
- Rockester*
- St. Davids*
- Hereford*

DUKES.

DUKES.

Portland
Ancaster
Rutland
Buckingham
Devonshire
Shrewsbury
St. Albans
Grafton

Cleveland and Southamp-
ton
Somerset
Kent
Kingston.

ARCHBISHOPS.

York
Canterbury.

L. H. Steward. My Lords, upon the Question Stated, I am Content.

L. H. Steward. My Lords, *Robert Earl of Oxford* and *Earl Mortimer* is acquitted of the High-Treason and other High Crimes and Misdemeanors wherewith he stands charged, by the Unanimous Vote of all your Lordships here present.

L. H. Steward. Call the Earl to the Bar.

Serj. at Arms. O yes, &c. Lieutenant of the *Tower of London*, bring the *Earl of Oxford* and *Earl Mortimer* to the Bar of this House.

L. H. Steward. *Robert Earl of Oxford* and *Earl Mortimer*, I am to acquaint your Lordship, that your Lordship is acquitted of the Articles of Impeachment Exhibited against you for High-Treason, and other High Crimes and Misdemeanors, by the House of Commons, and all things therein contained; and thereupon I am to pronounce this Judgment, which I pronounce accordingly:

It is considered, ordered and adjudged by the Lords Spiritual and Temporal in Parliament assembled, that *Robert Earl of Oxford* and *Earl Mortimer* shall be, and is hereby acquitted of the Articles of Impeachment exhibited against him by the House of Commons for High-Treason and other High Crimes and Misdemeanors, and of all things therein contain'd, and that the said Impeachment shall be and is hereby dismissed.

L. H. Steward. Lieutenant of the *Tower of London*, you are now to discharge your Prisoner.

L. H. Steward. My Lords, this is all that remains to be done by Vertue of his Majesty's Commission, I do therefore declare the same to be dissolved.

Then the Lord High Steward broke his Staff.

L. Chancellor. Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. Chancellor. This House is adjourn'd to the Chamber of Parliament.

The Earl was immediately discharg'd at the Bar, and paying his Respects to the Lords, and having receiv'd the Compliments of his Friends, went away directly to his own House.

But the House of Commons resent'd this Proceeding so far as to Address the King, that the *Earl of Oxford* might be excepted out of the then intended Act of Grace, which was done accordingly.



CLXXXIX. *The Trials of Major Stede Bonnet and Thirty Three others, at the Court of Vice-Admiralty at Charles-Town in South-Carolina, for Piracy, Oct. 30, &c. 1718. 5 GEO. I.*

Tuesday, October the 28th, 1718. the Court met according to Appointment.

P R E S E N T

Nicholas Trott, Esq; Judge of the Vice-Admiralty, and Chief-Justice of the said Province of *South-Carolina*.

Assistant Judges,

George Logan, Esq;
Alexander Parris, Esq;
Philip Dawes, Esq;
George Chicken, Esq;
Benjamin de la Confeillere, Esq;

Samuel Dean, Esq;
Edward Brailsford, Gent.
John Croft, Gent.
Capt. Arthur Loan.
Capt. John Watkinson.



THE King's Commission to *Nicholas Trott, Esq;* Judge of the Court of Vice-Admiralty, and the Commission in the name of the Lord Palatine, and the rest of the Lords Proprietors, and Testified by the Honourable *Robert Johnson, Esq;* Governor, and the rest of the Lords Deputies, for holding the Court of Admiralty Sessions, was openly read.

Then the Grand-Jury was called, and twenty three of them were sworn; the Names of which are as followeth:

Michael Brewton, Fore-
man.

Robert Tradd.

Andrew Allen.

Peter Manigault.

John Beauchamp.

John Bullock.

Thomas Barton.

Anthony Matthews.

Alexander Kinlock.

Henry Perrineau

Paul Douxfaint.

John Breton.

John Bee.

Daniel Gale.

Thomas Loyde.

Laurence Dennis.

Elias Foifin.

John Shepherd.

John Simmons.

George Peterfon.

Solomon Legare.

Abraham Lesuir.

John Caywood.

Then

Then the Judge of the Vice-Admiralty proceeded to give his Charge to the Grand Jury, as followeth.

GENTLEMEN,

WE are here assembled to hold this Court of Admiralty-Sessions; and the Duty of my Office requires me to give in Charge to you the things that you are to Enquire of and to Present.

In a former Admiralty-Charge, by way of Preface or Introduction to the particular Crime of Piracy, which will again now be brought before you;

I then shewed you, First, That the Sea was given by God for the use of Men, and is subject to Dominion and Property, as well as the Land.

And then I particularly remarked to you, the Sovereignty of the Kings of England over the British Seas.

I then proceeded, Secondly, to shew you, That as Commerce and Navigation could not be managed without Laws; so there have been always particular Laws for the better ordering and regulating Marine Affairs; with an Historical Account of those Laws, and their Origin.

Of all those Matters I then spake largely and fully; and shall not now trouble you with any farther Repetition of them.

But I shall now proceed, in the Third place, to shew you, That there have been particular Courts and Judges appointed, to whose Jurisdiction Maritime Causes do belong; and that in Matters both Civil and Criminal.

And then I shall in particular shew you the Constitution and Jurisdiction of this Court of Admiralty Sessions.

And shall mention the Crimes cognizable therein; and shall particularly enlarge upon the Crime of Piracy, that will now be brought before you.

Time will not permit me to speak of the several sorts of Magistrates, to whose Jurisdiction Maritime Affairs do belong, in the Transmarine or Foreign Parts of the World: Therefore I shall confine my self under this Head, only to speak of the Laws of England; by which the general Jurisdiction in Marine Affairs, is by the King as Supreme, as well by Sea as Land, committed to the Lord High Admiral; who, besides his Power over the Navy, and the Government over the Seamen, hath a Jurisdiction^a Civil and Criminal in Marine Affairs, which are decided by his Maritime Judges in the Court of Admiralty, the chief of which is known by the Stile of *Supremæ Curie Admiralitatis Angliæ Judex*: within those Cognizance, in Right of the Jurisdiction of the Admiralty by the Sea Laws, and the Laws and Customs of the Admiralty of England, are comprized all Matters properly Maritime, and pertaining to Navigation.

As to the Antiquity of the Office of Lord Admiral, and the Court of the^b Admiralty, it is sufficient to remark, that the thing itself that signified that Office, now known to us by the Stile of Lord High Admiral, and the Jurisdiction thereof, hath been in the Kingdom of England time out of mind.

The learned Antiquary Sir Henry Spelman, in

his^c *Glossarium*, and out of him^d Dr. Godolphin gives us the Catalogues of the Admirals from the Reign of King Henry III. Not but that the Office of Admiral is far more ancient: For the same learned Antiquary saith, that he hath not in that Catalogue inserted *Marthufus*, that *Princeps Nautarum*, in King Edgar's Time; nor those *Tetrarchs* of his Navy; nor of those other Commanders in Chief in Sea Affairs, constituted by his Successors Kings of England; but of such only as in the ordinary way have been dignified with the said Office.

The Lord^e Coke in the first part of his *Institutes*, in honour of the Admiralty of England, saith, "That the Jurisdiction of the Lord Admiral is very ancient, and long before the Reign of Edward III. as some have supposed, as may appear by the Laws of Oleron, (so called, for that they were made by King Richard I. when he was there) that there had been an Admiral time out of mind, and by many other ancient Records in the Reigns of Henry III, Edward I. and Edward II. is most manifest."

But the learned Selden^f in his Notes upon *Forsetscue*, tells us, That in an ancient Manuscript De l'Office de l'Admiralty, translated into Latin by one Tho. Rowghton, calling it *De Officio Admiralitatis*, there are Constitutions often mentioned touching the Admiralty of Henry I. Richard I. King John, and Edward I. which shews the great Antiquity of that Court.

And as to the Jurisdiction of the Court of Admiralty, not to enter upon the Disputes between the Civilians and the common Lawyers concerning the same; I shall now only observe to you, that it is allowed even by those Statutes that were made purposely to restrain the Jurisdiction of the Court of Admiralty, that that Court ought to have Cognizance of all things done upon the main Sea^g, or Coasts of the Sea. And of the Death^h of a Man, and of Maibem done in great Ships, being and hovering in the main Stream of great Rivers, only beneath the Bridge of the same Rivers nigh the Sea.

And by the Preamble to the Statute of the 28 H. VIII. it is declared, ⁱ that Traitors, Pirates, Thieves, Robbers, Murderers, and Confederates upon the Sea, were tried before the Admiral, or his Lieutenant or Commissary, after the Course of the Civil Law.

But as appears further by the said Preamble that it was found inconvenient to try those Offenders before the Admiral;

Therefore by the said Statute this Court of Admiralty Sessions was appointed, whereby such Offenders were to be tried according to the Course of the Common Law, as if their Offences were committed on Land.

And now I shall proceed to speak of the Crimes cognizable in this Court. And particularly I shall enlarge upon the Crime of Piracy that will come before you.

The Crimes cognizable in this Court, and within the Jurisdiction of the same, by the express Words of the Statute^k are all Treasons, Felonies, Robberies, Murders, and Confederacies, committed in or upon the Sea, or in any other Haven, River, Creek, or Place where the Admiral or Admirals

^a See Godolph. Admir. Jurisd. c. 4. p. 41. usque ad p. 17.

^b P. 215. to p. 230. And Justice his Laws of the Sea, p. 284. to p. 289.

^c Spelman's Notes on Forsetscue, p. 35, 36.

^d See the Stat. 15 R. 2. c. 3. p. 180. 2 H. 4. c. 11. p. 193. 2 H. 5. c. 6. Sect. 2. p. 214. And see 13 Car. 2. c. 9. Art. 36. p. 1174.

^e 28 H. 8. c. 15. p. 486. ^f No 3.

^g See the Stat. 13 R. 2. c. 5. p. 173.

^h See the Stat. 13 R. 2. c. 5. p. 173.

ⁱ See the Stat. 13 R. 2. c. 5. p. 173.

^k See the Stat. 13 R. 2. c. 5. p. 173.

have or pretend to have Power, Authority, or Jurisdiction.

There being only one of those Crimes, viz. Robbery or Piracy, that will come before you, I shall omit the rest, and only speak to that: wherein I shall shew you the Nature of the Offence, and the Heinousness thereof.

Now, as this is an Offence that is destructive of all Trade and Commerce between Nation and Nation; so it is the Interest of all Sovereign Princes to punish and suppress the same.

And the King of England¹ hath not only an Empire and Sovereignty over the British Sea, but also an undoubted Jurisdiction and Power, in concurrency with other Princes and States, for the Punishment of all Piracies and Robberies at Sea, in the most remote Parts of the World.

Now as to the Nature of the Offence: Piracy is a Robbery committed upon the Sea, and a Pirate is a Sea Thief.

Indeed, the Word *Pirata* as it derived from *πείρα*, *transire*, à *transendo mare*, was anciently taken in a good and honourable^m Sense, and signified a Maritime Knight, and an Admiral or Commander at Sea; as appears by the several Testimonies and Records cited to that purpose, by that learned Antiquary Sir Henry Spelman in his *Glossarium*. And out of him the same Sense of the Word is remarked by Dr. Cowel, in hisⁿ *Interpreter*; and by Blount in his^o *Law Dictionary*. But afterwards the Word was taken in an ill Sense, and signified a Sea-Rover or Robber; either from the^p Greek Word *πείρα*, *Deceptio*, *Dolus*, *Deceit*; or from the Word *πείρα*, *transire*, of their wandering up and down, and resting in no place, but coasting hither and thither to do Mischief: And from this Sense, of *κατα θαλάσσαν κακῶς ποιεῖν*, Sea-Malefactors were called *πειραταί*, *Pirates*.

Therefore a Pirate is thus defined by my Lord Coke^q; *This Word Pirate*, saith he, *in Latin Pirata, is derived from the Greek Word πείρατος, which again is fetched from πείρα, à transendo Mare, of Roving upon the Sea: and therefore in English a Pirate is called, a Rover and Robber upon the Sea.*

Thus the Nature of the Offence is sufficiently set forth in the Definition of it.

As to the Heinousness or Wickedness of the Offence, it needs no Aggravation, it being evident to the Reason of all Men. Therefore a Pirate is called^r *Hostis Humani Generis*, with whom neither Faith nor Oath is to be kept. And in our Law they are termed^s *Brutes*, and^t *Beasts of Prey*: and that it is lawful for any one that takes them, if they cannot with Safety to themselves bring them under some Government to be tried, to put them to Death.

And by the Civil Law any one may take from them their Ships or Vessels: so that excellent Civilian^u Dr. Zouch, in his Book *De Jure Nautico*, saith, *In Detestation of Piracy, besides other Punishments, it is enacted, that it may be lawful for any one to take their Ships.*

And yet by the same Civil Laws, Goods taken by Piracy gain not any Property against the Owners. Thus in the Roman Digests or Pandects of Justinian^w, it is said, *Persons taken by Pirates or Thieves, are nevertheless to be esteemed as free.*

And then it follows, *He that is taken by Thieves, is not therefore a Servant of the Thieves, neither is Postliminy necessary for him.*

And the learned Grotius, in his Book *De Jure Belli ac Pacis*,^y saith, *Those things which Pirates and Thieves have taken from us, have no need of Postliminy, because the Law of Nations never granted to them a Power to change the Right of Property: therefore things taken by them, wheresoever they are found, may be claimed.*

And agreeable to the Civil Law are the Laws of^z England, which will not allow that a taking Goods by Piracy doth divest the Owners of their Property, tho' sold at Land, unless sold in Market overt.

Before the Statute of the 25 E. III. Piracy was holden to be *Petit Treason*, and the Offence said to be done *contra Ligantiam suæ debitum*, for which the Offenders were to be drawn and hanged: but since that Statute the Offenders received Judgment as *Felons*.

And by the said Statute of 28 H. VIII.^b the Offenders are ousted of the Clergy.

But still it remains a *Felony* by the^c Civil Law; and therefore tho' the afore said Statute of 28 H. VIII. gives a Trial by the Course of the Common Law, yet it alters not the Nature of the Offence;

¹ See Sir Charles Hedges his Charge at the Trial of Dawson, &c.

^m *Pirata, pro milite maritimo à πὸ τοῦ πείρα, i. e. transire vel pervagari. Affer. Menesens. Epist. in vit. Ælfredi. — Rex Ælfredus jussit cymbas & galeas, i. e. longas naves, fabricari per Regnum, ut navali prælio hostibus adventantibus obviam. Impostisque Piratis in illis, vias maris custodiendas commisit. Hoc sensu Archipiratam dici censeo pro nautarum præfecto, vel quem hodie Admirallum nuncupamus. In quadam enim Charta Regis Edgari Cænobio Glasloniensis confectæ, An. Dom. 971. testium unus, Mariusm Archipiratam se nominat. Annal. Gisleburnenses, in Will. Ruso, cap. 1. Robertus vero Comes (Normaniæ) attemptavit venire in Angliam cum magno exercitu; sed à Piratis Regis, qui curam Maris à Rege (Willielmo) susceperat, repulsus est. Spelman Glossar. in voce Pirata, P. 460. Vid. etiam Selden. Mare clausi l. 2. c. 10. p. 257. Engl. & Godolph. Admir. Jurisd. c. 3. p. 25.*

ⁿ In the word *Pirata*. ^o In the Word *Pirate*.

^p See Ridley's View of the Civil Law, p. 2. c. 1. Sect. 3. p. 127.

^q 3 Inst. c. 49. p. 113. And on Littleton, f. 391. a. And see Bridal his Jus Criminis, p. 70, 71. Coke, 3 Inst. c. 49. p. 113. Molloy de Jure Marit. l. 1. c. 4. Sect. 1. p. 51. See Laws of Oleron, c. 47. in Godolph. in p. 211.

^r In odium Piratarum, præter alias pœnas, statutum est, ut eorum navigia, cuiusvis diripere liceat. Zouch de Jure Nautico, p. 1. Sect. 10. p. 400.

^s *Qui a Latronibus capti liberi permanent. D. l. 49. t. 15. 19. Sect. 2. p. 757.*

^t *Qui a Latronibus captus est, servus Latronem non est: nec Postliminium illi necessarium est. Ib. No 24.*

^u *Et quæ Pirata aut Latrones nobis eripuerunt non opus habent Postliminio, quia jus gentium illis non concessit ut jus Domini mutare possint. Itaque res ab illis captæ ubicunque reperuntur vindicari possunt. Grot. de Jur. Bel. ac Pac. l. 3. c. 9. Sect. 16. p. 561.*

^v See 27 E. 3. c. 13. p. 128. 1 Coke, p. 685. Anonym. Hobart, p. 78, 79. Sir R. Bingley's Case; and Edman and Smith's Case, 29 C. 2. 3 Keble, p. 744. pl. 11. Bridal's Jus. Grim. p. 71. Molloy, B. 1. c. 4. Sect. 22, 23. p. 61, 62.

^w Coke 3 Inst. c. 49. p. 113. Hale, P. C. p. 77. Bridal, p. 71. Molloy, p. 56. W. I. his Law of England concerning Offences against the Crown, p. 288. Hawkins his P. C. l. 1. c. 37. Sect. 2. p. 98.

^x 28 H. 8. c. 15. Sect. 3. p. 487.

^y Coke, p. 112. Hale, p. 77. Bridal, p. 72. Molloy, B. 1. c. 4. Sect. 25, 26. p. 62.

and the *Indictment* must mention the same to be done *super altum mare*, upon the *High Sea*^d, and must have both the Words *Felonice* and *Piraticè*; and therefore a *Pardon* of all Felonies doth not extend to this Offence, but the same ought to be specially named.

Thus having explained to you the *Nature* of the Offence, and the *Wickedness* thereof, as being destructive of Trade and Commerce; I suppose I need not use any Arguments to you, to persuade you to a faithful Discharge of your Duty, in the bringing such Offenders to Punishment.

And indeed, the *Inhabitants* of this *Province* have of late to their great *Cost* and *Damages*, felt the Evil of *Piracy*, and the *Mischiefs* and *Insults* done by *Pyrates*; when lately an *infamous Pirate* had so much Assurance as to lie at our *Bar*, in sight of our *Town*, and to seize and rifle several of our *Ships* bound inward and outward.

And then had the Confidence to send in his insolent *Demands* for what he wanted, with Threats of *murdering* our People he had on board him, if they were not complied with. Which was putting the *Province* under *Contribution*.

And the Success he had in going off from our Coast with Impunity, encouraged^e another of those *Beasts of Prey* to come upon our Coast, and take our *Vessels*.

And this very *Company*, which will now be charged before you with the Crime of *Piracy*, their *Ringleader*, with many, if not all of the *Company*, were belonging to that *Crew*, which first insulted us. And presuming upon their former Success and Impunity, had the Confidence to lie upon our *Coast* to fit their *Vessel*, and to go on *Shore* at their Will and Pleasure; designing, as we had had just Reason to suppose, that when all Things were fitted for their mischievous Designs, to come again to cruize before our *Bar*, and take our *Vessels*.

And therefore upon the receiving these Accounts, it was high Time for the *Government* to fit out a *Force* against the *Pirates*; and to endeavour to suppress them, in order to support our *Trade* and *Commerce*, which otherwise must have been inevitably ruin'd.

And being under such a Necessity of having Forces raised for that purpose, we cannot sufficiently commend and honour the *Zeal* and *Bravery* of those Persons, who so willingly and readily undertook that *Expedition* against the *Pirates*; and so gallantly acted their Parts when they engaged them.

But it will not be fit for me to say any more upon that *Subject*, by reason of the near Relation I stand in to the *Commander* in Chief in that Expedition; and who is known to you all to have so well acted his Part therein, that as it is not proper, so he needs not my Commendations.

But then I must not omit mentioning to you, that in this *Attack* made upon those *Enemies of Mankind*, many of our People lost their Lives in the Discharge of their Duty to their King and Country, and who fell by the Hands of those inhuman and murdering *Criminals* which will now be brought before you. And the Blood of those murdered Persons, will cry for Vengeance and Justice against these Offenders.

And therefore I hope the Consideration of doing Justice to those Persons who were kill'd in

the Service of their Country, will make you to use your Diligence in bringing the Criminals to Punishment, without which the Blood of those Persons will in a great measure be required at our Hands.

I need not expatiate to you upon the Heinousness of the Sin of *Murder*; a Crime which carries its own natural Horror and Guilt along with it; so that it is altogether needless for me to aggravate it; and the manifest Injustice and Evil of which is evident to all Persons, even by the Light of Nature: So that there is no Nation so barbarous, but by their universal Practice do consent to the Equity and Justice of that antient Law of God, that, *Whoso sheddeth Man's Blood, by Man shall his Blood be shed*, Gen. ix. 6.

Indeed, I freely grant, that the Greatness of the Crimes the Persons are charged with, should make you the more careful in your *Enquiry*, and to avoid any Error or Mistake on both Extremes; that as you would not condemn the *Innocent*, so likewise that you do not acquit the *Guilty*, always remembering what the Wise Man saith, that *He that justifieth the Wicked, as well as he that condemneth the Just, even both are an Abomination to the Lord*, Prov. xvii. 15. See *Ch.* xxiv. v. 24.

I have only this to add, that you being a *Grand Jury*, your Business is not to try the Prisoners, but to consider whether or no by the Evidence, there is that probable Proof of the Persons being guilty of the Fact charged upon them, as that they ought to be put upon their *Trial* for the same.

An Indictment found by you being virtually but a legal Accusation, there being another Jury to pass upon them.

But on the other Side, tho' your finding the Bill of Indictment is not conclusive to the Prisoners, but that they will have a *Trial*, and be heard in their own Defence before another Jury, which properly are said to try the Prisoners, and pass between the King and them upon their Lives or Deaths; nevertheless, you ought to be cautious and diligent in your *Enquiry*, and not rashly and carelessly find a Bill of Indictment against Persons, and put them upon the Hazard of a Trial for a capital Crime.

But as to those *Indictments* that will now be brought before you, I am very well assured the *Proofs* will be so clear and full, that you'll have no Reason to doubt the Truth of the Facts charged therein; and then I shall not question your faithful Discharge of that great Duty and Trust the Law hath reposed in you, in bringing such Criminals to Justice.

Thus having sufficiently explained to you what is likely to come before you, I shall now dismiss you to your Business.

Then the Court adjourned till the Afternoon.

The Court met according to Adjournment.

And the *Grand Jury* being called over, a Bill of Indictment was given to them against *Stede Bonnet*, *Robert Tucker*, *Edward Robinson*, *Neal Paterson*, *William Scot*, and *Job Bayley*, for feloniously and piratically taking the Sloop *Francis* with her Goods, Capt. *Peter Manswareing*, Commander.

^d *Hawkins*, Ib. Sect. 10. p. 100.

^e *Vane*.

Then the Court adjourn'd till *Wednesday* Morning.

Wednesday, October the 29th, 1718.

The Court met according to Adjournment.

THE *Grand Jury* being called over, a Bill of Indictment was delivered to them against *David Hariot, John William Smith, Thomas Carman, John Thomas, William Morrison, William Livers* aliàs *Evis, Samuel Booth, William Hewet,* and *John Levit,* for feloniously and piratically taking the said Sloop *Francis,* with her Goods, Capt. *Peter Manwareing,* Commander.

And another Bill of Indictment against *William Eddy* aliàs *Wedy, Alexander Annand, George Rofs, George Dunkin, Thomas Nichols, John Ridge, Matthew King, Daniel Perry,* and *Henry Virgin,* for the same Fact, in taking Capt. *Manwareing.*

And another against *James Robbins* aliàs *Rattle, James Mullet* aliàs *Millet, Thomas Price, John Lopez, Zachariah Long,* and *James Wilson,* for the same Fact.

Then the *Grand Jury* returned, finding *Billa vera* on the Bill of Indictment against *Stede Bonnet* aliàs *Edwards,* aliàs *Thomas, Robert Tucker, Edward Robinson, Neal Paterfon, William Scot,* and *Job Bayley,* for feloniously and piratically taking the said Sloop *Francis,* with her Goods, *Peter Manwareing* Commander.

On the Bill of Indictment against *David Hariot, John William Smith, Thomas Carman, John Thomas, William Morrison, William Livers* aliàs *Evis, Samuel Booth, William Hewet,* and *John Levit,* for the same Fact, in taking Capt. *Manwareing.*

On the Bill of Indictment against *William Eddy* aliàs *Wedy, Alexander Annand, George Rofs, George Dunkin, Thomas Nichols, John Ridge, Matthew King, Daniel Perry* and *Henry Virgin.*

As also a Bill of Indictment against *James Robbins* aliàs *Rattle, James Mullet* aliàs *Millet, Thomas Price, John Lopez, Zachariah Long,* and *James Wilson,* both for the same Fact.

Then the Court proceeded to arraign *Robert Tucker, Edward Robinson, Neal Paterfon, William Scot,* and *Job Bayley,* upon the Indictment, for feloniously and piratically taking the Sloop *Francis,* *Peter Manwareing,* Commander.

Who all pleaded Not Guilty.

The Court then delivered another Bill of Indictment to the *Grand Jury* against *Stede Bonnet* aliàs *Edwards* aliàs *Thomas, David Hariot, Edward Robinson, Robert Tucker, William Scot, Job Bayley, Neal Paterfon, John William Smith, Thomas Carman,* and *John Thomas,* for feloniously and piratically taking the Sloop *Fortune,* with her Goods, Capt. *Thomas Read* Commander.

Another Bill of Indictment against *John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robbins* aliàs *Rattle, James Mullet* aliàs *Millet, Thomas Price, James Wilson, John Lopez,* and *Zachariah Long,* for the same Fact, in taking Capt. *Read.*

And another against *William Morrison, William Livers* aliàs *Evis, Samuel Booth, William Hewet, John Levit, William Eddy* aliàs *Wedy, Alexander Annand, George Rofs, George Dunkin,* and *Thomas Nichols,* for the same Fact.

Then the Court proceeded to arraign *John William Smith, Thomas Carman, John Thomas,*

William Morrison, William Livers aliàs *Evis, Samuel Booth, William Hewet,* and *John Levit,* for feloniously and piratically taking the Sloop *Francis,* with her Goods, Capt. *Peter Manwareing,* Commander.

Who all pleaded Not Guilty.

Then the Court adjourned till *Thursday* Morning.

Thursday, October the 30th, 1718.

The Court met according to Adjournment.

THEN the *Grand Jury* returned, finding *Billa Vera* on the Bill of Indictment against *Stede Bonnet* aliàs *Edwards* aliàs *Thomas, David Hariot, Edward Robinson, Robert Tucker, William Scot, Job Bayley, Neal Paterfon, John William Smith, Thomas Carman,* and *John Thomas,* for taking the said Sloop *Fortune,* with her Goods, Capt. *Thomas Read* Commander.

On the Bill of Indictment against *John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robbins* aliàs *Rattle, James Mullet* aliàs *Millet, Thomas Price, James Wilson, John Lopez,* and *Zachariah Long,* for the same Fact, in taking Capt. *Read.*

And on the Bill of Indictment against *William Morrison, William Livers* aliàs *Evis, Samuel Booth, William Hewet, John Levit, William Eddy* aliàs *Wedy, Alexander Annand, George Rofs, George Dunkin,* and *Thomas Nichols,* for the same Fact.

Then the Court proceeded to the Trial of *Robert Tucker, Edward Robinson, Neal Paterfon, William Scot,* and *Job Bayley.*

Clerk. Set *Robert Tucker, Edward Robinson, Neal Paterfon, William Scot,* and *Job Bayley* to the Bar.

Then the *Petit Jury* were called over.

Clerk. You the Prisoners at the Bar: These good Men that were called last, and have here appeared, are those that shall pass between our Sovereign Lord the King and you, upon your Lives and your Deaths; therefore if you or any of you will challenge them or any of them as they come to the Book to be sworn, and before they be sworn, you may, and you shall be heard.

Then the *Petit Jury* were sworn, whose Names were as followeth.

<i>Timothy Bellamy,</i> Foreman.	<i>Thomas Chambers.</i>
<i>George Ducket.</i>	
<i>John Rivers.</i>	
<i>William Sberiffe.</i>	
<i>Benjamin Dennis.</i>	
<i>Hugh Durfey.</i>	
	<i>Daniel Townsend.</i>
	<i>John Lee.</i>
	<i>Thomas Bee.</i>
	<i>John Barton.</i>
	<i>Richard Fairchild.</i>

Cryer. O Yes, If any Man can inform the Judge of this Vice-Admiralty for the Vice Admiralty Jurisdiction of this Province, and the rest of the Commissioners of this Admiralty-Sessions, or the Attorney-General of this Inquest to be taken between our Sovereign Lord the King, and the Prisoners at the Bar, or any of them, of any Treason, Piracy, Murder, or other Felony committed or done by the Prisoners at the Bar, or any of them, let them come forth, and they shall be heard; the Prisoners now stand at the Bar upon their Deliverance.

Then the Prisoners were severally bid to hold up their Hands (which they did.)

Then

Then the *Clerk* charged the Jury with them thus:

Clerk. You Gentlemen of the Jury that are sworn, look upon the Prisoners, and hearken to their Charge.

Then the Indictment was read, as followeth.

“ **T**HE Jurors for our Sovereign Lord the King do upon their Oath present, That “ *Stede Bonnet* aliàs *Edwards*, aliàs *Thomas*, late “ of *Barbadoes*, Mariner; *Robert Tucker*, late “ of the Island of *Jamaica*, Mariner; *Edward “ Robinson*, late of *New-Castle upon Tine*, Ma- “ riner; *Neal Paterson*, late of *Aberdeen*, Ma- “ riner; *Job Bailey* aliàs *Beely*, late of *London*, “ Mariner; *William Scot*, late of *Aberdeen*, Ma- “ riner; the Second Day of *August* in the Fifth “ Year of the Reign of our Sovereign Lord “ *George*, by the Grace of God of *Great Britain*, “ *France*, and *Ireland*, King, Defender of the “ Faith, &c. by Force, &c. upon the High “ Sea, in a certain Place called *Cape James* aliàs “ *Cape Inlopen*, about two Miles distant from “ the Shore, in the Latitude of Thirty-nine, or “ thereabouts, and within the Jurisdiction of the “ Court of *Vice-Admiralty* of *South Carolina*, did “ piratically and feloniously set upon, break, “ board, and enter a certain Merchant-Sloop, “ called the *Francis*, *Peter Manwareing*, Com- “ mander, then being a Sloop of certain Per- “ sons (to the Jurors aforefaid unknown) and “ then and there piratically and feloniously did “ make an Assault, in and upon the said *Peter “ Manwareing*, and other his Mariners, (whose “ Names to the Jurors aforefaid are unknown.) “ In the same Sloop, against the Peace of God, “ and of our said now Sovereign Lord the King, “ then and there being, piratically and feloniously “ did put the aforefaid *Peter Manwareing*, and “ others his Mariners of the same Sloop, in the “ Sloop aforefaid, then being in corporal Fear “ of their Lives, then and there in the Sloop “ aforefaid, upon the *High Sea*, in the Place “ aforefaid, called *Cape James* aliàs *Cape Inlopen*, “ about two Miles distant from the Shore, in “ the Latitude of Thirty-nine, or thereabouts, “ as aforefaid; and within the Jurisdiction afore- “ faid, *piratically* and *feloniously* did steal, take “ and carry away the said Merchant-Sloop, “ called the *Francis*, and also twenty-six Hog- “ heads, three Tierces, and three Barrels of “ Rum, of the Value of two hundred and sixty “ three Pounds six Shillings and eight Pence, “ current Money of the Island of *Barbadoes*; “ twenty five Hogheads of Molosses, of the “ Value of one hundred thirty eight Pounds “ thirteen Shillings and eight Pence, current “ Money of the Island of *Antegoa*; three Barrels “ and three Tierces of Sugar, of the Value of “ thirty three Pounds, like current Money of “ *Antegoa*; two Pockets of Cotten, of the Va- “ lue of fifty Shillings, like current Money of “ *Antegoa*; and about sixty Weight of Indigo, “ of the Value of nine Pounds, like current “ Money of *Antegoa* aforefaid; one new Cable, “ of the Value of fifty Pounds, Sterling Money “ of *Great Britain*; nineteen *French* or *Spanish* “ Pistoles; two half Moidores of Gold; four- “ teen *French* Crowns; one Pair of Silver Buckles, “ value ten Shillings, Sterling Money of *Great “ Britain*; and one Silver Watch, of the Value “ of seven Pounds, Sterling Money of *Great*

“ *Britain* aforefaid; the Goods and Chattels of “ certain Persons, (to the Jurors aforefaid un- “ known) then and there, upon the *High Sea* “ aforefaid, in the aforefaid Place, called *Cape “ James* aliàs *Cape Inlopen*, about two Miles di- “ stant from the Shore, in the Latitude of thirty- “ nine, or thereabouts, as aforefaid, and within “ the Jurisdiction aforefaid; being found in the “ aforefaid Sloop, in the Custody and Possession “ of the said *Peter Manwareing*, and others his “ Mariners of the said Sloop, and from their “ Custody and Possession then and there, upon “ the High Sea aforefaid, in the Place aforefaid, “ called *Cape James* aliàs *Cape Inlopen*, as afore- “ faid, and within the Jurisdiction aforefaid, “ against the Peace of our now Sovereign Lord “ the King, his Crown, and Dignity.

Clerk. Upon this Indictment they have been arraign'd: Upon their Arraignment they have pleaded *Not Guilty*; and for their Trial have put themselves upon God and their Country, which Country you are. Your Charge is to enquire whether they, or any of them, are guilty of the Felony and Piracy of which they stand indicted, in Manner and Form as they stand indicted, or not guilty. If you find them, or any of them, guilty, you shall then enquire what Goods or Chattels, Lands or Tenements, they, or any of them, had at the Time of the Felony of Piracy committed, or at any time since. But if you find them not guilty, &c. And hear your Evidence.

Then *Richard Allen*, Esq; Attorney-General, spake as followeth:

May it please your Honours, and you Gentlemen of the Jury.

THE Nature of the Crime, *Piracy*, for which the Prisoners at the Bar are now to be tried, and the Statute of the Twenty-eight of *Henry* the Eighth, intituled, *For Pirates*, has been fully and learnedly laid open and explain'd by the Judge in his Charge to the Grand Jury, (at which I am sensible most, if not all of you, were present.) Therefore I shall say but little more on that Head, and only remark, that it is a Crime so odious and horrid in all its Circumstances, that those who have treated on that Subject have been at a loss for Words and Terms to stamp a sufficient Ignominy upon it: Some calling them Sea-Wolves; others Beasts of Prey, and Enemies of Mankind, with whom neither Faith nor Treaty is to be kept. And all this is but a faint Description of these Miscreants: For Beasts of Prey, tho' fierce and cruel in their Natures, yet, as has been observ'd of them, they only do it to satisfy their Hunger, and are never found to prey upon Creatures of the same Species with themselves. Add hereto, that those wild Beasts have neither rational Souls, Understanding, nor Reason to guide their Actions, or to distinguish between, Good or Evil. But Pirates prey upon all Mankind, their own Species and Fellow-Creatures, without Distinction of Nations or Religions; *English*, *French*, *Spaniards* and *Portuguese*, and *Moors* and *Turks* are all alike to them: For Pirates are not content with taking from the Merchants what Things they stand in need of, but throw their Goods over-board, burn their Ships, and sometimes bereave them of their Lives for Pastime and Diversion, as we have had frequent Instances of late, and prove destructive to all

Trade and Commerce in general. And if a Stop be not put to those Depredations, and our Trade no better protected, not only *Carolina*, but all the *English Plantations* in *America* will be totally ruin'd in a very short Time.

The Pirates are become very numerous and formidable in these Parts: The Trade of *America* is no small Advantage to the Crown of *Great Britain*. *Jamaica*, by relation, is ruin'd by those Pirates already; and other Parts of *America* have suffered most grievously, and are like to share in the same Fate. I know not what is done at home, therefore I can't say no Care at all has been taken of us: But this I do say, no effectual Care has been taken to suppress those Pirates. And if a true Representation of these Matters were laid before his Majesty, we could not but hope for some Redress.

'Tis not my Business to call in question the Conduct of the *Spaniards*, in breaking up the *Bay of Campeachy*. They could not but think the turning away such a Number of profligate Wretches, as were got together, must put them on a worse Course of Life: They have done them more Harm since than cutting their Log-Wood; for nine Parts in ten of them turned Pirates, and have lived upon robbing and plundering them and us ever since that Time. That and the great Expectations which so many had from the *Bahama* Wrecks, where not one in ten proved successful, gave Birth and Increase to all the Pirates in those Parts, *English, French, and Spaniards*.

I just now instanced *Jamaica* as a Place that is almost ruin'd by the Pirates: But what Occasion have we to look abroad? What a grievous Dilemma were we ourselves reduced to in the Month of *May* last? When *Thatch* the Pirate came and lay off this Harbour with a Ship of forty Guns mounted, and one hundred and forty Men, and as well fitted with warlike Stores of all Sorts, as any Fifth-Rate Ship in the Navy, with three or four Pirate-Sloops under his Command. And after having taken Mr. *Samuel Wragg*, one of the Council of this Province, bound out from this Place to *London*, as also one Mr. *Marks*, and several other Vessels going out and coming into this Harbour, they plundered those Vessels going home to *England* from hence of about fifteen hundred Pounds Sterling, in Gold and Pieces of Eight. And after that, they had the most unheard of Impudence to send up one *Richards*, and two or three more of the Pirates with the said Mr. *Marks*, with a Message to the Government, to demand a Chest of Medicines of the Value of three or four hundred Pounds, and to send them back with the Medicines, without offering any Violence to them, or otherwise they would send in the Heads of Mr. *Wragg* and all those Prisoners they had on board; and *Richards*, and two or three more of the Pirates, walked upon the Bay, and in our public Streets, to and fro in the Face of all the People, waiting for the Governor's Answer. And the Government, for the Preservation of the Lives of the Gentlemen they had taken, were forced to yield to their Demands. And some of those very Prisoners now at the Bar were Part of that *Thatch's* and *Bonnet's* Crew. Afterwards one *Vaughan*, another noted Pirate, came and lay off our Bar, and sent in another insolent Message. This roused our Spirits; and tho' reduced to a very low Ebb by Reason of the Calamities of the *Indian War*, and long and

heavy Taxes, we could not bear those Insults, but sent out a Force to suppress them. However, we must own, that that honourable Gentleman, Colonel *William Rbett*, was the chief, if not the first Promoter of fitting out two Sloops to take some of those Pirates. The Government readily fell in with the Measures proposed: Colonel *Rbett* went in Person, accompanied by many Gentlemen of the Town, animated with the same Principle of Zeal and Honour for our public Safety, and the Preservation of our Trade.

'Tis probable *Vaughan* the Pirate, before Things could be got in readiness, might have some Intimation of our Design, and made his way off the Coasts, though all possible Care was taken to prevent it. However, Col. *William Rbett* and the rest of the Gentlemen were resolv'd not to return without doing some Service to their Country, and therefore went in quest of a Pirate they had heard lay at *Cape Fear*. About the latter End of *September* they came up with, and engaged them: The Fight lasted above six Hours, and the Pirates were forced to surrender, tho' the Colonel's Vessel running a-ground, lay under all the Disadvantages in the World, as you are all sensible.

The Piratical Crew at the Bar, and now to be tried, in the Engagement, killed *ten* or *eleven* of our Men on the Spot, and wounded about *eighteen*, several of which died since they came on ashore here.

This Pirate-Sloop was commanded by that noted Pirate Major *Stede Bonnet*, and formerly called the *Revenge*, now the *Royal James*, and was one of those very Sloops that lay off the Harbour of *Charles-Town* about *May* last, when they took Mr. *Wragg* Prisoner, and sent up their insolent Demands to the Governour, as I have mentioned before.

We must all own, that the Undertaking and Design of fitting out those Sloops after these Pirates, was bold and noble, and carried on with Prudence and Courage, and crown'd with Victory and Success; and I hope Col. *Rbett*, and the rest of the Gentlemen that were with him, will meet with both Thanks and Rewards suitable to their great Merit, and the Credit and Reputation they have brought to this Province by this gallant Action.

But see how Justice follows those wicked Offenders! They are now brought to suffer in that Country which they so lately insulted. 'Tis true, *Bonnet* had not the sole Command of his Sloop when he lay off the Bar, but was turned out some time before by *Thatch*, but that was not *Bonnet's* Fault.

Bonnet's Escape out of Prison is no small Misfortune to us: First, because some will be reproached with conniving at his Escape that had no hand in it, and though they be never so innocent: Secondly, by reason of the ill Consequence that may happen to many Merchants in Case *Bonnet* makes a Head again, and particularly to the Merchants of this Province.

I hope the great Reward of seven hundred Pounds offer'd by the Government for taking *Bonnet* and his *Master*, will make the People vigilant in apprehending them. I'm sure the Government gave frequent and strict Charges to the Marshal for securing him, and ordering Centinels to be placed early in the Evening; and immediately on his

Escape,

Escape, set up all Night sending *Hue and Cries* and *Exprefses* by *Land* and by *Water*, throughout the whole Province; so that it is to be hop'd he will be retaken before this Service be over. I am sensible *Bonnet* has had some Assistance in making his Escape; and if we can discover the Offenders, we shall not fail to bring them to exemplary Punishment.

And now, Gentlemen of the Jury, I must remind you of your Duty on this Occasion. You are bound by your Oaths, and are oblig'd to act according to the Dictates of your Consciences, to go according to the Evidence that shall be produced against the Prisoners, without Favour or Affection, Pity or Partiality to any one of them, if they appear to be guilty of those Crimes they are charg'd with. And you are not allow'd a Latitude of giving in your Verdict according to Will and Humour.

I am sorry to hear some Expressions drop from private Persons, (I hope there is none of them upon the Jury) in favour of the Pirates, and particularly of *Bonnet*; that he is a Gentleman, a Man of Honour, a Man of Fortune, and one that has had a liberal Education. Alas, Gentlemen, all these Qualifications are but several Aggravations of his Crimes. How can a Man be said to be a Man of Honour, that has lost all Sense of Honour and Humanity, that is become an Enemy of Mankind, and given himself up to plunder and destroy his Fellow-Creatures, a common Robber, and a Pirate?

Nay, he was the *Archpirata*, as it is now taken in the worst Sense, or the chief Pirate, and one of the first of those that began to commit those Depredations upon the Seas since the last Peace.

I have an Account in my Hand of above twenty eight Vessels taken by him, in Company with *Thatch*, in the *West-Indies*, since the fifth Day of *April* last; and how many before, no Body can tell.

His Estate is still a greater Aggravation of his Offence, because he was under no Temptation of taking up that wicked Course of Life.

His Learning and Education is still a far greater; because that generally softens Mens Manners, and keeps them from becoming savage and brutish; but when these Qualifications are perverted to wicked Purposes, and contrary to those Ends for which God bestows them upon Mankind, they become the worst of Men, as we see the present Instance, and more dangerous to the Commonwealth.

Gentlemen, most of the said *Bonnet's* Crew, and particularly the Prisoners at the Bar, to wit, *Edward Robinson*, *Robert Tucker*, *William Scot*, *Job Bayley*, and *Neal Paterfon*, are old Offenders, and were with *Thatch* and *Bonnet* at the taking of all, or most of these Vessels I have mentioned, and were either with *Bonnet* or *Thatch* when they lay off our *Bar* in *May* last, and sent up that insulting Message, and were in the Engagement against *Col. Rbett*, so that there is hardly any room left for the least Pity or Compassion: Who can think of it, when you see your Fellow-Townsmen, some dead, and others daily bleeding and dying before your Eyes?

But the particular Fact or Act of Piracy for which the Prisoners at the Bar are now to be tried, is set forth in the Indictment, for that they the said *Edward Robinson*, *Robert Tucker*, *William Scot*, *Job Bayley*, and *Neal Paterfon*, the second Day of

August, in the fifth Year of his Majesty's Reign, by Force and Arms, upon the high Sea, in a certain Place called *Cape James* aliàs *Cape Inlopen*, in the Latitude of *thirty nine*, did *piratically* and *feloniously* set upon, board, break and enter a certain Merchant Sloop called the *Francis*, *Peter Manwareing* Commander, putting the said *Manwareing* and others in corporal Fear of their Lives; and then and there *piratically* and *feloniously* did take and carry from the said *Manwareing* out of the said Sloop, twenty six Hogsheads and three Tierces, and three Barrels of Rum of the Value of two hundred sixty three Pounds six Shillings and eight Pence, and other the Goods mentioned in the Indictment, of the Value of Five hundred Pounds. We shall call the Evidence, and prove the Fact fully and clearly upon them.

Take Notice, Gentlemen, that the boarding, breaking, and entry of one, if the rest were present and consenting, is the boarding, breaking, and entry of all the rest.

We shall prove, that all the Prisoners at the Bar were at the taking of *Manwareing's* Sloop, that they all bore Arms, and that they all shared a few Days before they came to *Cape Fear*: and if so, we doubt not but you'll find them *Guilty*, and discharge that Duty the Country expects from you.

Mr. Thomas Hepworth. May it please your Honours, and you Gentlemen of the Jury, the Crime the Prisoners now stand charged with, is *Piracy*, which is the worst sort of Robbery, both in its Nature and its Effects, since it disturbs the Commerce and Friendship betwixt different Nations, and if left unpunished, involves them in War and Blood. What Calamities and Ruin they carry along with them, no Person can be a Stranger to; so that those that bring not such Criminals to Judgment, when it lies in their Power, and is their Duty to do so, are answerable in a great Measure, before God and Man, for all the fatal Consequences of such Acquittals, which bring a Scandal on the public Justice, and are often attended with public Calamities.

It is not therefore, Gentlemen, to be supposed that wise or honest Men, (and there is none who would willingly be thought otherwise) who love their Country, and wish its Peace and Prosperity, would be guilty in that kind.

What has been said by the King's Attorney, or my self upon this unexpected Occasion, I hope will not be looked upon as intended to influence any of the Jury. I am sure it is far from being so designed; Religion, Conscience, Honour, common Honesty, Humanity, and all Laws forbid such Methods. There is no doubt but the Judges as well as the Jurymen best discharge their Duty when they proceed without Favour or Affection, Hatred or Ill-will, or any partial Respect whatsoever: Malice and Favour (too great Enemies to Justice) are to be excluded all Courts of Judicature, as too partial.

Every Man ought to be extremely tender of such a Person as he has Reason to believe is innocent; but it should be consider'd likewise, on the other side, that he who brings a notorious Pirate or common Malefactor to Justice, contributes to the Safety and Preservation of the Lives of many, both bad and good; of the good, by means of the Assurance of Protection; and of the bad too, by the Terror of Justice. It was upon this Consideration that the *Roman Emperors*, in their Edicts, made

made this piece of Service for the public Good as meritorious as any Act of Piety or religious Worship.

Our own Laws demonstrate how much our Legislators, and particularly how highly that great Prince King *Henry V.* and his Parliament, thought *England* concerned in providing for the Security of Traders, and scouring the Seas of Rovers and Free-booters. Certainly, there never was any Age wherein our Ancestors were not extraordinary zealous in that Affair; looking upon it, as it is and ever will be, the chief Support of Navigation, Trade, Wealth, Strength, Reputation and Glory of the *English* Nation.

Gentlemen, our Concern, as our Trade is, ought in reason to be rather greater than that of our Fore-fathers: We want no manner of Inducements, no Motives to stir us up, whether we consider our Interest or Honour. We have not only the sacred Word, but also the glorious Acts of the best of Kings, which sufficiently manifest to us, that the Good and Safety of the *English Nation* is the greatest Care of his Life. Let every Man therefore who pretends to any thing of a true *English* Spirit, readily and cheerfully follow so good, so great, so excellent an Example, by assisting and contributing to the utmost of his Power and Capacity at all times towards the carrying on his noble and generous Designs for the common Good; and particularly at this Time, by doing all he can, to the end that by the Administration of equal Justice, the Discipline of the Seas, on which the Good and Safety of the *English Nation*, and these Parts of *America* more especially, entirely depends, may be supported and maintained.

The Civil Law terms the Pirates *Beasts of Prey*, with whom no Communication ought to be kept; neither are Oaths or Promises made to them binding. And by the Law-Marine the Captors may execute such *Beasts of Prey* immediately, without any Solemnity of Condemnation, they not deserving any Benefit of the Law.

I believe, Gentlemen, that no greater Motives can be urged to spur you on in your Duty, than to desire you to reflect and consider how long our Coasts have been infested with Pirates (for the Name of Men they do not deserve) and how many Vessels they have taken and pillag'd belonging to this Place, as well as Multitudes of others belonging to divers Parts of his Majesty's Dominions; and how many poor Men in whose Blood they have imbru'd their Hands with the greatest Inhumanity imaginable, and how many poor Widows and Orphans they have made, and how many Families they have ruin'd, and how long they have gone on in their abominable Wickedness: Nay, do but consider how those very Pirates lately insulted this Government, when they sent for Medicines, threatening to destroy our Vessels and Men in case of refusal; nay, since these have accepted of Certificates from the Government of *North Carolina*, like Dogs to their Vomits they have returned to their old detestable way of living, and since taken off these Coasts thirteen Vessels belonging to *British* Subjects.

I believe you can't forget how long this Town has laboured under the Fatigue of watching them, and what Disturbances were lately made with a design to release them, and what Arts and Practices have been lately made use of and effected for the Escape of *Bonnet* their Ringleader; the Consideration of which shews how necessary it is that the

Law be speedily executed on them to the Terror of others, and for the Security of our own Lives, which we were apparently in danger of losing in the late Disturbance, when under a Notion of the Honour of *Carolina*, they threaten'd to set the Town on fire about our Ears.

We shall now call our Witneses, who will relate to you what enormous and horrid Crimes the Prisoners at the Bar have committed in the Prosecution of the Fact laid in the Indictment.

Clerk. Call *Ignatius Pell* the Boatswain, who appeared and was sworn.

Mr. *Hepworth*. Do you know the Prisoners at the Bar?

Ign. *Pell*. I know them all very well.

Mr. *Hepworth*. Please to give the Court an Account what Vessels were taken after you came from *North Carolina*:

Ign. *Pell*. I shall begin before that Time. We came from the Bay of *Honduras*, and from thence to *Providence*, after which we took several Vessels, and then we came and lay off this Bar, where we took five Vessels.

Judge *Trott*. Did all the Prisoners come from the Bay of *Honduras*?

Ign. *Pell*. All except *Robert Tucker*, he came out of a Sloop belonging to *Bermuda*; after that we took a *Brigantine*, out of which we took fourteen Negroes. After we had discharged the *Brigantine*, we set sail and went to *Top-sail-Inlet* at *North Carolina*, where the Ship was run ashore and lost, which *Thatch* caused to be done. After we had been there some time, Capt. *Thatch* came aboard, and demanded all our Arms, and took our best Hands and all our Provision, and all that we had, and left us.

Att. Gen. Were all these Men sent aboard of Major *Bonnet* immediately, or no?

Ign. *Pell*. No, Sir, they were put ashore upon an Island.

J. *Trott*. How came they on board the *Revenge*?

Ign. *Pell*. The Boat was sent off to fetch them aboard.

Pris. Major *Bonnet* came with the Boat, and told us, as we were on a Marroon Island, that he was going to *St. Thomas's* to get a Commission from the Emperor to go against the *Spaniards* a Privateering, and we might go with him or continue there: so we having nothing left, was willing to go with him.

Att. Gen. You say all were on shore, and all might have gone up into the Country; pray what Constraints were any of you under?

Ign. *Pell*. Sir, none; when we left *Top-sail-Inlet*, it was with a Design to go *St. Thomas's* for the Emperor's Commission to go against the *Spaniards*; but the first Vessel we saw we gave Chace to, and came up with her.

Mr. *Hepworth*. What did you take out of that Vessel?

Ign. *Pell*. We took some Provisions out of her. After we had discharged her, we saw another, which we chased and took.

Att. Gen. Were all these Men aboard and in Arms at the same time?

Ign. *Pell*. Yes, Sir, all were in Arms: So after we had taken some Provisions out of her, then we discharged her. Next Day we saw two Sloops bound to *Bermuda* which we took. The next Day we gave Chace to another, and about Seven or Eight of the Clock we came up with them.

J. Trott. I suppose you were always ready for an Engagement; so that they had their Arms always in Order.

Ig. Pell. I know nothing to the contrary.

J. Trott. Was Tucker there in particular.

Ig. Pell. He was, to be sure.

J. Trott. Go on.

Ig. Pell. Then we gave Chace to a Ship bound and we came up with her, in which were some Negroes. We left three Negroes on board, and two White Men, and sent three Hands from the *Revenge*: But we seeing two Sloops more we stood after them, and the other turn'd Tail and we never saw them more: So we came up with the Sloop, out of which we took thirty Barrels of Beef, some Butter, and other Provision.

Mr. Hepworth. What did you return in the room of these Goods?

Ig. Pell. Some *Molosses* that we had on board Major Bonnet's Sloop, after we had discharged these Sloops. Next Day we took a Ship and a Scooner, which Major Bonnet took with him.

Mr. Hepworth. Did you take no plunder out of those?

Ig. Pell. The chief was Provisions. Then we failed in company; and the next Day we came to the Capes of *Virginia*, where we met with two Vessels bound for *Glasgow* in *Scotland*, out of which we took Provisions and some *Tobacco*. And after we had discharged them we failed for Cape *James*; and after we had been at Anchor some time, we saw a Sloop which was Capt. *Manwareing*: We let down our Dory and sent some Hands on board; and in a little time after they came on board the *Revenge* with Captain *Manwareing*.

Attorn. Gen. Were all the Prisoners on board *Manwareing's* Sloop; or had they all their Arms ready when *Manwareing* was taken?

Ig. Pell. I cannot say that they were all on board; but they had all their Arms ready.

J. Trott. Did they all appear forward and active? Did none of them show themselves dissatisfied or unwilling to act at that time?

Ig. Pell. No, I don't know but one was as forward and as willing to act as the other; all of them had their Arms ready.

J. Trott. Well, how did you proceed after Captain *Manwareing* was taken?

Ig. Pell. Next Day we haled the Scooner a long-side of Captain *Manwareing's* Sloop, and hoisted out several Hogheads of *Molosses*, and put on board the Scooner.

Mr. Hepworth. What became of the Scooner afterwards?

Ig. Pell. After we put *Reeves's* Wife on board, and Captain *Read's* Son, we sent them on shore.

Attorn. Gen. How long was Captain *Manwareing* a Prisoner?

Ig. Pell. About ten Weeks.

Attorn. Gen. Was not there more Goods taken out of *Manwareing's* Sloop? What became of them? Did you not share them?

Ig. Pell. Yes, we shared a little before we came to Cape *Fear*.

Attorn. Gen. Did all the Prisoners at the Bar receive their Shares?

Ig. Pell. Yes, Sir; I know nothing to the contrary.

J. Trott. They did not refuse their Shares none of them did they?

Ig. Pell. No.

Clerk. Have any of you any Questions to ask the King's Evidence? *Robert Tucker* have you any?

Prisoner. No, Sir.

Clerk. *Edward Robinson*, have you?

Prisoner. No, Sir.

Mr. Hepworth. May it please your Honours, we will proceed to call another Evidence.

Clerk. Call Capt. *Thomas Read*; who appeared and was sworn.

Mr. Hepworth. Capt. *Read*, please to look upon the Prisoners at the Bar, if you know them.

Capt. *Read*. I know them all very well.

Mr. Hepworth. Please to give an Account to the Court how you was taken, and also of the taking of Capt. *Manwareing*.

Capt. *Read*. The Sloop *Revenge* was at an Anchor, and the Scooner lay a long-side of her. I was then a Prisoner on board the Sloop *Revenge*. In the Evening we saw a Sloop coming into the Bay, and Major *Bonnet* sent off five Hands with the Dory; and about an Hour after they came on board the *Revenge* and brought Capt. *Manwareing*. After they brought him on board, Major *Bonnet* demanded his Papers, and he gave them to him. He asked him from whence he came? He answered from *Antegoa*, and bound for *Boston*. He ask'd him what he had on board? He told him: But it being Night, he said but little more to him: Next Morning they brought the Sloop and haled along-side the Scooner; and I saw them hoist out several Hogheads out of the Sloop and put on board the Scooner. And I heard Major *Bonnet* say the next Day, that there were twenty one Hogheads; and that he had ordered Pitch and Tar to be put on board the Sloop, and in the Evening they took the Forefail and Mainfail of the Scooner, and Sailed for Cape *Fear*.

J. Trott. You look upon all those Men as belonging to Major *Bonnet*, and they were all active in the taking of *Manwareing*?

Capt. *Read*. I did not see but one acted as the other did.

J. Trott. You did not look upon them to be Prisoners, like you and your Men?

Capt. *Read*. No, Sir.

J. Trott. Do you know any thing of their *sharing*? Did they all take their Shares?

Capt. *Read*. I know nothing of that? for we were all in the Round-House, and were not admitted among them at that time.

Mr. Dean. Did you see them have their Shares each of them?

Capt. *Read*. I will not say I saw them have every Man his particular Share; but they were all together when they did share.

Clerk. Would any of you ask the King's Evidence any Question?

Prisoners. We desire nothing but that he would speak the Truth.

Mr. Hepworth. May it please your Honours, we shall proceed to call another Evidence, which is Capt. *Peter Manwareing*.

Clerk. Call Capt. *Peter Manwareing*. Who appeared and was sworn.

Mr. Hepworth. Captain *Manwareing*, do you know the Prisoners at the Bar?

Capt. *Manwareing*. I know them very well.

Mr. Hepworth. Please to give the Court an Account of your being taken by them.

Capt. *Manwareing*. When they came on board us we were at an Anchor. About Eight or Nine
of

of the Clock in the Evening we saw the Canoo coming: I ordered my Man to hale them. He asked from whence they came, and what Sloops they were? They answered, Capt. *Thomas Richards* from *St. Thomas's*, and Capt. *Read* from *Philadelphia*. So we were glad to hear it; so hoped all was well. But as soon as they came up the Shrowds they clapp'd all Hands to their Cutlasses. Then I saw we were taken: And I said, Gentlemen, I hope as you are *Englisbmen*, you'll be merciful, for you see we have nothing to defend our selves. They told us they would if we were Civil. So I was ordered on board the *Revenge* with two of their Men. So when I came on board, Major *Bonnet* desired me to come under the Auning. He demanded my Papers. I gave them to him. So he told me I must lie as well as I could. Next Day Morning *Robert Tucker* came to me, and asked me what I had on board? and told me if I did not tell the Truth, it should be the worse for me. I told him I had some Molosses, Sugar, and Rum. Then he asked me concerning my Passengers, what Money they had. I told him I never examined Passengers what Money they had. So then Major *Bonnet* ordered them to come and lie along-side the Scooner; but what was done till then on board my Sloop I cannot tell. But then they took out the Molosses and the Rum and put on board the Scooner.

Attorn. Gen. How did they behave themselves with respect to your self afterwards?

Capt. Manwareing. They were civil to me, very civil: But they were all very brisk and merry, and had all Things plentiful, and were a making Punch and drinking.

Clerk. Would any of you the Prisoners ask the King's Evidence any Questions?

They ask no Questions.

Mr. Hepworth. Please your Honours, we will proceed to call another Evidence.

Clerk. Call *James Killing*, Capt. *Manwareing's* Mate. Who appeared, and was sworn.

Mr. Hepworth. Do you know the Prisoners at the Bar?

James Killing. Yes, Sir, I know them all very well.

Mr. Hepworth. Please to give the Court an Account of the taking Captain *Manwareing's* Sloop.

James Killing. The thirty first of July between Nine and Ten of the Clock, there running a strong Tide at Ebb, we came to an Anchor about fourteen fathom of Water near Cape *James*. In about half an Hour's time I perceived something like a Canoo: So they came nearer. I said here's a Canoo a coming; I wish they be Friends. I haled them; and ask'd from whence they came? They said Capt. *Thomas Richards* from *St. Thomas's*, and Capt. *Thomas Read* from *Pensylvania*. They ask'd me from whence we came? I told them from *Antegoa*. They said we were welcome. I said they were welcome, as far as I new. So I ordered the Men to hand down a Rope to them. So soon as they came on board they clapp'd their Hands to their Cutlasses; and I said we are taken. So they curs'd and swore for a Light. I ordered our People to get a Light as soon as possible. So they ordered our Captain immediately to go on board the *Revenge*; and accordingly was sent with two of their own Hands; and I saw him no more that Night. So when they came into the Cabin, the first thing they begun with was the Pine-Apples, which they cut down with their Cutlasses.

They ask'd me if I would not come and eat along with them? I told them I had but little Stomach to eat. They ask'd me why I looked so melancholy? I told them I looked as well as I could. They asked me what Liquor I had on board? I told them some Rum and Sugar. So they made Bowls of Punch, and went to drinking of the *Pretender's* Health, and hoped to see him King of the *Englisb* Nation; Then sung a Song or two. Next Morning they ordered more Hands on board the Sloop, and so came and lay long-side the Scooner; after that they hoisted out several Hogshheads of Molosses, and several Hogshheads of Rum, and put on board the Scooner, and took several Barrels of Pitch and Tar and put on board the Sloop; and I happened to go down into the Cabin, and *Robert Tucker* came to me, and told me I had no business there, but was better go forward and work among the rest of the Men. So I went forward, and asked who that was? They told me that was their Father. In the after-part of the Day two of *Bonner's* Men were order'd to the Mast to be whipt, and I was threaten'd if I did not confess all I knew. Then *Robert Tucker* came to me and told me I must go along with them. I told him I was not fit for their Turn, neither were my Inclinations that way. After that Major *Bonnet* himself came to me, and told me I must either go on a Maroon Shore, or go along with them, for he design'd to take the Sloop along with him. That Evening between Eight and Nine we were ordered to set sail, but whither I knew not. So we sailed out that Night, and I being weary with the Fatigue, went to sleep; and whether it was with a Design or not I cannot tell, but we fell to Leeward of the *Revenge*; and in the Morning Major *Bonnet* took the Speaking Trumpet, and told us if we did not keep closer he would fire in upon us and sink us. So then we proceeded on our Voyage till we came to Cape *Fear*.

J. Trott. Have you done with your Evidence?

J. Killing. Yes.

Clerk. Would any of you Prisoners ask the King's Evidence any Questions?

No Questions asked by the Prisoners.

J. Trott. You the Prisoners at the Bar stand charged with *Felony* and *Piracy* committed on a certain Sloop belonging to Capt. *Peter Manwareing*. The Evidences have proved it home upon you; the Boatswain tells what old Offenders you were, and that you were with *Thatch* off this Bar, and that you were at the taking several Vessels after you left *Top-sail-Inlet*; and all the Evidences prove the same; so that it appears all of you took up with this wicked Course of Life out of Choice: Now what Evidences have you to come in on your behalf? or what have you to say in your Defence? Now is your time to speak what you have to say.

Clerk. *Robert Tucker*, what have you to say?

Robert Tucker. After Capt. *Thatch* had taken what we had and left us, Major *Bonnet* came and told us that he was going to *St. Thomas's* for the Emperor's Commission, if there was any to be had.

J. Trott. Pray, if you were bound to *St. Thomas's*, what did you do at the Cape of *Virginia*? What business had you there?

Robert Tucker. We had but little Provision on board.

J. Trott. So you went and met with some by the way.

Clerk.

Clerk. Edward Robinson, what have you to say ?

Edward Robinson. When Capt. *Thatch* left us it was on a Marroon Island, and Major *Bonnet* came and told me he was going to *St. Thomas's*, and we might go with him.

J. Trott. Was not you one of them that was off this Bar with *Thatch* ?

Edw. Robinson. Yes.

J. Trott. Why did you not come on shore then ?

Edw. Robinson. I would have come on shore but Capt. *Thatch* would not give me leave. I was with Mr. *Wragg*, and told him I would go on shore if I had Liberty.

J. Trott. Was you one of the five that came up to Town ?

Edw. Robinson. No.

Clerk. Neal Paterfon, what have you to say in Defence of yourself ?

N. Paterfon. *Thatch* came on board and carried away fourteen of our best Hands, and marrooned twenty five of us on an Island ; and Major *Bonnet* came and told us he was minded to go to *St. Thomas's*, and if there were any Commissions from the Emperor, to get one, and go a privateering against the *Spaniards* ; so I was willing to go with him, and when I was on board, he forced me to do what he pleas'd, for it was against my Will.

J. Trott. Did not *Thatch* carry away your Money and what you had besides of Goods ?

N. Paterfon. Yes.

Att. Gen. Was you not all ashore when you receiv'd the Act of Grace ?

N. Paterfon. Yes, Sir.

Attorn. Gen. Why had you not continued ashore ? Why did you join with *Bonnet* ? Or who forc'd you to it ?

N. Paterfon. But, Sir, it was in a strange Land, and I had no Money, nor nothing left, and I was willing to do something to live ; but it was against my Will to go a pirating.

Judge Trott. If you were forc'd and took only Provisions, pray how did you come to share so much Money and Goods afterwards ? You say *Thatch* carried away what you had before.

N. Paterfon. I could not hinder the rest from doing what they pleas'd ; but it was contrary to my Inclination.

Cl. William Scot, what have you to say ?

W. Scot. When we left *Topfail-Inlet*, it was to go to *St. Thomas's* ; and I asked whether there was Provisions on board ? They told me there was enough, which was not above ten or eleven Barrels.

Judge Trott. So you took it where you could find it, because you had it not of your own : But pray what did you with so much Moloffes, which was neither fit to eat or drink ?

W. Scot. What I did, was to keep me from perishing ; but it was not in my Power to hinder the rest.

Cl. Job Bayley, what have you to say ?

Job Bayley. When Capt. *Thomas* or Major *Bonnet* was ready to sail, I went aboard, and I asked whether they had Provisions on board ? They told me they had : But in a few Days it was all spent, and then I was forc'd to do as the rest did.

Judge Trott. But why did you not do as Capt. *Manwareing* and his Men did ? You see they did not act as you did.

Job Bayley. Capt. *Manwareing* was not taken then.

Judge Trott. But how came you to join with them afterwards ? And pray what made you fight against Col. *Rbett*, when he came out with lawful Authority to you ?

Job Bayley. We thought it had been a Pirate.

Judge Trott. And so one Pirate might fight with another. But how could you think it was a Pirate, when he had King *George's* Colours ?

Att. Gen. May it please your Honours, and you Gentlemen of the Jury, the Evidences have plainly prov'd, that all the Prisoners at the Bar were at the taking of Capt. *Manwareing's* Sloop, that they all consented to, and all were active in it, and all receiv'd their Shares ; so that I think it hath been plainly prov'd home upon them.

Judge Trott. Gentlemen of the Jury, the Prisoners at the Bar all stand indicted for *Felony* and *Piracy* committed on a Sloop belonging to Capt. *Peter Manwareing*, as it is expressed in the *Indictment*. The *Boatswain* tells us what old Offenders they were before they went to *Topfail-Inlet* ; that they were at the taking of no less than *thirteen* Vessels ; and that in particular they were at the taking of Capt. *Manwareing*. Then comes Capt. *Read*, and he was taken before Capt. *Manwareing*, and was then a Prisoner on board the Pirate Sloop, and he tells you, they all appear'd in Arms, and that he did not look upon them as Prisoners, or under Constraint, but of the same Company ; and he tells you he saw them take Capt. *Manwareing*, and that he saw them take out the Goods, as is mentioned in the *Indictment*, out of *Manwareing's* Sloop. Then comes Capt. *Manwareing* himself, and he says all the Goods mention'd in the *Indictment* were taken out, and that they shar'd these Goods among themselves. Then comes *Killing the Mate*, and he proves the same, and particularly *Tucker*, he was so forward, that he told them, if they did not tell the Truth, it should be the worse for them : And *Paterfon* was so active, that he was for having them brought to the Gun to make them confess ; and that all the rest had their Arms ready, and all had their Shares : So that I think the Evidences have fully prov'd the *Indictment* upon them, and that it is very plain and home against them. They plead indeed, that they were forc'd and constrain'd to go, but give no Proof of it ; and therefore what Constraint any of them appears to be under, I shall leave to your Considerations : Tho' I think the Evidence is very plain and clear, yet I shall not pretend to direct your Judgments. I shall only remark to you what the Wise Man saith, that *he that justifieth the Wicked, as well as he that condemneth the Just, even both are an Abomination to the Lord*.

Then an *Officer* was sworn to keep the *Jury*.

And about *two* Hours after the *Jury* return'd, and gave in their *Verdict*.

Cl. Gentlemen, answer to your Names *Timothy Bellamy*.

Timothy Bellamy. Here, &c.

Cl. Are you all agreed of your *Verdict* ?

Jury. Yes.

Cl. Who shall say for you ?

Jury. The Foreman.

Cl. Robert Tucker, hold up thy Hand (which he did.) How say you ? Is he guilty of the *Piracy* whereof he stands indicted, or not guilty ?

Foreman. Guilty.

Cl. What Goods and Chattels, &c.

Foreman. None that we know of.

Cl. Then hearken to your Verdict, as the Court hath recorded it. You say that *Robert Tucker* is guilty of the *Piracy* whereof he stands indicted, and that he had no Goods or Chattels, &c.

Fury. Yes.

And the Jury also found *Edward Robinson*, *Neal Paterfon*, *William Scot*, and *Job Bayley*, guilty.

Cl. Marshal, look to your Prisoners.

THEN the Court proceeded to the 'Trial of *John William Smith*, *Thomas Carman*, *John Thomas*, *William Morrison*, *William Livers* aliàs *Evis*, *Samuel Booth*, *William Hewet*, and *John Levit*, for the aforesaid Fact, in *piratically* taking the said Sloop *Francis*, Capt. *Peter Manwareing*, Commander.

Cl. Set *John William Smith*, *Thomas Carman*, &c. to the Bar.

Then the Petit Jury were called over.

Clerk. You the Prisoners at the Bar: These good Men that were called last, and have here appeared, are those that shall pass between our Sovereign Lord the King and you, upon your Lives and your Deaths; therefore if you or any of you will challenge them or any of them as they come to the Book to be sworn, and before they be sworn, you may, and you shall be heard.

Then the Jury were sworn, whose Names are as followeth.

<i>Samuel Prioleau</i> , Foreman.	<i>Henry Gennelack.</i>
<i>John Hodgson.</i>	<i>John Jeffers.</i>
<i>Garrard Vanvilsen.</i>	<i>Charles Marche.</i>
<i>Robert Harvey.</i>	<i>John Grimal.</i>
<i>Joshua Marriner.</i>	<i>Benjamin Griffin.</i>
<i>Thomas Fairchild.</i>	<i>Joseph Massey.</i>

Then the usual Proclamation for Information was made. And the Prisoners being bid to hold up their Hands, the Clerk charged the Jury with them thus.

Cl. You Gentlemen of the Jury that are sworn, look upon the Prisoners, and hearken to their Charge.

Then the *Indictment* was read as followeth.

THE Jurors for our Sovereign Lord the King, do upon their Oaths present, That *Daniel Harriot*, late of *Jamaica*, *Mariner*; *John William Smith*, late of *Charles-Town*, *Mariner*; *Thomas Carman*, late of *Maidstone in Kent*, *Mariner*; *John Thomas*, late of *Jamaica*, *Mariner*; *William Morrison*, late of *Jamaica*, *Mariner*; *William Livers* aliàs *Evis*, late of *Dublin*, *Mariner*; *Samuel Booth*, late of *Charles-Town*, *Mariner*; *John Levit*, late of *North Carolina*, *Mariner*; and *William Hewet*, late of *Jamaica*, *Mariner*; the Second Day of August, &c. as before.

Cl. Upon this Indictment they have been arraigned, &c. as before.

The Witnesses against the Prisoners were *Ignatius Pell*, the Boatswain, *Capt. Thomas Read*, *Capt. Peter Manwareing*, and *Mr. James Killing* his Mate, who all gave the same Evidence against these as against the others that were tried before.

Cl. Will any of you Prisoners ask the King's Evidence any Questions?

No Questions asked by the Prisoners.

Judge Trott. You the Prisoners at the Bar, you have heard how fully the Witnesses have charged the Facts upon you: Now what you have to say in your Defence, I shall be ready to hear you.

Cl. John William Smith, if you have any thing to say, you have Liberty to speak.

John William Smith. When we left *Topfail-Inlet*, I knew nothing but that we were going to *St. Thomas's*; but after we were out, they hoisted the bloody Flag: But I did before believe we were going to *St. Thomas's*.

Att. Gen. Did you bear Arms on board of Major *Bonnet*?

Smith. Yes, Sir.

Att. Gen. Was you at the taking all those Vessels?

Smith. Yes, Sir; but it was against my Will.

Cl. John Carman, what have you to say?

Carman. As for what I did on board *Captain Thatch*, I was forced; but when I came to *North Carolina*, I would not have went on board, but *Major Bonnet* shew'd me the Act of Grace; and when I enter'd myself on board, it was to get my Bread, in hopes to have went where I might have had Business; for when we left *Topfail-Inlet*, I had not sign'd the Articles.

Ign. Pell. But you gave the Captain your Word that you would.

Carman. When I was left in the Sloop, I endeavour'd to make my Escape with the Sloop.

Judge Trott. So, I find you wanted a Vessel of your own.

Carman. No, but to have got one from them: But I could not.

Att. Gen. This confirms what the King's Evidence proves against them.

Cl. John Thomas, what have you to say?

Thomas. We had nothing left us, and we were on a *Marroon Island*, and *Major Bonnet* he came and told me I might go with him; but it was against my Will to bear Arms.

J. Trott. Was not you off this Bar?

Thomas. Yes, but I was forced to it.

Mr. Hepworth. And was you not at the taking of *Capt. Manwareing's* Sloop?

Thomas. Yes.

Mr. Hepworth. And had you not your Share?

Thomas. Yes, Sir.

J. Trott. And yet you say you was not willing to go a pirating.

Clerk. William Morrison, what have you to say?

Morrison. *Capt. Thatch* had run the Sloop ashore, and *Major Bonnet* went up to the Governor for the Act of Grace; and when he returned he told me I might go to *St. Thomas's*; and after that he said Provisions would fall short, and he should go on the Coast of *Virginia* to see for some.

J. Trott. But was that your Manner of going for a Commission, to take thirteen Vessels by the way? But was you not at the taking *Manwareing's* Sloop? And had you not your Share?

Cl. William Livers aliàs *Evis*, what have you to say?

Evis. After we came to *North Carolina*, and *Capt. Thatch* had lost the Ship, *Major Bonnet* told me he would give me my Passage to *St. Thomas's*, and he would endeavour to get a Ship there, and I might go with him a privateering: But when we came to Sea, I found how it was, and I would not consent for a long time; but at last they forced me to it.

J. Trott.

J. Trott. But you had your Share as well as the rest.

Evis. They forced me to do what I did.

Clerk. Samuel Booth, what have you to say?

Booth. As we came from *Topfail-Inlet* we met with the Sloop *Revenge*; they boarded us and took us, and I was a Prisoner three Weeks before I consented; and then they order'd me to the Gun before I would consent.

J. Trott. But you had your Share of Capt. *Manwareing's* Sloop.

Booth. But my Inclinations was not that way.

Clerk. William Hewet, what have you to say?

Hewet. I design'd to go to *St. Thomas's* with Major *Bonnet*, for he told me he was bound thither; so I was willing to go with him.

Clerk. John Levit, what have you to say?

He makes no Defence.

Attorn. Gen. May please your Honours, the Boatswain and all the Evidences prove the Indictment upon each of the Prisoners, that they were all at the taking of Capt. *Manwareing's* Sloop, and all had their Shares.

J. Trott. Gentlemen of the Jury, I think I need say but little on this matter: they all confess the Fact of which they stand indicted. Some of them were old Offenders, and all of them were proved to be at the taking of Capt. *Manwareing's* Sloop, and all took their Shares: so that I think the Fact is very fully and clearly proved upon them. But I shall leave that to your Considerations, and I pray God direct you to give a true Verdict.

Then an Officer, was sworn to keep the Jury.

Who after they had consider'd of their Verdict, return'd and found *John William Smith, Thomas Carman, John Thomas, William Morrison, William Livers* aliàs *Evis, Samuel Booth, William Hewet,* and *John Levit,* guilty.

Then the Court adjourn'd to Friday Morning.

Friday, October the 31st, 1718.

THE Court proceeded to arraign *William Eddy* aliàs *Nedy, Alexander Ammand, George Rofs, George Dunkin, Thomas Nichols, John Ridge, Matthew King, Daniel Perry,* and *Henry Virgin,* upon the following Indictment, for piratically taking Capt. *Manwareing*.

The Jurors for our Sovereign Lord the King do upon their Oaths present that *William Eddy* aliàs *Nedy, late of Aberdeen, Mariner; Alexander Annand, late of Jamaica, Mariner; George Rofs, late of Glasgow, Mariner; George Dunkin, late of Glasgow, Mariner; Thomas Nichols, late of London, Mariner; John Ridge, late of London, Mariner; Matthew King, late of Jamaica, Mariner; Daniel Perry, late of Guernsey, Mariner; and Henry Virgin, Mariner, late of Bristol; the second Day of August, in the fifth Year of the Reign of our Sovereign Lord King George, by the Grace of God of Great Britain, France, and Ireland, King, Defender of the Faith, &c. as before.*

Who all pleaded *Not Guilty*.

Then the Court proceeded on their Trial.

And the Jury were sworn, whose Names are as followeth.

Timothy Bellamy, Foreman, &c. as before.

The same Witnesses against these, viz.

Ignatius Pell, the Boatswain.

Capt. *Thomas Read.*

Capt. *Peter Manwareing.*

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And Mr. *James Killing,* his Mate.

Who all gave the same Evidence against these Prisoners as against the others, excepting *Thomas Nichols.*

Capt. *John Stevenson,* one of the Captors, being sworn, declared, that *George Rofs,* the Gunner of the Pirate's Sloop, was for blowing up the said Sloop, and that he acknowleg'd he was to have set fire to the Train, and that he would have done it.

As to *Thomas Nichols:*

Ignatius Pell declared, that *Nichols,* after he came to Sea, was very much discontented; but Major *Bonnet* said he would force him to go. However, he would not join with the rest of the Men, but always separated himself from the Company.

Capt. *Read* said, that *Nichols* behaved himself different from the rest, and did not join with them.

Capt. *Manwareing* said, that *Nichols* when he was aboard his Sloop said, *he did hope it would be over with him in a little time, for he hoped to get clear of them,* and looked very melancholy, and never joined with the rest in their Cabals when they were drinking: and when Major *Bonnet* sent for him he refused to go, and said, *he would die before he would fight.*

Clerk. Will any of you ask the King's Evidence any Questions?

Nichols. Mr. *Killing,* did you never hear me say I would leave that Course of Life?

J. Trott. Did you hear him say so?

Killing. When he came on board he told me, *he would give the whole World, if he had it, to be free from them:* and when he was on board and Major *Bonnet* sent for him, he refused to go on board the *Revenge,* till he sent to fetch him by force, and then he told me *he would not fight if he did lose his Life for it:* and he was not with them when they shared; and he told them *he hoped he should not be long with them;* and he never was at their Cabals as the rest were.

J. Trott. He seems to be under a Constraint indeed, and therefore must be taken into Consideration.

Clerk. Will any of you Prisoners ask any more Questions?

None asked.

J. Trott. If any of them have any thing to say, they now have their liberty to speak.

Clerk. *William Eddy* aliàs *Nedy,* what have you to say?

Nedy. I never was on board Capt. *Manwareing's* Sloop nor had no hand in it.

J. Trott. You was one of *Bonnet's* Crew.

Nedy. I never acted in it.

J. Trott. That is no Excuse; it is not such or such a one that goes on board only, but those that stand ready to assist them, have as great a hand in the Fact as the other; for Men would not be taken by two or three, if they had no more help; so that the whole Crew are equally concern'd at such a time.

Clerk. *Alexander Ammand,* what have you to say?

Ammand. When we were at *Topfail-Inlet,* Major *Bonnet* told me he would go and get a Clearance for the Sloop, for he design'd to go to *St. Thomas's* for a Commission, and I might go with him: so I suspected nothing till we were out at Sea, and then I could not help it.

J. Trott. But why did you not declare against it then, and so not join with them?

Annand. I was but one Man, and a Stranger, and I was afraid I should have lost my Life.

Clerk. George Rofs, what have you to say?

Rofs. I belonged to Sloop, and we met with Major *Bonnet* and was taken by him: next Day two of the Men told me I must go with them. I answer'd them, No; I did not design to leave the Sloop: but they told me I must; and they told me if I would but consent I should have any thing. And a little after Capt. *Manwareing* was taken.

J. Trott. And you had your Share of *Manwareing's* Goods?

Rofs. Yes.

J. Trott. So, tho' you were unwilling at first, you was willing afterward, and also fought Col. *Rbett* when he came out against you.

Rofs. They told me it was Capt. *Thatch*; for my part I did not know who *Thatch* was.

J. Trott. But pray what Authority had you to fight any body?

Clerk. George Dunkin, you may speak what you have to say.

Dunkin. After we were taken at the Capes of

Major *Bonnet* came to me and told me I must go along with them. But I told him I could not leave the Vessel. He told me I must.

J. Trott. But why did you join with them afterwards in taking your Share of *Manwareing's* Goods? and why did you fight Col. *Rbett* and his Men? If you had not fought, you might have saved the Lives of 12 or 14 Men.

Dunkin. Major *Bonnet* declared, if any one refused to fight he would blow his Brains out.

Thomas Nichols made his Defence before.

Clerk. John Ridge, what have you to say?

Ridge. After we came to *Toppsail-Inlet*, and the Ship was lost, Major *Bonnet* came and told me that he would go and accept the Act of Grace, and get a Clearing for the Sloop, and go to *St. Thomas's* for a Commission, and he expected we would go with him; so when he was gone up to the Country we rigged the Sloop; so the Quarter-Master, the Boatswain, and he agreed together; but for my part I knew nothing what their Design was; and so the first Vessel we saw they took: but it was my Resolution to go away by the first Opportunity.

Clerk. Matthew King, what have you to say?

King. When we were at *Toppsail-Inlet*, Captain *Thatch* marooned us on an Island, and left us; and Major *Bonnet* told us he would go to *St. Thomas's*; but the first Prize we met with we took, having but little Provisions on board.

J. Trott. How could you think of going to *St. Thomas's* without Provisions?

Attor. Gen. But the Boatswain says there were Provisions on board; several Barrels of Flower, and several Barrels of Beef and Pork.

J. Trott. What need had you then to go a pirating.

King. I did not know it 'till we were out.

J. Trott. *Bonnet* had not above five Hands, and there were of you twenty-five; why would you be all commanded by them? You had no need to yield to them.

Clerk. Daniel Perry, what have you to say?

Perry. When Capt. *Thatch* left us it was on a Maroon Island, and Major *Bonnet* came and told us he had the Act of Grace, and so we might go with him.

J. Trott. Is that all you have to say? You knew *Thatch* and *Bonnet* were both *Pirates*, and why would you with go them again?

Clerk. Henry Virgin, what have you to say?

Virgin. Major *Bonnet* ordered about thirty Hands to be ready, and in a little time we were ordered on board; and when we were about an hundred Leagues from Land, he asked if there were any that would go a Marrooning; and I believe there were two or three that promised him they would, tho' I did not.

J. Trott. But had you no Opportunity to come from them?

Virgin. If we had known any thing of the Act of Grace when we were off this Bar, we had come ashore. I went to make my Escape, and leapt into the Water, and had like to have been drown'd.

J. Trott. How many Vessels have you been at the taking and burning of do you think?

Virgin. I believe about three.

Mr. *Hepworth.* He was with them at the Bay of *Honduras*, and all along.

Virgin. But I never gave my Consent, for Capt. *Thatch* never asked any of us.

J. Trott. Would any of the *Prisoners* say any more? if they will I am ready to hear them.

Attor. Gen. May it please your Honours, and you Gentlemen of the Jury, these three, *Nichols*, *Dunkin*, and *Ridge*, seem to make some Defence. As for *Nichols*, he was with them when *Manwareing* was taken; and the *Mate* tells us, that he separated himself from the rest of the Cabal; and when they shared, he told them they might do as they pleased with his Share, for he hoped he should not be with them long; so that it appears that he separated himself from the rest of the Company from the very first: these things therefore ought to be consider'd. And as for *Dunkin*, he looked upon himself as a Prisoner at first; but the Boatswain indeed says he had his Shares. And as for *Ridge* he said, that he resolved to make his escape. For all the rest they seem to be equally guilty.

J. Trott. Gentlemen of the Jury, the Prisoners at the Bar stand indicted for *Felony* and *Piracy* committed on a Sloop belonging to Capt. *Peter Manwareing* Commander, and not only did they break and board the said *Manwareing's* Sloop, which was an Act of *Piracy*, but it hath been proved upon them, that they were at the taking of thirteen Vessels after they left *Toppsail-Inlet*. Indeed there are three that have something to say in their Defence, *Nichols*, *Ridge*, and *Dunkin*. As for *Dunkin*, *Pell* says he had his Share, as the rest had: Capt. *Read* looked upon him as a Prisoner, but Capt. *Manwareing* did not. As for *Ridge*, he was at *North Carolina*, and took up with *Bonnet* to go to *St. Thomas's*, and it is possible for a Man to be deceived, for *Pell* declares that they were bound to *St. Thomas's*, at first; and *Killing* the *Mate* declared, that he told him he would free himself from that Course of Life the first Opportunity: so I shall leave this to your Consideration. But for *Nichols*, I think its plain he was under Constraint and Force; for *Pell* himself declares that he would have nothing to do with their Shares, and he did hope that he should not be long with them. Capt. *Manwareing*, and Mr. *Killing* his *Mate*, all confirm the same. And when he was sent for to come on board *Bonnet*, to go out to fight Colonel *Rbett*, he refused to go; and when he was forced to go on board, he said he would die before he would fight; and accordingly went into

into the Hole, and did not fight Col. *Rbett*. So that by the whole Course of the Evidence, I think it is very clear that he was under Constraint and Fear. As to the rest, I think the Proof is full against them; but I shall leave them to your Consideration. You know that as the Innocent must not be condemned, so the Guilty ought not to be acquitted. Remember you have the Lives of these Persons in your Hands; and I pray God direct you to give a true Verdict.

Then an *Officer* was sworn to keep the *Jury*.

Who after they had considered of their *Verdict*, returned, and found *William Eddy* aliàs *Nedy*, *Alexander Annand*, *George Ross*, *George Dunkin*, *John Ridge*, *Matthew King*, *Daniel Perry*, and *Henry Virgin*, Guilty; and *Thomas Nichols*, Not Guilty.

THEN the Court proceeded to arraign *James Robbins* aliàs *Rattle*, *James Mullet* aliàs *Millet*, *Thomas Price*, *James Wilson*, *John Lopez*, and *Zachariah Long*, upon the following *Indictment*, for piratically taking *Capt. Manwareing*.

“ The Jurors for our Sovereign Lord the King do upon their Oath present, that *James Robbins* aliàs *Rattle*, late of *London*, Mariner; *James Mullet* aliàs *Millet*, late of *London*; Mariner; *Thomas Price*, late of *Bristol*, Mariner; *James Wilson*, late of *Dublin*, Mariner; *John Lopez*, late of *Oporto*, Mariner; and *Zachariah Long*, late of the Province of *Holland*, Mariner; the *Second Day of August*, in the *Fifth Year* of the Reign of our Sovereign Lord *George*, by the Grace of God, of *Great Britain*, *France*, and *Ireland*, King, Defender of the *Faith*, &c.

To which *Indictment* *James Robbins* aliàs *Rattle*, *James Mullet* aliàs *Millet*, *Thomas Price*, *John Lopez*, and *Zachariah Long*, pleaded *Not Guilty*. *James Wilson* pleaded *Guilty*.

Then the Court proceeded upon the Trial of those that pleaded *Not Guilty*.

The Jurors were sworn, whose Names are as followeth :

<i>Samuel Proileau</i> , Foreman.	<i>Henry Genelac</i> .
<i>John Hodgson</i> .	<i>John Jeffers</i> .
<i>Garrat Vanvelsin</i> .	<i>Charles Marche</i> .
<i>Lucas Stoutenborough</i> .	<i>John Grimbäll</i> .
<i>Joshua Mariner</i> .	<i>Benjamin Griffin</i> .
<i>Thomas Fairchild</i> .	<i>Joseph Massey</i> .

The *Witnesses* against the *Prisoners* were the above-named.

Ignatius Pell, the Boatwain.

Capt. Thomas Read.

Capt. Peter Manwareing.

And Mr. *James Killing* his Mate.

Who all gave the same *Evidence* against these *Prisoners*, as against the others that were tried before.

Clerk. You, the *Prisoners* at the Bar, have heard what the King's *Evidence* have sworn against you. Now is your time to make your *Defence*.

Clerk. *James Robbins*, what have you to say?

Robbins. I was on board the *Revenge*, and then I was sent on board of *Capt. Read's* Sloop, and was there four Days; and then was sent on board the *Revenge* again: For I was about to run away, if I had an Opportunity.

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Clerk. *James Mullet*, what have you to say?

Mullet. When we left *Topsail-Inlet*, it was to go to *St. Thomas's*; so *Major Bonnet* told me: And I being on a *Marroon Shore*, I was willing to go with him.

Clerk. *Thomas Price*, what have you to say?

Price. *Capt. Thatch* left us on a *Marroon Shore*, and had nothing left; and *Major Bonnet* told me I might go with him to *St. Thomas's*; but I designed not to go a pirating.

J. Trott. Had you not your Share?

Price. I was forc'd to do as I did when I was on board.

Clerk. *John Lopez*, what have you to say?

Lopez. I was at the Bay of *Honduras*, and was taken by *Thatch* and carried to *Topsail-Inlet*, and there he marrooned me on an Island, and came with five Hands and carried all away that we had and left us. And *Major Bonnet* told me he would go to *St. Thomas's*, and I might go along with him. I told *Capt. Manwareing*, I would not go a pirating, for I did not like it.

J. Trott. Did you not share a little before you came to *Cape Fear*?

Lopez. Yes; but it was against my Will.

J. Trott. *Capt. Manwareing*, do you know any thing of this Man?

Capt. Manwareing. All as I know, he told me he had a *Wife and Children*; and that he did not like that *Course of Life*. This is all I can say of him.

Clerk. *Zachariah Long*, what have you to say?

Long. When we sailed, I knew nothing but that it was to go to *St. Thomas's*, till afterwards; and then I must do as the rest did.

Then the *Judge* summ'd up the Evidence.

And an *Officer* was sworn to keep the *Jury*.

Who after they had considered of their *Verdict* returned, and found the above-said *James Mullet* aliàs *Millet*, *Thomas Price*, *John Lopez*, and *Zachariah Long*, Guilty; and *James Robbins* aliàs *Rattle*, Not Guilty.

Then the Court adjourn'd till *Saturday Morning*.

Saturday, November the First, 1718. the Court met according to *Adjournment*.

THEN the Court proceeded to arraign *Edward Robinson*, *Robert Tucker*, *William Scot*, *Job Bayley*, *Neal Paterson*, *John William Smith*, *Thomas Carman*, and *John Thomas*, upon the following *Indictment*.

“ The Jurors for our Sovereign Lord the King do upon their Oath present, that *Stede Bonnet* aliàs *Edwards*, aliàs *Thomas*, late of the Island of *Barbadoes*, Mariner; *David Heriot*, late of the Island of *Jamaica*, Mariner; *William Scot*, late of *Aberdeen*, Mariner; *Job Bayley*, late of *London*, Mariner; *Edward Robinson*, late of *New-Castle upon Tyne*, Mariner; *Robert Tucker*, late of the Island of *Jamaica*, Mariner; *Neal Paterson*, late of *Aberdeen*, Mariner; *John William Smith*, late of *Charles-town*, Mariner; *Thomas Carman*, late of *Maidstone in Kent*, Mariner; and *John Thomas*, late of the Island of *Jamaica*, Mariner; the *thirty first Day of August*, in the *fifth Year* of the Reign of our Sovereign Lord *George*, by the Grace of God

“ of God of *Great Britain, France, and Ireland,*
 “ King, Defender of the Faith, &c. by Force,
 “ and Arms, &c. upon the High Sea, in a cer-
 “ tain Place called *Cape Fear*, in the Latitude of
 “ Thirty-four, or thereabouts, and within the
 “ Jurisdiction of the Court of *Vice-Admiralty* of
 “ the Province of *South Carolina*, did piratically
 “ and feloniously set upon, board, break, and
 “ enter a certain Merchant-Sloop, called the
 “ *Fortune, Thomas Read*, Commander, then be-
 “ ing a Sloop of certain Persons (to the Jurors
 “ aforesaid unknown) and then and there pira-
 “ tically and feloniously did make an Assault in
 “ and upon the said *Thomas Read*, and other
 “ his Mariners, (whose Names to the Jurors
 “ aforesaid are unknown.) In the same Sloop,
 “ against the Peace of God, and of our now
 “ Sovereign Lord the King, then and there be-
 “ ing, piratically and feloniously, did put the
 “ aforesaid *Thomas Read*, and others his Mari-
 “ ners of the same Sloop, in the Sloop aforesaid,
 “ then being in corporal Fear of their Lives,
 “ then and there in the Sloop aforesaid, upon
 “ the *High Sea*, in the Place aforesaid, called
 “ *Cape Fear*, in the Latitude of Thirty-four, or
 “ thereabouts, aforesaid, in the Sloop aforesaid,
 “ and within the Jurisdiction aforesaid, *piratically*
 “ and *feloniously* did steal, take, and carry away
 “ six Tierces of Bread, of the Value of thirteen
 “ Pounds, current Money of *Pensylvania*; four
 “ Barrels of Bread, of the Value of four Pounds,
 “ like current Money of *Pensylvania*; one Barrel
 “ of Linseed Oil, of the Value of seven Pounds,
 “ like current Money of *Pensylvania*; two Tierces
 “ of *Hams*, of the Value of twenty Pounds, like
 “ current Money of *Pensylvania*; and twenty Bar-
 “ rels of Flower, of the Value of twenty Pounds,
 “ like current Money of *Pensylvania*; six China-
 “ Plates, of the Value of three Pounds, like
 “ current Money of *Pensylvania*; seven Iron-
 “ bound Blocks, of the Value of forty Shillings,
 “ like current Money of *Pensylvania*; ninety
 “ Fathom of Rigging, of the Value of three
 “ Pounds, like Current Money of *Pensylvania*;
 “ the said Pump, with Boxes and Breaks, of the
 “ Value of twenty Shillings, like current Money
 “ of *Pensylvania*; the Goods and Chattels of
 “ certain Persons, (to the Jurors aforesaid un-
 “ known) then and there upon the *High Sea*
 “ aforesaid, in the aforesaid Place, called *Cape*
 “ *Fear*, in the Latitude of thirty-four, or there-
 “ abouts, aforesaid, in the Sloop aforesaid, and
 “ within the Jurisdiction aforesaid; being found
 “ in the aforesaid Sloop, in the Custody and
 “ Possession of the said *Thomas Read*, and others
 “ his Mariners in the same Sloop, from the said
 “ *Thomas Read*, and others his Mariners of the
 “ said Sloop, and from their Custody and Pos-
 “ session, then and there, upon the *High Sea*
 “ aforesaid, in the Place aforesaid, called *Cape*
 “ *Fear*, in the Latitude of thirty-four, or there-
 “ abouts, as aforesaid, in the Sloop aforesaid,
 “ and within the Jurisdiction aforesaid, and
 “ against the Peace of our said now Sovereign
 “ Lord the King, his Crown and Dignity, &c.

Who all pleaded *Not Guilty*.

Then the Court proceeded upon their *Trial*.

The Petit-Jury were sworn, whose Names are
 as followeth.

Timothy Bellamy, Foreman.
George Ducket.
John Rivers.
William Sheriff.
Benjamin Dennis.
Hugh Durfey.

Thomas Chambers.
Daniel Townshend.
John Lee.
Thomas Bee.
John Barton.
Richard Fairchild.

Then the usual Proclamation for Information
 was made. And the Prisoners being bid to hold
 up their Hands, the Clerk charged the Jury with
 them thus.

Clerk. You the Gentlemen of the Jury that are
 sworn, look upon the Prisoners, and hearken to
 their Charge.

Then the Indictment was read, *as before*.

Clerk. Upon this Indictment they have been
 arraigned, &c. *as before*.

Then the Witnesses against the Prisoners were
 called.

Clerk. Call *Ignatius Pell*, the Boatswain.

Who appeared, and was sworn.

Mr. *Hepworth*. Do you know the Prisoners at
 the Bar?

Ign. Pell. Yes, Sir.

Mr. *Hepworth*. Give the Court an Account of
 the taking Capt. *Thomas Read*, and plundering
 of his Sloop.

Ign. Pell. Capt. *Read* was in Company with
 two Vessels more, which we took, but did not
 share, till we came to *Cape Fear*.

Mr. *Hepworth*. Were the Goods mentioned in
 the Indictment taken out?

Ign. Pell. Yes, Sir.

Judge *Trott*. Did all the Prisoners at the Bar
 receive their Shares?

Ign. Pell. Yes.

Clerk. Will any of you ask the King's Evi-
 dence any Questions? *Edward Robinson*, will
 you ask any Questions?

Edw. Robinson. Boatswain, do you not remem-
 ber when we left *Top-sail-Inlet*, it was with a Design
 to go to *St. Thomas's*?

Ign. Pell. I do believe you might think we
 were going to *St. Thomas's*; but the first Vessel
 we saw, we consented to take, and you had your
 Share as well as the rest.

Clerk. *Robert Tucker*, will you ask any Que-
 stions?

Tucker. No.

Mr. *Hepworth*. May it please your Honours,
 we will proceed to call another Evidence.

Capt. *Peter Manwareing* called and sworn.

Mr. *Hepworth*. Do you know the Prisoners at
 the Bar?

Capt. *Manwareing*. I know them all.

Mr. *Hepworth*. Please to give the Court an
 Account of the sharing of Capt. *Read's* Goods at
Cape Fear.

Capt. *Manwareing*. As for taking of Captain
Read, I can say nothing, because he was taken
 by them before I was taken; but when we came
 to *Cape Fear*, they shared what they had.

Judge *Trott*. And had all the Prisoners at the
 Bar their Shares?

Capt. *Manwareing*. I did not see any of them
 refuse; and they were amongst the rest when
 they did share.

Clerk. Will any of you ask the Evidence any
 Questions?

The Prisoners ask no Questions.

Mr. *Hep-*

Mr. *Hepworth*. We will proceed to call another Evidence. Capt. *Thomas Read*, do you know the Prisoners at the Bar?

Capt. *Read*. I know them all.

Mr. *Hepworth*. Please to give the Court an Account of your being taken and plundered by them.

Capt. *Read*. After we were taken, *Robert Tucker* with some others came on board; and then we failed to Cape *Inlopen*, where Capt. *Manwareing* was taken, and after that to Cape *Fear*.

Mr. *Hepworth*. Were those Goods taken out as are mentioned in the Indictment?

Capt. *Read*. Yes, Sir.

Judge *Trott*. Did all the Prisoners receive their Shares?

Capt. *Read*. Yes, I did not see but what they did: They were all together when they shared.

Clerk. Will any of you ask the Evidence any Questions?

Edward Robinson. Capt. *Read*, when did you see me on board your Sloop?

Capt. *Read*. I cannot say I saw you on board; but you were with them when they shared.

Judge *Trott*. If you were not on board the Sloop, you was one of the Crew; and, as I told you before, it's not they only are Pirates that go on board of a Vessel, but they that stand ready to assist are as much Pirates as the other, and are as much concerned in the Fact.

Clerk. Will any of you ask any Questions?

Prisoners. No.

Mr. *Hepworth*. We will proceed to call another Evidence. *James Killing*, do you know the Prisoners at the Bar?

Killing. Yes, Sir.

Mr. *Hepworth*. Give the Court an Account of what you know of the taking of Capt. *Read*.

Killing. I can say but little to the Matter till we came to Cape *Fear*, and there they shared the Goods.

Judge *Trott*. Did you see the Goods taken out?

Killing. I cannot say I saw them all taken out; but I saw them a sharing of them together.

Mr. *Hepworth*. We will call another Evidence.

Francis Griffin, Capt. *Read's* Mate; who was sworn.

Mr. *Hepworth*. Do you know the Prisoners at the Bar?

Griffin. Yes, Sir.

Mr. *Hepworth*. Please to give an Account of the taking the Sloop you belong'd to.

Griffin. After we were taken, *Tucker* and some more came on board, and *Tucker* fell to beating and cutting the People with his Cutlash, and cut one Man's Arm. So then we went to Cape *James* aliàs Cape *Inlopen*, where Captain *Manwareing* was taken, and thence we failed for Cape *Fear*.

Mr. *Hepworth*. Were all these Goods mentioned in the Indictment taken out? (*That Part of the Indictment read.*)

Griffin. Yes, Sir.

Judge *Trott*. Did all the Prisoners take their Shares?

Griffin. I know nothing to the contrary.

Clerk. Will any of you ask the King's Evidence any Questions?

No Questions asked.

Judge *Trott*. You the Prisoners at the Bar, what have you to say in your Defences? I am

now ready to hear you.

Clerk. *Edward Robinson*, what have you to say.

Robinson. I have nothing to say, more than what I have said.

Clerk. *Robert Tucker*, what have you to say?

Tucker. I knew nothing but we were going to *St. Thomas's*, when I engaged with Major *Bonnet*.

Judge *Trott*. You was his Quarter-Master; and you was the Person that cut the Man with the Cutlash, and abused the People.

Clerk. *William Scot*, what have you to say?

Scot. I was never on board Capt. *Read*.

Judge *Trott*. You was never on board! What of that? You was one of the Crew, and consented to it, and had your Share.

Clerk. *Job Bayley* and *Neal Paterfon*, what have you to say?

Prisoners. We have nothing more to say.

Clerk. *John William Smith*, what have you to say?

Smith. It was never my Design to go a pirating; and when I was at Sea, I could not help what others did.

Judge *Trott*. If it was not your Design at first, you afterwards consented to it.

Clerk. *Thomas Carman* and *John Thomas*, what have either of you to say?

Prisoners. We have no more to say, than what we have said.

Att. Gen. May it please your Honours, I think the Evidence have plainly proved the Prisoners at the Bar guilty of the Fact charged upon them in the Indictment; so that they were all equally guilty.

Judge *Trott*. Gentlemen of the Jury, the Prisoners at the Bar stand indicted for *Felony* and *Piracy*, committed on a Sloop belonging to Capt. *Thomas Read*: All the Evidences fully prove the Fact upon them, that they were all equally guilty, and all shared in the Goods and Plunder; but *Tucker* abused the People, and cut one Man with his Cutlash, so that he added Barbarity to his other Crimes. They all pretend they were under Force and Constraint; but it is but a Suggestion of their own, without the least Proof: But there is full Proof of their consenting. But I shall leave them to your Consideration. But the Case is so clear, that I believe you will not be long before you return with your Verdict.

Then an Officer was sworn to keep the Jury.

Who after they had considered of their Verdict, return'd, and found the abovesaid *Edward Robinson*, *Robert Tucker*, *William Scott*, *Job Bayley*, *Neal Paterfon*, *John William Smith*, *Thomas Carman*, and *John Thomas*, Guilty.

THEN the Court proceeded to arraign *William Morrison*, *William Liver's* aliàs *Evis*, *Samuel Booth*, *William Hewet*, *John Levit*, *William Eddy* aliàs *Nedy*, *Alexander Annand*, *George Ross*, *George Dunkin*, and *Thomas Nichols*, upon the following Indictment, for taking Capt. *Read*.

“ The Jurors for our Sovereign Lord the King do upon their Oath present, That *William Morrison*, late of *Jamaica*, Mariner, &c. (as before.)

Who all pleaded *Not Guilty*, excepting *John Levit*, who pleaded *Guilty*.

Then

Then the Court proceeded upon the *Trial* of those that had pleaded *Not Guilty*.

And the Jury were sworn, whose Names are as followeth :

Timothy Bellmay, Foreman, &c. (as before.)

Ign. Pell, one of the Witnesses against the Prisoner, was called and sworn. He, and the rest of the Witnesses in general, gave the same Evidence against these Prisoners, as against the former, only they were more particularly examined as to *Thomas Nichols*, and *George Dunkin*.

Mr. Hepworth. *Ign. Pell*, do you know the Prisoners at the Bar?

Ign. Pell. Yes, Sir, I know them all very well.

Att. Gen. Please to give the Court an Account of the taking and plundering *Capt. Read*; and begin with *Nichols*.

Ign. Pell. *Thomas Nichols* was very much dissatisfied on board, and did not join with the rest of the Company, and would not take the Share, and said *he hoped he should not continue long with them*.

Foreman. Do you know any thing of *Dunkin*? How did he behave himself?

Ign. Pell. I did not see but he was as active as any of the rest, and took his Share as the rest did at *Cape Fear*.

Judge Trott. And had all the Prisoners their Shares?

Ign. Pell. Yes, excepting *Nichols*.

Judge Trott. Were the Goods mentioned in the Indictment taken out of *Read's Sloop*?

Ign. Pell. Yes.

Clerk. Will any of you ask the King's Evidence any Questions?

No Questions asked by the Prisoners.

Mr. Hepworth. We will proceed to call another Evidence. *Capt. Manwareing*, do you know the Prisoners at the Bar?

Capt. Manwareing. I know them all very well.

Mr. Hepworth. Please to give the Court an Account of their sharing *Capt. Read's Goods* at *Cape Fear*; and particularly how *Nichols* behaved himself.

Capt. Manwareing. When *Nichols* was on board my Sloop, he said several Times, *he would get clear of them the first Opportunity, and he hoped it would not be long first*; and when *Major Bonnet* sent for all Hands on board the *Revenge*, he refused to go, till he sent word, *if he would not come, he would make him*; and when he went, he said, *before he would fight, he would die*: And he always kept himself from the Company, and from their Cabals.

Judge Trott. Do you know any thing of *Dunkin*?

Capt. Manwareing. What I can say is, There was some brown Bread upon Deck, and he said, *it was fit for nothing but Negroes to eat*; and I told him, *I wished he might never want it*. So they went, and brought some whiter out of the Hole.

Mr. Hepworth. How did he behave himself?

Capt. Manwareing. I saw nothing but he was as the rest were.

Mr. Hepworth. Would any of you ask the King's Evidence any Questions?

No Questions asked by the Prisoners.

Mr. Hepworth. Please your Honours, we proceed to call another Evidence.

James Killing sworn.

Mr. Hepworth. Do you know the Prisoners at the Bar?

Killing. I know them all very well.

Mr. Hepworth. Please to give the Court an Account of what you know of their taking and plundering *Capt. Read*; and first begin with *Nichols*.

Killing. I remember when he was on board our Sloop, and *Major Bonnet* sent for him, when he went off, he said, *he hoped to get clear of them, and he would die before he would fight*.

Judge Trott. *Pell*, do you know whether he did fight *Col. Rbett*, or not?

Ign. Pell. He did not fight; and if one that *Major Bonnet* loved very well had not been shot-down by his Side, he had blowed his Brains out; for he had his Pistol ready.

Mr. Hepworth. How did *Dunkin* behave himself?

Ign. Pell. I can say nothing for any of the rest, but that they were all as one, and had all their Shares.

Clerk. Would any of you ask the King's Evidence any Questions?

No Questions asked by the Prisoners.

Mr. Hepworth. We will proceed to call another Evidence. *Capt. Thomas Read*, do you know the Prisoners at the Bar?

Capt. Read. I know them all very well.

Mr. Hepworth. Please to give the Court an Account of what Goods were taken from you, and how the Prisoners behaved themselves; and first of *Nichols*.

Capt. Read. The most of the Time he was on board *Capt. Manwareing Sloop*, I heard him say, *he did not like that Course of Life*; and the last Words I heard *Major Bonnet* say to him, was, *that he would force no Man to go against his Will*.

Judge Trott. Can you say any thing of *Dunkin*?

Capt. Read. As for *Dunkin*, I did not see but he acted as the rest did.

Dunkin. *Capt. Read*, It was against my Will.

Mr. Hepworth. *Capt. Read*, were these Goods taken out of you, as are mentioned in the Indictment? (*That Part of the Indictment read.*) Were all these Goods taken out?

Capt. Read. Yes.

Clerk. Will any of you ask any Questions? *George Dunkin*, will you ask any Questions?

George Dunkin, *Capt. Read*, when did you see me as active as any of the rest?

Capt. Read. Before *Capt. Manwareing* was taken, I thought you had been a Prisoner; but afterwards I saw no difference.

Judge Trott. You was one of *Bonnet's Crew*, one of that Company.

Mr. Hepworth. We proceed to call another Evidence.

Francis Griffin. *Capt. Read's Mate* sworn.

Mr. Hepworth. Do you know the Prisoners at the Bar?

Griffin. I know them all.

Mr. Hepworth. Give an Account of what you know of *Nichols*, and the rest of the Prisoners.

Griffin. As for *Nichols*, he was a Man I know nothing of, he being on board of *Manwareing's Sloop*.

Mr. Hepworth. What do you know of *Dunkin*?

Griffin. I knew nothing of him till we were come to Cape Fear; and I saw no difference, but he shared among the rest.

Mr. Hepworth. Were those Goods taken out of the Sloop, the Goods mentioned in the Indictment?

Griffin. Yes, Sir.

J. Trott. Now you the Prisoners, what you have to say in your Defence I shall be ready to hear.

Clerk. William Morrison, what have you to say?

Morrison. I have no more to say than I have said already.

Clerk. William Livers aliàs *Evis,* what have you to say?

Evis. Nothing more.

Clerk. Samuel Booth.

Booth. When I went on board Major *Bonnet,* it was to go to *St. Thomas's* with him.

J. Trott. Why had you not continued at *North Carolina,* since you could not continue here?

Booth. I thought to have had better Business there.

Clerk. John Levit, William Eddy aliàs *Nedy, Alexander Annand.*

Prisoners. We were forced to go, and did not know what they would do.

Attor. Gen. But did you not know what you did when you shared? You knew that did not belong to you, did you not?

Clerk. George Ross, George Dunkin, Thomas Nichols, asked no Questions; only *Dunkin* deliver'd in a Paper, which was read in Court, and contained a Testimony of his former Behaviour when in *Scotland.*

Attor. Gen. Please your Honours and you Gentlemen of the Jury, I think it appears from the Evidence, that *Nichols* was under Constraint, and forced. As for *Dunkin,* and the rest, they all took their Shares at *Cape Fear.*

J. Trott. Gentlemen of the Jury, the Prisoners at the Bar stand indicted for *Felony* and *Piracy* committed on a Sloop belonging to *Capt. Thomas Read.* As for *Nichols,* *Pell* says that he was not joined to the Company, and said, *as for his Share they might do what they pleased, for he hoped he should not be with them long:* And when Major *Bonnet* sent for him on board, he refused to fight *Col. Rhett;* and if another had not been kill'd, Major *Bonnet* had blown his Brains out. *Capt. Manwareing* says, he refused his Share, and kept himself from the Company and from their Cabals; and he said when sent for on board, *that he would die before he would fight.* And *Capt. Read* says, that Major *Bonnet* said, *that he would put him ashore, for he would force no Man against his Will.* And *Killing* says that he told him, that *he would not fight Col. Rhett,* when Major *Bonnet* sent for him on board the *Revenge.* So that I think it plainly appears he was under Constraint. But for *Dunkin,* he says of himself indeed that he was a Prisoner, and under Constraint; but *Pell* says he was not, and that he took his Share, and was as the rest were. And *Capt. Manwareing* says, that he complained of the Bread, that it was fit for none but Negroes: so I shall leave you to consider that. As for the rest, they have but little to say in their Defence, and I think the Evidence have proved the Fact fully upon them. But I shall leave this to your Consideration; and remember you have the Lives of these Persons in your hands.

Then the *Officer* was sworn to keep the *Jury:*

Who after they had consider'd of their *Verdict,*

returned and found the abovefaid *William Morrison, William Livers* aliàs *Evis, Samuel Booth, William Hewit, William Eddy* aliàs *Nedy, Alexander Annand, George Ross,* and *George Dunkin,* Guilty; and *Thomas Nichols,* Not Guilty.

Then the Court adjourn'd till *Monday Morning.*

Monday, November the 3d, 1718. the Court met according to Adjournment.

THEN the Court proceeded to arraign *John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robbins* aliàs *Rattle, James Mullet* aliàs *Millet, Thomas Price, James Wilson, John Lopez,* and *Zachariah Long,* upon the following Indictment for taking *Capt. Read.*

The Jurors for our Sovereign Lord the King do, upon their Oaths, present, that *John Ridge,* late of *London, Mariner, &c.* as before.

To which Indictment *John Ridge, Matthew King, Henry Virgin, James Robbins* aliàs *Rattle, James Mullet* aliàs *Millet, Thomas Price, John Lopez,* and *Zachariah Long,* pleaded not Guilty: and *Daniel Perry* and *James Wilson* pleaded Guilty.

Then the Court proceeded upon the Trial of those that had pleaded *Not Guilty.*

And the Jury were sworn, whose Names are as followeth:

<i>Samuel Prioleau,</i> Foreman.	<i>Henry Genelac.</i>
<i>John Hodgson.</i>	<i>Benjamin Griffin.</i>
<i>Garrat Vanvelsin.</i>	<i>Charles Marche.</i>
<i>Lucas Stoutenburgh.</i>	<i>John Grimbail.</i>
<i>Joshua Mariner.</i>	<i>Nicholas Stephens.</i>
<i>Thomas Fairchild.</i>	<i>William Harvey.</i>

The Witnesses against the Prisoners were the above-named.

Ignatius Pell.

Capt. Peter Manwareing.

Capt. Thomas Read.

James Killing. And

Francis Griffin.

Who gave the same Evidence against these Prisoners as those tried before.

And fully prov'd upon them all the Fact of piratically taking *Capt. Read.*

Only the Witnesses were more particularly examin'd as to *James Robbins* aliàs *Rattle,* who upon a former Indictment for taking *Capt. Manwareing* was acquitted.

Attor. Gen. Ignatius Pell, give an Account of *James Robbins.*

Ign. Pell. He was as the rest were when we shared at *Cape Fear.*

J. Trott. How long was he with you before he joined himself to the Company, after he came on board?

Ign. Pell. As soon as we came to *Cape Fear.*

Attor. Gen. Did you see *Robbins* have his Share?

Ign. Pell. Yes, Sir, they had all their Shares.

Attor. Gen. Was *Robbins,* on board *Read's* Sloop?

Ign. Pell. I cannot tell whether he was on board or not.

J. Trott. You looked upon him as one of the Company?

Ign. Pell. Yes.

Capt. Manwareing sworn.

Mr. Hep.

Mr. *Hepworth*. Please to begin with *Robbins*, how he behaved himself.

Capt. *Manwareing*. He was as the rest of the Men were: He was on board the *Revenge*, and I think they called him *James Rattle* sometimes.

J. *Trott*. Did he receive his Share?

Manwareing. He was among the Company when they did share.

James Killing called and sworn.

Mr. *Hepworth*. Give an Account of *Robbins*.

Killing. All I can say, he was as the rest were in sharing Capt. *Read*'s Goods, and was amongst them when they did share.

Capt. *Read* sworn.

Mr. *Hepworth*. Give an Account of *Robbins*.

Capt. *Read*. I did not know him before we came to *Cape Fear*; but I did not see but he was as active there in taking out the Goods as any of the rest.

J. *Trott*. Did he share among the rest?

Capt. *Read*. Yes, I believe he did, for he was among them when they shared.

Robbins. I was forced to do what I did.

J. *Trott*. Did they force you to take your Share?

Francis Griffin called and sworn:

Mr. *Hepworth*. Give an Account of *Robbins*.

Griffin. I did not know him till we came to *Cape Fear*, and there I saw him on board the *Revenge*; and I did not see but that he did as the rest of the Company; and when they were sharing he was with them and received his Share.

Clerk. What have you to say, *Robbins*?

Robbins. I never was on board Capt. *Read*.

J. *Trott*. But you was one of the Company.

Robbins. I never consented to take out the Goods.

J. *Trott*. But you consented to take part of them; and they that shared the Goods were as much Pirates as those that took them out of the Vessel.

Then the Judge summ'd up the Evidence.

And an Officer was sworn to keep the Jury.

Who after they had considered of their Verdict, returned and found the said *John Ridge*, *Matthew King*, *Thomas Price*, *Henry Virgin*, *James Robbins*, alias *Rattle*, *James Mullet* alias *Millet*, *John Lopez*, and *Zachariah Long*, Guilty.

THE Court then delivered a Bill of Indictment to the Grand Jury, against *John Brierly*, alias *Timber-head*, *Robert Boyd*, *Rowland Sharp*, *Jonathan Clarke*, and *Thomas Gerrard*, for feloniously and piratically entering the Sloop *Francis*, belonging to Capt. *Peter Manwareing* the Commander, and taking certain Goods out of the same at *Cape Fear*.

And another Bill of Indictment against the same Persons for feloniously and piratically entering the Sloop *Fortune* belonging to Capt. *Thomas Read* Commander, and taking certain Goods out of the same at *Cape Fear*.

The Grand Jury returned upon the said Bills of Indictment *Billa vera*.

Then the Court proceeded to arraign the said *John Brierly* alias *Timber-head*, *Robert Boyd*, *Rowland Sharp*, *Jonathan Clarke*, and *Thomas Gerrard*, upon the following Indictment.

“ The Jurors for our Sovereign Lord the King do, upon their Oath, present, that *John Brier-*

ly alias *Timber-head*, late of *Bath-Town* in *North Carolina*, Mariner; *Robert Boyd*, late of *Bath-Town* aforesaid, Mariner; *Rowland Sharp*, late of *Bath-Town*, Mariner; *Jonathan Clarke*, late of *Charles-Town*, in the Province of *South-Carolina*; and *Thomas Gerrard*, late of *Antegoa*, Mariner; the 27th Day of *September*, in the fifth Year of the Reign of our Sovereign Lord *George*, by the Grace of God, of *Great-Britain*, *France*, and *Ireland*, King Defender of the Faith, &c. by Force and Arms, upon the High Sea, in a certain Place call'd *Cape Fear*, about half a Mile distant from the Shore, in the Latitude of thirty four, or thereabouts, and within the Jurisdiction of the Court of Vice-Admiralty of this Province of *South-Carolina*, did piratically and feloniously set upon, board, break, and enter a certain Merchant Sloop call'd the *Francis*, Capt. *Peter Manwareing* Commander, then being a Sloop of certain Persons, (to the Jurors aforesaid are unknown) and then and there piratically and feloniously did make an Assault in and upon the said *Peter Manwareing*, and other his Mariners (whose Names to the Jurors aforesaid are unknown) in the same Sloop, in the Peace of God, and our Sovereign Lord the King, then and there being, particularly and feloniously did put the aforesaid *Peter Manwareing*, and others his Mariners of the same Sloop, in the Sloop aforesaid then being, in corporal fear of their Lives; then and there in the Sloop aforesaid, upon the high Sea, in the place aforesaid, call'd *Cape Fear*, about half a Mile distant from the Shore, in the Latitude of thirty-four, and within the Jurisdiction aforesaid, piratically and feloniously did steal, take and carry away the said Sloop *Francis*, and also six Hogsheads of Rum of the Value of Eight Pounds current Money of the Island of *Barbadoes*, and one Tierce of Sugar of the Value of Seven Pounds current Money of the Island of *Antegoa*, the Goods and Chattels of certain Persons (to the Jurors aforesaid unknown) then and there upon the high Sea aforesaid, in the Place aforesaid call'd *Cape Fear*, about half a Mile distant from the Shore, in the Latitude of thirty four, or thereabouts, as aforesaid, and within the Jurisdiction aforesaid, being found in the aforesaid Sloop in the Custody and Possession of the said *Peter Manwareing*, and others his Mariners of the Sloop aforesaid; and from their Custody and Possession, then and there upon the high Sea aforesaid, and in the Place aforesaid, called *Cape Fear*, about half a Mile distant from the Shore, in the Latitude of thirty four, or thereabouts, as aforesaid, and within the Jurisdiction aforesaid, against the Peace of our said now Sovereign Lord the King, his Crown and Dignity. &c.

To which Indictment they all pleaded *Not Guilty*.

Then the Court proceeded upon their Trial.

The Jurors were sworn, whose Names were as followeth.

Timothy Bellamy, Foreman.

George Ducket.

John Rivers.

William Sberiffe.

Benjamin Dennis.

Hugh Durfey.

Thomas Chambers.

Daniel Townsbend.

John Lee.

Thomas Bee.

John Barton.

Richard Fairchild.

Then

Then the *Witnesses* were ordered to be called.
Clerk. Call *Ignatius Pell*, who was sworn.

Mr. *Hepworth*. *Pell*, do you know the Prisoners at the Bar?

Ig. Pell. I know them all very well.

Mr. *Hepworth*. Please to give an Account of what you know of them, and of their Behaviour at Cape Fear.

Ig. Pell. *John Brierly* and *Robert Boyd* came on board three or four Days after we came to Cape Fear.

J. Trott. You took them first, did you not?

Ig. Pell. Yes, we sent off our Dory, and took them.

J. Trott. From whence did they come?

Ig. Pell. From *North Carolina*.

Attorn. Gen. How long after they came on board did they join themselves to the Company?

Ig. Pell. *Brierly* did very soon, but *Boyd* did not so soon, tho' he did afterwards; and for *Sharp*, I do not know that ever he was joined to the Company.

J. Trott. And how did *Clarke* behave himself?

Ig. Pell. *Jonathan Clarke* and one came in from *South Carolina*: they went away from the Sloop; and then after some Days *Clarke* returned again, but it was with Hunger, tho' he said then it was not.

Attorn. Gen. Were there any Goods taken out of *Capt. Read's* Sloop after he had joined himself a second time?

Ig. Pell. I cannot say that certainly.

J. Trott. Nor you cannot say positively there were?

Ig. Pell. No.

Mr. *Hepworth*. What do you know of *Gerrard*?

Ig. Pell. I can say nothing to him.

Clerk. Will any of you ask the Evidence any Questions? *John Brierly*, will you ask any Questions?

Brierly. Pell, you know I often said I would not bear Arms, and that I desired no Share.

Ig. Pell. But *John*, you know you had your Arms ready as well as the rest, and that you had your Share.

Clerk. *Robert Boyd*, will you ask any Questions?

Boyd. No, Sir.

Clerk. *Rowland Sharp*, will you?

Sharp. No, Sir.

Clerk. *Jonathan Clarke*, will you ask any Questions?

Clarke. Pell, don't you remember that I was abaft, and one of the Negroes came and damned me, and asked me what I did there? why I did not go and work amongst the rest? and told me I should be used as a Negroe.

Ig. Pell. I do remember it was so.

Mr. *Hepworth*. We proceed to call another Evidence.

Capt. *Thomas Read* called and sworn.

Attorn. Gen. Capt. *Read*, please to begin with *Brierly*.

Capt. *Read*. *Brierly* came on board one Morning very early, and helped to take out several Goods.

Mr. *Hepworth*. Do you know what Goods?

Capt. *Read*. Some Rum and Sugar.

J. Trott. Do you know those Goods to be taken out?

Capt. *Read*. Yes,

J. Trott. How did he behave himself when Ma-

yor *Bonnet* sent for him on board to fight Colonel *Rbett*?

Capt. *Read*. I cannot tell.

Mr. *Hepworth*. How did *Boyd* behave himself?

Capt. *Read*. I took him to be a Prisoner like myself at first, till he was sent for on board the *Revenge* by Major *Bonnet* to fight Colonel *Rbett*.

Attorn. Gen. What made you think he was a Prisoner?

Capt. *Read*. Because he was not employ'd in any Business, as the rest were.

J. Trott. That Day they engaged Colonel *Rbett*, was he on board your Sloop?

Capt. *Read*. Yes, and Major *Bonnet* sent for all Hands on board the *Revenge*.

Attorn. Gen. What do you say of *Sharp*?

Capt. *Read*. I can say nothing of him.

Attorn. Gen. What have you to say of *Clarke*?

Capt. *Read*. He run away for a time, and then he return'd again after some Days.

Attorn. Gen. Was there any Goods taken out after he return'd?

Capt. *Read*. Yes, Sir.

J. Trott. Did *Clarke* himself take out those Goods?

Capt. *Read*. That I cannot tell; and as for *Gerrard*, he belong'd to Capt. *Manwareing*: and as the Captain and I was together, he came and told us how they us'd him; but he was sorry for what he had done, and was resolved to make his Escape the first Opportunity he had to get away.

Clerk. Have any of you any Questions to ask the King's Evidence?

The Prisoners ask no Questions.

Mr. *Hepworth*. We proceed to call another Evidence.

Francis Griffin sworn.

Mr. *Hepworth*. Look upon the Prisoners; do you know them?

Griffin. I know them all.

Mr. *Hepworth*. Begin with *John Brierly*.

Griffin. He was on board of us some time when we were at Cape Fear, and he was as the rest of the Company was; and he said he hoped when Major *Bonnet* should go to the Northward, to be revenged on some at the Hore-kills, for some Offence they had given him there.

J. Trott. You looked upon him as one of the Crew?

Griffin. Yes.

J. Trott. What do you know of *Boyd*?

Griffin. He was on board of us some time; and when Major *Bonnet* sent for all Hands on board the *Revenge*, he went with them: but as for *Sharp*, I can say nothing of him, nor of *Clarke*, only he run away, and in some Days he return'd again.

Mr. *Hepworth*. We shall call another Evidence.

Capt. *Peter Manwareing* sworn.

Mr. *Hepworth*. Captain *Manwareing*, do you know the Prisoners at the Bar?

Capt. *Manwareing*. I know them all very well.

Mr. *Hepworth*. Please to give the Court an Account of what you know of them; and begin with *Brierly*.

Manwareing. Brierly, the 12th Day of August he came on board; and a little after he was on board, I did not see but he acted as the rest did, and he hoped to come up with some at the Hore-kills: but as for *Boyd*, he was on board Capt. *Read's* Sloop.

J. Trott. What have you to say of *Sharp*?

Manwareing. Some time after he came to Cape Fear, and Major *Bonnet* sent for him on board the *Revenge*, he said he would go on shore if he had an Opportunity, and I never saw him among the rest of the Company.

Judge *Trott*. What have you to say of *Jonathan Clarke*?

Manwareing. After we had been at Cape Fear some Days, *Jonathan Clarke*, and one *Dolton*, came in, and Major *Bonnet* sent the Dory, and brought them on board; and after some Days, *Clarke* and _____ went away, and was gone some Days, and then returned again, and then he was ordered to work among the Negroes. As for my Man *Garrard*, he came and told me, *he was not able to bear any longer, but was forced to comply with them, for they told him they would have no regard for the Colour, but wou'd make a Slave of him*; but he did not receive any of their Goods; and when he was at home, he had the Character of an honest Man, and fought for his King and Country.

Mr. *Hepworth*. We will call another Evidence.

James Killing called and sworn.

Mr. *Hepworth*. Do you know the Prisoners at the Bar?

Killing. I know them all very well.

Mr. *Hepworth*. Give the Court an Account of what you know of their sharing at Cape Fear.

Killing. *Brierly* was put on board our Sloop there to work at his Trade, and would often say, *he had a Quarrel against some at the Hore-Kills, he hoped to revenge himself upon them.*

Judge *Trott*. Why what had they done to him?

Killing. He was in debt, and therefore he owed them a Grudge; but for the rest, I can say nothing.

Judge *Trott*. You the Prisoners, what you have to say in your Defence, I shall now be ready to hear.

Cl. *John Brierly*, what have you to say?

Brierly. Mr. *Boyd* and I was in a leaky Canoo, and we were afraid she would sink, and so we were obliged to keep along shore; and I stood up, and thought I saw a Vessel or two, and he bid me look again, and then I saw it was a Vessel. They sent off their Dory, and asked if we would consent to go with them? And we said, No: But they said they would break the Canoo, and we might go where we pleased. So they made me consent to go on board the *Revenge*, but I never joined myself while I was on board: And then I was order'd on board Captain *Manwareing*, and there I worked; but I never bore Arms, nor did fight Colonel *Rbett*.

Cl. *Rowland Sharp*, what have you to say?

Sharp. After I was taken, I went on shore, and travelled four Days in the Woods without eating or drinking, and could find the way to no Plantation, and so was forced to return again, and I refused to sign the Articles; and one of the Men came and told me I was to be shot, and I had the Liberty to chuse the four Men that should do it, and the Boatwain went about to get Hands to beg me off; but I was resolved to make my Escape the first Opportunity.

Cl. *Jonathan Clarke*, what have you to say?

Clarke. The 12th of August coming into Cape Fear with Mr. *Dolton*, he thought he saw the

Mast of a Vessel, and I desired him to take the Helm that I might see, for if there was any Vessel it was *Pirates*; but *Dolton* said it was nothing but an old Tree: But when we came farther in, we saw three Sloops, and they sent off their Dory and took us, and carried us aboard the *Revenge*; and Major *Bonnet* asked from whence we came? and I told him. He asked me where we were a going? we told him. The next Day he asked if I did not design to do as they did? I told him no. Then I went away with a Design to get clear of them, but with Hunger was forced to return again: And they asked me if I would sign the Articles then? and I refused; and one of the Negroes came and damned me, and asked me why I did not go to the Pump, and told me that was my Business: And Major *Bonnet* told me if I did not, he would make me Governor of the first Island he came to; for he would put me ashore, and leave me there.

Cl. *Thomas Gerrard*, what have you to say?

Gerrard. Some time after we were taken, one of the Men came and asked if I would join with them? I told him, No. He said, I was but * like a Negro, and they made Slaves of us all of that Colour, if they did not join. So I did it with a Design to get clear of them the first Opportunity; and I never shared any of the Goods.

Judge *Trott*. *Pell*, did he never share?

Pell. He never did share.

Judge *Trott*. And did they threaten to make a Slave of him, if he did not join?

Pell. Yes.

Att. Gen. May it please your Honours, and you the Gentlemen of the Jury, as for *Brierly* and *Boyd*, it appears from the Evidence that they came to Cape Fear three or four Days after *Bonnet*: *Brierly* he took up very soon, and *Boyd* some time after; and that there were several Goods taken out of Capt. *Manwareing*'s Sloop, and particularly Rum and Sugar. And as for *Sharp*, there is no Evidence proves any thing fully on him; and therefore I think he may be looked upon as under Constraint and Force. As for *Gerrard*, I think the same; for though he signed the Articles, yet no Evidence proves that he did share any of the Goods: Nay, the Boatwain says he did not share; and if they did not comply with them, they would make a Slave of him all the Days of his Life. And Capt. *Manwareing* says he had the Character of an honest Man at home; and that he fought for his King and Country.

Judge *Trott*. Gentlemen of the Jury, the Prisoners at the Bar stand charged with *Piracy*, committed on a Sloop belonging to Capt. *Manwareing*; and the Evidence have proved it fully upon *Brierly* and *Boyd*; and particularly, that there was Rum and Sugar taken out. *Brierly* took up very soon with them, and had his Share; and that he hoped to revenge himself on some at the *Hore-Kills*. *Boyd* did not take up so soon; but he did afterward. As for *Sharp*, he would have made his Escape, but could not; and Major *Bonnet* told him he should die, and bid him chuse four Men to shoot him; and tho' he signed the Articles, he never shared, as *Pell* proves. As for *Clarke*, he says he was forced to it; that he went away, and Hunger forced him to return again, and the Negroes insulted over him; and

* He was a Mullato.

Major Bonnet told him, he would make him Governor of an Island, and leave him there; and none of the Evidence proves that he shared any of the Goods. And as for Gerrard, he was threaten'd to be made a Slave of; tho' indeed he had been better made a Slave than go a pirating: But Capt. Manwareing says he had the Report of an honest Man in his Country; and that he was faithful to his King and Country: So I shall leave those to your Consideration. And if you think they were under Force and Constraint, as indeed it appears to me, by the whole Course of the Evidence, that they were, then you ought to acquit them.

Then an Officer was sworn to keep the Jury.

Who after they had considered of their Verdict, returned, and found John Brierly aliàs Timberhead, and Robert Boyd, Guilty; Rowland Sharp, Jonathan Clarke, and Thomas Gerrard, Not Guilty.

Then the Court adjourned till Tuesday Morning.

Tuesday, November the Fourth, 1718. the Court met according to Adjournment.

THEN the Court proceeded to arraign the said John Brierly aliàs Timberhead, Robert Boyd, Rowland Sharp, Jonathan Clarke, and Thomas Gerrard, upon the following Indictment.

“ The Jurors for our Sovereign Lord the King do upon their Oath present, That John Brierly aliàs Timberhead, late of Bath-Town in North Carolina, Mariner; Robert Boyd, late of Bath-Town afore said, Mariner, Rowland Sharp, late of Bath-Town afore said, Mariner; Jonathan Clarke, late of Charles-Town, in the Province of South Carolina, Mariner; and Thomas Gerrard, late of Antegoa, Mariner; the twenty seventh Day of September, in the Fifth Year of the Reign of our Sovereign Lord George, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, &c. by Force and Arms, &c. upon the High Sea, in a certain Place called Cape Fear, about half a Mile distant from the Shore, in the Latitude of Thirty-four, or thereabouts, and within the Jurisdiction of the Court of Vice-Admiralty of South Carolina, did piratically and feloniously set upon, board, break, and enter a certain Merchant-Sloop, called the Fortune, Thomas Read, Commander, then being a Sloop of certain Persons (to the Jurors afore said unknown) and then and there piratically and feloniously did make an Assault in and upon the said Thomas Read, and other his Mariners, (whose Names to the Jurors afore said are unknown.) In the same Sloop, against the Peace of God, and of our now Sovereign Lord the King, then and there being, piratically and feloniously, did put the afore said Thomas Read, and others his Mariners of the same Sloop, in the Sloop afore said, then being in corporal Fear of their Lives, then and there in the Sloop afore said, upon the High Sea, in the Place afore said, called Cape Fear, about half a Mile distant from the Shore, in the Latitude of Thirty-four, or thereabouts, and within the Jurisdiction afore said, *piratically and feloniously* did steal, take,

“ and carry away the said Sloop Fortune, and also ten Barrels of Pork, of the Value of twenty Pounds, current Money of Pennsylvania; two Firkins of Butter, of the Value of fifty Shillings, like current Money of Pennsylvania; and three Tierces of Bread, of the Value of six Pounds ten Shillings, like current Money of Pennsylvania; the Goods and Chattels of certain Persons, (to the Jurors afore said unknown) then and there, upon the High Sea afore said, in the afore said Place, called Cape Fear, about half a Mile distant from the Shore, in the Latitude of thirty-four, or thereabouts, as afore said, and within the Jurisdiction afore said; being found in the afore said Sloop, in the Custody and Possession of the said Thomas Read, and others his Mariners, of the Sloop afore said, and from their Custody and Possession, then and there, upon the High Sea afore said, in the Place afore said, called Cape Fear, about half a Mile distant from the Shore, in the Latitude of thirty-four, or thereabouts, as afore said, and within the Jurisdiction afore said, against the Peace of our said now Sovereign Lord the King, his Crown, and Dignity, &c.

Who all pleaded Not Guilty.

Then the Court proceeded upon their Trial.

The Jurors were sworn, whose Names are as followeth:

Samuel Proileau, Foreman.	Henry Guelac.
John Hodgson.	John Ballentine.
Garrat Vanvelsin.	Charles Marche.
Lucas Stoutenburgh.	John Grimbball.
Joshua Mariner.	Nicholas Stephens.
Thomas Fairchild.	William Harvey.

Then the Witnesses were ordered to be called.

Clerk. Call Ignatius Pell: Who was sworn.

Mr. Hepworth. Pell, give an Account first of Brierly and Boyd.

Ig. Pell. As for Brierly, he soon united himself to the Company; and when we engaged Colonel Rbett, he was as active as any of the rest. But for Boyd, he was sent on board Capt. Read's Sloop, and was there till Major Bonnet sent for him on board the Revenge, to fight Colonel Rbett.

Judge Trott. And did he fight?

Ig. Pell. He was wounded with one of the first Shot, and so was carried down into the Hole; so that he never did fight.

Mr. Dean. Why was he put on board the Sloop?

Ig. Pell. To look after the Sloop, I suppose.

Att. Gen. Had he his Arms ready when you engaged Col. Rbett?

Ig. Pell. Yes, Sir: So we had all in general: But I did not see him use them.

As for the other three, he thought them to be under Constraint, and they did not fight Colonel Rbett.

Clerk. Will any of you ask the King's Evidence any Questions?

No Questions ask'd by the Prisoners.

Mr. Hepworth. We proceed to call another Evidence.

Capt. Peter Manwareing sworn.

Mr. *Hepworth*. Capt. *Manwareing* give an Account of the Prisoners of their fighting Colonel *Rbett*, and begin with *Brierly* and *Boyd*.

Capt. *Manwareing*. They came on board, and *Brierly* soon became one of the Company, and hoped to revenge himself on them at the *Hore-Kills*, and acted as the rest did when they engaged Col. *Rbett*. But as for *Boyd*, I took him to be a Prisoner for some Time.

Captain *Manwareing's* Evidence concerning *Sharp*, *Clarke*, and *Gerrard*, the same as in the former Trial.

Mr. *Hepworth*. Will any of you ask the King's Evidence any Questions?

No Questions ask'd by the Prisoners.

Mr. *Hepworth*. We will call another Evidence.

James Killing call'd and sworn.

Mr. *Hepworth*. Give an Account of the Prisoners at the Bar; and first of *Brierly* and *Boyd*.

Killing. As for *Boyd*, he was on board Captain *Read* after we came to *Cape Fear*, till they were sent for to fight Colonel *Rbett*; and I thought he had been a Prisoner till then, and I talked very free to him. And as for *Brierly*, he was as the rest of the Company.

Att. Gen. Were there any Goods taken out after *Brierly* came on board?

Killing. Yes.

Mr. *Hepworth*. Do you know what Goods?

Killing. I cannot remember every particular Sort.

His Evidence against the other three the same as in the former Trial.

Clerk. Will any of you ask the King's Evidence any Questions?

No Questions ask'd by the Prisoners.

Mr. *Hepworth*. We call another Evidence.

Capt. *Thomas Read call'd and sworn.*

Mr. *Hepworth*. Capt. *Read*, please to give an Account of the Prisoners at the Bar; and first of *Brierly* and *Boyd*.

Capt. *Read*. As for *Brierly*, I did not see but he acted as all the rest of the Company did.

Judge *Trott*. What have you to say of *Boyd*?

Capt. *Read*. I thought him to be a Prisoner, and discours'd freely with him, which if he had discovered, it had done me an Injury; for I heard him wish we might meet with a Thirty-Gun Ship, and I told him I should be glad of it as well as he.

Foreman. What did he wish to meet with a Thirty-Gun Ship for?

Capt. *Read*. To free us from the Pirates.

His Evidence against the other three the same as before.

Clerk. Will any of you ask the King's Evidence any Questions?

None of the Prisoners ask'd any Questions.

Judge *Trott*. You the Prisoners may now speak what you have to say.

Clerk. What have you to say *John Brierly*?

Brierly. When Mr. *Boyd* and I came in at *Cape Fear*, we saw three Sloops; and then came off a Dory with some Hands, and haled us, and then carried us on board; but we did not know that they were Marrooners. But Mr. *Boyd* trembled, and shook like a Leaf; and I told him not to be afraid. So they carried us on board.

Judge *Trott*. And so you united yourself with them to make up the Company?

Brierly. I was forced to do what I did.

Clerk. *Robert Boyd*, what have you to say?

Boyd. After we came to *Cape Fear*, and was taken by *Bonnet's* Men, I was on board the *Revenge* for some Time, and they asked me to sign the Articles, the which I refused; and Major *Bonnet* told me, if I did not, he would marroon me on an Island, and leave me. And after I was sent on board Capt. *Read's* Sloop, I had nothing but the Provisions I lived on; I never had any thing more. And when Major *Bonnet* sent for all on board to fight Colonel *Rbett*, it would have been present Death for any to refuse, and I was wounded with one of the first Shot.

The other three made it appear they were innocent, as in the other Indictment.

Att. Gen. May it please your Honours, and you the Gentlemen of the Jury, the Evidence proves the Fact fully on *Brierly*; that he soon engaged with *Bonnet* after he was taken, and that he acted as the rest of the Company did; and that he hoped to be revenged on some at the *Hore-Kills*. As for *Boyd*, though he was on board the Pirate-Sloop, he never took Part with them; and he wished for a Thirty-Gun Ship, that they might be set at Liberty. And Capt. *Read*, took him for a Prisoner till he was sent for on board the *Revenge*; and then the Boatswain says he did not fight. As for the other three, I think it appears they were under Constraint and Force.

Judge *Trott*. Gentlemen of the Jury, the Prisoners at the Bar stand indicted for piratically taking Capt. *Read*, in the Sloop *Fortune*. As for *Brierly*, the Evidence proves it very plain and fully upon him, that he took up very soon with them, and did hope to revenge himself upon some of the *Hore-Kills*, and that he engaged against Col. *Rbett*. As for *Boyd*, Capt. *Read* looked upon him as a Prisoner; and that he had such Discourse with him, that if he had disclos'd it to *Bonnet's* Crew, it had done him much hurt; and the Boatswain says, he did not fight Col. *Rbett*. And as for the other three, I think it hath been fully proved they were under Constraint. But I shall leave it to your Consideration.

Then an Officer was sworn to keep the Jury.

Who after they had consider'd of their Verdict, returned, and found *John Brierly* alias *Timberhead*, Guilty; *Robert Boyd*, *Rowland Sharp*, *Jonathan Clarke*, and *Thomas Gerrard*, Not Guilty.

Then the Court adjourned till *Wednesday Morning*.

Wednesday, November the Fifth, 1718. the Court met according to Adjournment.

THEN *Robert Tucker*, *Edward Robinson*, *Neal Paterson*, *William Scot*, *Job Bayley*, *John William Smith*, *Thomas Carman*, *John Thomas*, *William Morrison*, *William Livers* alias *Evis*, *Samuel Booth*, *William Hewet*, *John Levit*, *William Eddy* alias *Nedy*, *Alexander Annand*, *George Ross*, *George Dunkin*, *John Ridge*, *Matthew King*, *Daniel Perry*, *Henry Virgin*, *James Robbins*, *James Mullet* alias *Millet*, *Thomas Price*, *John Lopez*, *Zachariah Long*, *James Wilson*, *John Brierly* alias *Timberhead*, and *Robert Boyd*, who stood convicted of *Piracies*, as appears by the above Records, were brought to the Bar, and were severally asked what

what they could say why Judgment of Death should not pass upon them.

And they having nothing to alledge in arrest of Judgment;

Then Proclamation for *Silence* was made, while the Judge of the Court of Vice-Admiralty pronounced *Sentence of Death* upon the *Prisoners*.

J. Trott. You the Prisoners at the Bar, *Robert Tucker, Edward Robinson, Neal Paterson, William Scot, Job Bayley, John-William Smith, Thomas Carman, John Thomas, William Morrison, William Livers* aliàs *Evis, Samuel Booth, William Hewet, John Levit, William Eddy* aliàs *Nedy, Alexander Anand, George Rofs, George Dunkin, John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robbins, James Mullet* aliàs *Millet, Thomas Price, John Lopez, Zachariah Long, James Wilson, John Brierly, and Robert Boyd*, stand here convicted of *Piracy*.

You have been *indicted* but for *two Acts of Piracy*; but you know upon the *Trials* it was fully proved against most of you, that you *piratically* took *thirteen* Vessels since you joined Major *Bonnet*, and sailed from *Topsail Inlet* in *North Carolina*.

So that many of you might have been convicted on *eleven* more *Indictments of Piracy*.

Besides, several of you were proved to be *Pirates* before that time, as belonging to *Thatch's* Crew; and so were guilty of the several *Piracies* committed while you belong'd to him.

You cannot but acknowledge that you have all of you had a fair and indifferent Trial.

You were fully heard, not only as to all you could pretend to say in your own *Defences*, but also as to what you alledge in *Mitigation* of your Crimes.

And indeed, when you saw that the *Facts* laid in the *Indictment* were so fully proved against you, tho' most of you pleaded *Not Guilty* for *Form-fake*, yet in the open Court, upon your *Trials*, most of you acknowledged the *Facts* charged upon you. Therefore no one can think but that you were all of you justly found *Guilty*; and your own *Consciences* will oblige you to acknowledge the same. So that there is not any of you who can complain of any *Hardships* at your *Trials*.

As to the *Crime* that you are convicted of, which is *Piracy*, the *Evil* and *Wickedness* of it is evident to the Reason of all Men: So that it needs no Words to aggravate the same; it is so destructive of all Trade and Commerce between Nation and Nation, that *Pirates* are called *Enemies to Mankind, with whom no Faith nor Oath ought to be kept*; and they are term'd in our Law *Brutes* and *Beasts of Prey*, and therefore it is the *Interest*, as well as *Duty*, of all Governments to bring such Offenders to Punishment.

Tho' the Greatness of your *Crime* is such, that no one can think but that the *Sentence of Death* which will now be passed upon you is justly due to you for the same; yet as Pity and Compassion, even to the worst of Criminals, when brought to Punishment, are natural to all Men who have not flung off all Sense of Humanity, but much more firmly ingrafted in the Hearts of Christians; therefore surely it cannot but be a very melancholy Spectacle to see so many Persons in the Prime of their Years, in perfect Health and Strength, dropping into the Grave: And which is a more sorrowful Consideration, that they are in the height

of their Sins; and therefore, without the infinite Mercies of God, through the Satisfaction of Christ, must necessarily sink into the Dwellings of everlasting Misery.

And indeed, most sad and deplorable is the Condition you have brought your selves to: To be adjudg'd by the Laws of your Country unworthy any longer to live, and to tread the Earth, or breathe the Air; and that no further Good or Benefit can be expected from you but by the Example of your Deaths; and to stand like Marks or fatal Rocks and Sands, to warn others from the same Shipwrack and Ruin for the future.

As most of you have been *Mariners* by Profession, and every one of you have several times been at *Sea*; so I cannot but wonder, that being so often at *Sea*, you should not consider the great Power of God in creating the same, and his Providence in preserving those who pass upon it; and consequently, that such Thoughts should not cause in you a *Dread* of his Power, and a *Love* of his Goodness.

The Consideration of God's Power in making the Sea, and setting Bounds to the raging Waters thereof, is used as an Argument by God himself, why Men should fear him; for thus God expresseth it by the Prophet *Jeremiah*: *Fear ye not me? saith the Lord: will ye not tremble at my Presence, which have placed the Sand for the bound of the Sea by a perpetual Decree, that it cannot pass it; and tho' the Waves thereof toss themselves, yet can they not prevail: tho' they fear, yet can they not pass over it; Jer. 5. v. 22.* Or as it is expressed in the Book of *Job*: *Hitherto shalt thou come, but no farther; and here shall thy proud Waves be stayed: Job 38. v. 11.*

The *Psalmist* saith, that *they that go down to the Sea in Ships, that do Business in great Waters; these see the Works of the Lord, and his Wonders in the Deep. For he commandeth and raiseth the stormy Wind, which lifteth up the Waves thereof. They mount up to the Heaven, they go down again to the Depths, their Soul is melted because of Trouble. They reel to and fro, and stagger like a drunken Man, and are at their Wits end. Then they cry unto the Lord in their Trouble, and he bringeth them out of their Distresses. He maketh a Storm a Calm, so that the Waves thereof are still. Then they are glad because they be quiet; so he bringeth them unto their desired Haven.* But the practical Inference that he draws from these is, *That Men should praise the Lord for his Goodness, and for his wonderful Works to the Children of Men: Psal. 107. v. 23, 24, 25, 26, 27, 28, 29, 30, 31.*

But instead of having a Sense of God's Power and Goodness, in preserving you and others upon the Sea, your frequent Preservations harden'd you into a Contempt of the Danger you were in; and you thereby slighted your Deliverance. And tho' you could not but see the many *natural* Dangers that attend the Seas, and those who had occasion to go upon the same, yet you were resolv'd that you would contribute what in you lay to the Hazards thereof, by the frequent *Rapines* and *Murders* which you committed. So that what the Prophet saith of the *Pride of the Tyrians*, may be apply'd to you, *that you caused your Terror to be on all that haunt the Sea: Ezek. 26. ver. 17.*

Altho' it may be, while you were in your seeming Prosperity, and went on in your committing *Spoils* and *Robberies* without controul, you might make a *mock at your Sins*, *Prov. 14. v. 9.* and *ch. 10. v. 23.* and say in your Hearts, *God hath forgotten,*

forgotten, he hideth his Face, he will never see it, Psal. 10. v. 11. 94. v. 7. 64. v. 5. and Job 22. v. 13. yet now that you see that God's Hand hath reached you, and his Power hath brought you to public Justice; I hope your present unhappy Condition hath had a good effect upon you, that it hath raised in you more serious Thoughts; and that you are now sensible of the Greatness of your Sins, and that you will sincerely repent you of the same.

As to the great *Evil* and *Sinfulness* of the *Facts* you have committed, surely you cannot but know, that it is one of the express Commandments of God, *Thou shalt not steal*, Exod. 20. v. 15. and the Apostle St. Paul expressly affirms, that *Thieves shall not inherit the Kingdom of God*, 1 Cor. 6. v. 10.

But then remember that to *Theft* you have added the Sin of *Murder*, in destroying those Persons who were sent by lawful Authority to suppress you, and to put a stop to your wicked Actions. For you being no way authorised to use the Sword, or to fight any one, every one of those Persons who fell by your Hands, were murdered; and their Blood now cries for Vengeance against you: For it is the *Voice of Nature*, as well as the revealed Law of God, that *Whoso sheddeth Man's Blood, by Man shall his Blood be shed*, Gen. 9. v. 6.

It is the Commandment of God, *Thou shalt do no Murder*, Exod. 20. v. 13. and the Apostle enumerating several of the Works of the Flesh, amongst the rest reckons *Murders*; and then concludes with these remarkable Words: *Of which I tell you before, as I have told you in time past, that they which do such things, shall not inherit the Kingdom of God*, Gal. 5. v. 21.

And *Murderers* are threaten'd to have *their part in the Lake which burneth with Fire and Brimstone, which is the second Death*, Rev. 21. v. 8. See ch. 22. v. 15. Words which carry that Terror with them, that considering your Circumstances, and your Guilt, surely the Sound of them must make you tremble; *For who can dwell with everlasting Burnings?* Isa. 33. v. 14.

I suppose you all know that you must appear before the Tribunal of Christ; from whose infinite *Knowledge* none of your Actions can be hid, and from whose infinite *Power* no one can rescue you or protect you; and from whom, without a true and unfeigned Repentance for all your Sins past, you can expect no other than that dreadful Sentence of Condemnation, *Depart from me, ye cursed, into everlasting Fire, prepared for the Devil and his Angels*, Matth. 25. v. 41.

I do not speak this to overwhelm you with Sorrow, much less to drive you into *Despair* of God's Mercy, which is one of the worst of Sins, and which I hope you will not add to your other Offences against God. But I mention this to you, to make you sensible of the great Danger of your Condition, without true and unfeigned Repentance. For seeing I can give you no hopes of Pardon from Man, I hope you will improve the short time you have now left you, to make your Peace with God, and to obtain Pardon from him.

And I wish that what I now say to you in this your deplorable Conditions, may make you all sensible of the Greatness of your Offences, that so you may become truly penitent; which if you are, you may yet hope for Mercy from God: *For tho' your Sins be as Scarlet, [even dyed in Blood] yet he can make them white as Snow*, Isa. 1. v. 18.

Therefore if you will now turn unto God by a

true and unfeigned Repentance, he will not refuse you nor reject you, even now in your great Distress.

For the Threatnings declared by God in the Scripture against Sinners, must always be understood against impenitent Sinners; for God hath declared himself to be *Merciful and Gracious*, Exod. 34. v. 6. *And that he hath no pleasure in the death of the Wicked, but that the Wicked turn from his way and live*, Ezek. 33. v. 11. ch. 18. v. 23. And hath promised that when he doth so; *he shall save his Soul alive*, ver. 27.

But be sure remember that you must go to God, in and thro' the alone Merits and Intercession of his Son *Jesus Christ*, who hath made *Satisfaction* to the Justice of God for us: *For he is our Advocate with the Father; And he is the Propitiation for our Sins*, John 2 v. 1, 2. *For his Blood cleanseth us from all Sin*, ch. 1. v. 7. Know therefore, that *there is none other Name under Heaven given among Men, whereby we must be saved*, but only by the Name of the Lord *Jesus*, Acts 4. v. 12.

But then consider how he invites *all them that labour and are heavy laden with their Sins to come unto him, and he will give them rest*, Matth. xi. v. 28. *He will not break the bruised Reed, nor quench the smoking Flax*, Isa. 42. v. 3. compared with Matth. 12. v. 20. The Apostle tells us, *that Christ Jesus came into the World to save Sinners*, 1 Tim. 1. v. 15. And he himself assures us, *that he came to seek and save that which was lost*, Luke 19. v. 10. Matth. 18. v. 11. And hath promised, *that he that cometh unto him, he will in no wise cast out*, John 6. 37.

Doubt not therefore, but that if you will now sincerely turn to God, he will accept you, and pardon and forgive you your Sins.

But know that the *Condition* of these and other the Promises of God made to Sinners, is *Faith* and *Repentance*. And great Sins (such as yours are) must have great Repentance. You must earnestly cry unto God for Pardon and Remission of your Sins, and particularly, that he would *deliver you from Blood-guiltiness*, Psal. 51. v. 14.

And do not mistake the *Nature* of Repentance, to be only barely a Sorrow for your Sins, by reason of the *Evil* and *Punishment* which they have now brought upon you: but your Sorrow for your Sins must arise from the Consideration of your having offended a gracious and merciful God. To which should be added, a sincere Resolution and an actual Amendment for the future. Indeed, such is your unhappy Circumstances, that you cannot give any actual Proof of the Amendment of your Lives: but remember that God knows the Heart.

Time will not permit me to enlarge upon the *Nature* of Repentance, and of the many Mistakes that Men make in that great Duty: Neither indeed will I so far presume to meddle out of my own Profession. You may have those Matters better explained to you by some of the *Ministers* of this Province, whom you may desire to attend you, and sit you for Death; and from them you may expect more full and particular Directions: *For the Priest's Lips shall keep Knowledge, and you shall seek the Law at their Mouths: for they are the Messengers of the Lord*, Mal. 2. v. 7. *And the Ambassadors of Christ; and to them is committed the Word [or Doctrine] of Reconciliation*, 2 Cor. 5. v. 19, 20.

Thus having discharged my Duty to you as a *Christian*, by exhorting you to an unfeigned Repentance for your Crimes, and Faith in Christ, by

by whose Merits alone you must hope for Pardon and Salvation; I must now do my Office as a Judge.

The Sentence that the Law hath appointed to pass upon you for your Offences, and which this Court doth therefore award, is,

That you the said Robert Tucker, Edward Robinson, Neal Paterfon, William Scot, Job Bayley, John William Smith, Thomas Carman, John Thomas, William Morrison, William Livers *aliàs* Evis, Samuel Booth, William Hewet, John Levit, William Eddy *aliàs* Nedy, Alexander Annand, George Rofs, George Dunkin, John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robbins, James Mullet *aliàs* Millet, Thomas Price, John Lopez, Zachariah Long, James Wilson, John Brierly, and Robert Boyd, shall go from hence to the Place from whence you came, and from thence to the Place of Execution, where you shall be severally hanged by the Neck, till you are severally dead.

And the God of infinite Mercy be merciful to every one of your Souls.

After the Condemnation of the above-mention'd Persons, Thomas Nichols, Rowland Sharp, Jonathan Clarke, and Thomas Gerrard, who were found Not Guilty, were discharged.

And then the Court adjourn'd to Monday the 10th Instant.

On Saturday, November the 8th, 1718, Robert Tucker, Edward Robinson, Neal Paterfon, William Scot, Job Bayley, John William Smith, John Thomas, William Morrison, Samuel Booth, William Hewet, William Eddy *aliàs* Nedy, Alexander Ammand, George Rofs, George Dunkin, Matthew King, Daniel Perry, Henry Virgin, James Robbins, James Mullet *aliàs* Millet, Thomas Price, John Lopez, and Zachariah Long, were executed at the White Point near Charles-Town, according to the above Sentence.

Monday, November the 10th, 1718. the Court met according to Adjournment.

THEN the Court proceeded to arraign Stede Bonnet *aliàs* Edwards *aliàs* Thomas, [who had escaped, but was retaken. Nov. 6.] for feloniously and piratically taking the Sloop *Francis*, with her Goods, Capt. Peter Manwareing, Commander; and the Sloop *Fortune*, with her Goods, Capt. Thomas Read, Commander; upon the two following Indictments.

The Jurors for our Sovereign Lord the King, do on their Oath present, That Stede Bonnet *aliàs* Edwards *aliàs* Thomas, late of Barbadoes, Mariner; Robert Tucker, late of the Island of Jamaica, Mariner, &c. as before.

The Jurors for our Sovereign Lord the King, do on their Oath present, That Stede Bonnet *aliàs* Edwards *aliàs* Thomas, late of the Island of Barbadoes, Mariner; David Heriot, late of the Island of Jamaica, Mariner; Edward Robinson, late of Newcastle upon Tine, Mariner, &c. as before.

To both which Indictments he pleaded Not Guilty. Judge Trott. You are to come upon your Trial

this Day, upon the first Indictment, and you have pleaded Not Guilty: so that what Evidence you have must be ready.

Bonnet. My pleading Not Guilty is because I may have something to offer in my Defence; and therefore I hope none of the Bench will take it amiss.

The Court proceeded upon his Trial on the first Indictment, for piratically taking the Sloop *Francis*, Capt. Peter Manwareing, Commander.

Then the Jurors were sworn, whose Names are as followeth.

Timothy Bellamy, Foreman.
George Ducket.
William Sberiff.
Benjamin Dennis.
Jonathan Main.
John Lee.

Thomas Bee.
James Mazyck.
Thomas Lamboll.
Henry Beaton.
Moses Wilson.
Claas Foor.

Mr. Hepworth. May it please your Honours, and you Gentlemen of the Jury; The Prisoner who now stands arraigned at the Bar, has been guilty of many Piracies, committed many Robberies, ruined many Families, and been the Occasion of many most cruel and inhuman Murders, and all that within a very short Time past. Should I here descend into all the Particulars, I shall take up too much of your Time. You know (all of ye) I believe, after what manner he lately fled from Justice. Nay, he was not satisfied with his own Escape, but he must tamper with the King's Evidence, to avoid others being prosecuted; and prevailed with the Master *Herriot* to run away with him, who has been since killed. And I believe the Prisoner at the Bar cannot, upon Reflection, but think himself answerable for that Man's Death. Nay, some People took particular notice of the Prisoner's Behaviour at the Time when *Thatch* having got the Command from him, he began to reflect upon his past Course of Life, and was then filled with such Horror, that he was perfectly confounded with Shame at the many detestable Crimes he had been guilty of, and said, he would gladly leave off that way of living, being fully tired, and having got considerably by it; but he should be ashamed ever to see the Face of an Englishman: Therefore if he could not get to Spain or Portugal, where he might be undiscovered, he would live and die in the same Course of Life, viz. in Piracy and Robbery.

The Trial of this Man ought to be the more considerable, as he was the great Ringleader of them; who has seduced many poor Ignorant Men to follow his Course of Living, and ruined many poor Wretches; some of whom lately suffered, who with their last Breath expressed a great Satisfaction at the Prisoner's being apprehended, and charged the Ruin of themselves and Loss of their Lives intirely upon him.

We shall now proceed to call our Evidences.

Ign. Pell. called and sworn.

Mr. Hepworth. Pell, begin with the first Indictment, and when you was first acquainted with Major Bonnet.

Ing. Pell. It was at the Bay of Honduras; but Capt. Thatch was Commander in Chief.

Att. Gen. This I observe was before they went to Top-sail-Inlet at North-Carolina.

Ing. Pell. Yes, Sir, for when we came to Top-sail-Inlet, Robert Tucker was chose Quarter-Master; and

and we went out to go to *St. Thomas's* for a Commission to go a privateering against the *Spaniards*; but the first Vessel we saw we took.

Mr. *Hepworth*. What did you take out of her?

Ign. *Pell*. We took some Provisions.

Att. *Gen*. Had you no Provisions on board the *Revenge*?

Ign. *Pell*. Yes, Sir, some Beef, Pork, and Flower.

Mr. *Hepworth*. What was the next Vessel you took?

Ign. *Pell*. A Sloop belonging to *Bermudas*. After we had discharged her, we took another in which were eight Negroes. We took out two, and left three Men and two Women, and sent three Hands more which made eight; and the next Day we gave Chace to two Ships belonging to *Glasgow* in *Scotland*, and in the Evening we came up with them, and the other turned Tail, and we never saw them more after that. And after we had taken some Tobacco and other Goods we discharged them. We took, as I remember, two Vessels belonging to *Bristol*, when Capt. *Read* was taken.

Att. *Gen*. What do you know of Capt. *Manwareing*?

Ign. *Pell*. We were at an Anchor near Cape *James* alias Cape *Inlopen*, and a little before Night we saw a Sloop come to an Anchor at the Mouth of the River, and we sent off the Dory with five Hands, and in a little Time they returned with Capt. *Manwareing*; and the next Day we haled the Sloop long-side the Scooner which we had taken before, and hoisted out several Hogsheads of Molasses and Rum, and put them on board the Canoo, and put some Pitch and Tar on board the Sloop.

Att. *Gen*. Who gave you Orders for the doing of that?

Ign. *Pell*. I cannot tell, Sir.

Att. *Gen*. Did you see Major *Bonnet* on board *Manwareing's* Sloop?

Ign. *Pell*. I cannot say he was, neither do I know certainly that he was not.

Judge *Trott*. Was he not your Commander?

Ign. *Pell*. He was called our Captain to be sure.

Cl. Have you any Questions to ask the King's Evidence?

Bonnet. Don't you believe in your Conscience, that when we left *Top-sail-Inlet*, it was to go to *St. Thomas's*? And there were near forty Hands, and the concluded to a marrooning.

Ign. *Pell*. I did believe it was so till after we were out.

Judge *Trott*. That was what they accused you for on their Trials; that you deceived them, under a Pretence of going to *St. Thomas's*.

Bonnet. I am sorry that they should take the Opportunity of my Absence to accuse me of that which I was free from.

Mr. *Dean*. If there were forty Hands on board, it cannot be thought that he had Power to command them.

Judge *Trott*. But he was Commander in Chief among them, and that after they went a pirating; was it not so, Boatswain?

Ign. *Pell*. He went by that Name; but the Quarter-Master had more Power than he.

Judge *Trott*. What do you mean by your Evasions? Was he Commander in Chief, or was he not?

Ign. *Pell*. He was.

Judge *Trott*. Then who had the greatest Power?

Att. *Gen*. Do you know if he received his Share of Capt. *Manwareing's* Goods? Or did any receive it for him?

Ign. *Pell*. Sir, it was the Quarter-Master took care of that.

Judge *Trott*. He was Commander in Chief, and therefore I suppose he had a double Share?

Ign. *Pell*. I did never enquire whether he had or not.

Judge *Trott*. Boatswain, tell the Truth; had he his Share, or had he not?

Ign. *Pell*. He had it.

Bonnet. Boatswain, did you ever hear me force any Man to go?

Ign. *Pell*. No, Major, I cannot say I did.

Bonnet. Do you not remember, that when we left *Top-sail-Inlet*, and they began to quarrel about Provision, that I said I would leave the Sloop?

Ign. *Pell*. I do remember you said so.

Judge *Trott*. But if you did take some for Provision, would no less than thirteen Vessels satisfy you?

Bonnet. It was contrary to my Inclination.

Mr. *Hepworth*. We proceed to call another Evidence.

Capt. *Peter Manwareing* call'd and sworn.

Mr. *Hepworth*. Capt. *Manwareing*, look upon the Prisoner at the Bar, do you know him?

Manwareing. I know him very well.

Mr. *Hepworth*. Give the Court an Account of your being taken by him.

Manwareing. I arrived at Cape *James* alias Cape *Inlopen*, the thirty-first of *July*; and after being at an Anchor some time, we saw a Dory coming, as I said before. So I was ordered on board the *Revenge*.

Judge *Trott*. And before whom was you brought?

Manwareing. Before the Man at the Bar, Capt. *Thomas* he was called then; and so I gave him my Papers; and it being Night, he said but little more that Night. Next Morning they haled the Sloop long-side the Scooner, and hoisted out the Rum and Molasses out of the Sloop, and put on board the Scooner; and the First of *August* we sailed in Company to Cape *Fear*. But indeed the Gentleman was very civil to me.

Att. *Gen*. Did you ever hear him give Orders to take out any Goods?

Manwareing. He was on board the Sloop himself when it was done.

Mr. *Hepworth*. Do you remember any particular Goods taken out.

Manwareing. Yes, Sir.

Clerk. Will you ask the King's Evidence any Questions?

Bonnet. I beg leave to ask whether you ever saw me share among the rest?

Manwareing. You was in the Round-House, and a Bundle and some Pieces was brought; and I saw you take it, and give it the *Negro-Boy*, to put into the Chest.

Bonnet. There were several that I kept their Shares for; but it was not mine.

Manwareing. It was put away by your Order.

Bonnet. Did you ever hear me order any thing out of the Sloop?

Manwareing. Major *Bonnet*, I am sorry you should ask me that Question; for you know you did: Which was my All, that I had in the World.

So that I do not know but my Wife and Children are now perishing for want of Bread in *New-England*. Had it been only myself, I had not matter'd it so much: but my poor Family grieves me.

Clerk. Will you ask any more Questions?

Bonnet. No, Sir.

Mr. Hepworth. We will call another Evidence.

James Killing called and sworn.

Mr. Hepworth. Give the Court an Account of your being taken, and what Goods were taken out of you.

The Evidence gave in the same Relation as in the former Trials; and then added, That Major *Bonnet* ordered him to go and shew which was the Rum, and which was the Moloffes.

Mr. Hepworth. Do you remember in particular what Goods were taken out?

Killing. Yes, Sir.

Mr. Hepworth. Were the twenty one Hogsheads of Moloffes, and the Rum taken out?

Killing. Yes, Sir.

Att. Gen. And all by Major *Bonnet's* Order?

Killing. Major *Bonnet* gave Orders for it to be done.

Judge Trott. What need had you of so much Moloffes?

Bonnet. I did not carry it away, and it was contrary to my Inclination.

Judge Trott. You gave Orders for it to be done, and yet it was contrary to your Inclinations.

Clerk. Will you ask the King's Evidence any Questions?

Bonnet. No, Sir.

Mr. Hepworth. We will call another Evidence.

Capt. Thomas Read called and sworn.

Mr. Hepworth. Please to give the Court an Account of *Capt. Manwareing's* being taken.

Capt. Read. After we came to Cape *James*, we saw a Sloop come to an Anchor, and Major *Bonnet* ordered the Dory, with five Hands to go off; and in about half an Hour they came on board with *Capt. Manwareing*.

Att. Gen. Was you on board the *Revenge* when the Dory was sent off?

Capt. Read. Yes, Sir.

Att. Gen. And Major *Bonnet* gave Orders to take out those Goods?

Capt. Read. Yes, Sir.

Judge Trott. Was he on board himself?

Capt. Read. Yes; and ordered the several Goods to be taken out.

Att. Gen. Do you know if the Major received his Share?

Capt. Read. The Captain was in the Round-House when they shared, and they brought in several Pieces of Cloth, and a Bag of Money.

Mr. Hepworth. Who brought that to him?

Capt. Read. I do not know which of the Men.

Att. Gen. And did the Captain receive his Share?

Capt. Read. He ordered it to be put in the Chest by the Boy.

Clerk. Will you ask any Questions?

Bonnet. No, Sir.

Judge Trott. You now stand on your Defence: What have you to say, I shall be ready to hear.

Bonnet. May it please your Honours, there is a young Man come from *North Carolina*, that will say something in my Defence.

James King call'd and sworn.

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Judge Trott. What do you know of the Prisoner at the Bar?

King. When Major *Bonnet* took out his Clearance at *North Carolina*, the Sloop was cleared for *St. Thomas's*, for a Commission to go against the *Spaniards* a privateering.

Mr. Dean. Do you certainly know it was so?

King. It was reported to be so by the Governour.

Att. Gen. Did you hear the Governour declare this?

King. No; but Colonel *Brice's* Son told me so?

Judge Trott. Colonel *Brice* lives fifty Miles in the Country, how did he come to inform you of this?

King. He came down out of the Country.

Judge Trott. If this be all the Evidence you have, I do not see this will be of much use to you; but if you have any thing further to say, I shall be ready to hear you.

Bonnet. I should be glad to go through both Indictments at once.

Judge Trott. We shall go through but one Indictment now; therefore you must prepare to speak to that singly.

Bonnet. May it please your Honours, and the rest of the Gentlemen, though I must confess my self a Sinner, and the greatest of Sinners, yet I am not guilty of what I am charged with. As for what the *Boatswain* says, relating to several Vessels, I am altogether free; for I never gave my Consent to any such Actions: For I often told them, if they did not leave off committing such Robberies, I would leave the Sloop; and desired them to put me on shore. And as for taking *Capt. Manwareing*, I assure your Honours it was contrary to my Inclination. And when I cleared my Vessel at *North Carolina*, it was for *St. Thomas's*; and I had no other End or Design in view but to go there for a Commission. But when we came to Sea, and saw a Vessel, the Quarter-Master, and some of the rest, held a Consultation to take it: But I opposed it, and told them again I would leave the Sloop, and let them go where they pleased. For as the young Man said, Col. *Brice's* Son can testify that I had Clearance for *St. Thomas's*.

Judge Trott. Was Col. *Brice's* Son there when you cleared for *St. Thomas's*?

Bonnet. Yes; and Col. *Brice's* Son knew I was design'd for *St. Thomas's*.

Judge Trott. But pray what Business had you at *St. Thomas's*? Surely after you had contracted so much Guilt upon your Conscience by your former *Piracies* and *Robberies*, you might have been contented to have lived a retired Life in *North Carolina*, reflected on your former wicked Course of Living, and repented of the same, and not engaged in new Actions.

Bonnet. I never took a Vessel but with *Capt. Thatch*.

Judge Trott. Did you not take *Capt. Manwareing's* Sloop?

Bonnet. It was contrary to my Inclinations; and I told them several Times if they would not leave off that Course of Life, I would leave the Sloop: And when *Capt. Manwareing* was taken, I was asleep.

Judge Trott. How came you to order the Dory to be sent off with five Hands to take him? And *Capt. Read* swears it was by your Order.

B b

Att.

Att. Gen. May it please your Honours, and the Gentlemen of the Jury, the Prisoner at the Bar hath pleaded *Not Guilty* to the *Indictment*; but the *Boatswain*, tho' he seems to bear a very great Affection to him, yet tells you that he was Commander in Chief among them at the Time when Capt. *Manwareing* was taken. Capt. *Manwareing* tells you, when he was brought on board the *Revenge*, he was brought before him, and no other, and that he delivered his Papers to him; and he saw his Share brought to him in the Round-House, and put into the Chest.

Then Capt. *Manwareing's* Mate says, Major *Bonnet* was on board the Sloop, and ordered him to shew which was the *Molasses*, and which was the *Rum*. And then Capt. *Read* says, Major *Bonnet* was Commander in Chief, and that he ordered the *Dory* to be sent off with five Hands to take Capt. *Manwareing*. Indeed the Prisoner pleads he was under Constraint from his Men, and that it was contrary to his Inclinations; but I think it not common for one that is forced to have such Command. And as for what *James King* says in behalf of the Prisoner, that he had his Clearance for *St. Thomas's*, in what he was accused of before, that he deceived his Men with a Notion of his going there for a Commission.

Judge *Trott*. Gentlemen of the Jury, the Prisoner at the Bar stands indicted for *Felony* and *Piracy*, committed on a Sloop belonging to Capt. *Peter Manwareing*, for breaking and boarding the said Sloop. The first Evidence, *Ignatius Pell*, through the great Affection he seemed to have for him, was unwilling to speak the Truth; yet he cannot deny but he was at the taking of *thirteen* Vessels, and particularly Capt. *Manwareing's*, and that he had his Share. Then comes Capt. *Manwareing*, and he says Major *Bonnet* was Commander in Chief; and that he was brought before him, and he gave his Papers to him, and by his Order it was that the Goods were taken out. And then *Killing* the Mate, he says *Bonnet* was on board when the Goods were taken out. Then comes Capt. *Read*, and he says the *Dory* was sent off by Major *Bonnet's* Order; and that his Share was brought into the Round-House to him. As for his Pretence, that his Men forced him against his Will, it appears by the Evidence he did not act like a Person under Constraint. And in the former Trials, several of you remember, that his Men generally said, that he deceived them under Pretence of his going to *St. Thomas's*; and that he forced them. So that I think the Evidence have proved the Fact upon him: But I shall leave this to your Consideration.

Then an *Officer* was sworn to keep the *Jury*.

Who after they had considered of their *Verdict*, returned, and found the abovesaid *Stede Bonnet* aliàs *Edwards* aliàs *Thomas*, Guilty.

Then the Court adjourned till *Tuesday* Morning.

Tuesday, November the 11th, 1718. the Court met according to Adjournment.

THEN the Court proceeded on the Trial of *Stede Bonnet* aliàs *Edwards* aliàs *Thomas*, upon the second *Indictment* for feloniously and *piratically* taking the Sloop *Fortune*, with her Goods,

Capt. *Thomas Read*, Commander.

To which *Indictment* upon his Arraignment he pleaded *Not Guilty*; but now desired leave to withdraw his *Plea*, and pleaded *Guilty*.

Then the Court adjourned till *Wednesday* Morning.

Wednesday, November the 12th, 1718, the Court met according to Adjournment.

THEN *Stede Bonnet* aliàs *Edwards* aliàs *Thomas*, who stood convicted of *Piracies*, as appears by the above Record, being brought to the Bar; and being asked what he had to say why Judgment of Death should not pass upon him:

And he having nothing to alledge in Arrest of Judgment;

Then Proclamation for *Silence* was made, while the *Judge* of the Court of *Vice-Admiralty* pronounced *Sentence* of Death upon the Prisoner.

Judge *Trott*. Major *Stede Bonnet*, you stand here convicted upon *two* *Indictments* of *Piracy*: One by the *Verdict* of the Jury, and the other by your own *Confession*.

Although you were indicted but for *two* Facts, yet you know that at your Trial it was fully proved, even by an unwilling Witness, that you *piratically* took and rifled no less than *thirteen* Vessels, since you sailed from *North Carolina*.

So that you might have been indicted and convicted of *eleven* more Acts of *Piracy*, since you took the Benefit of the King's *Act of Grace*, and pretended to leave off that wicked Course of Life.

Not to mention the many *Acts* of *Piracy* you committed before; for which, if your Pardon from *Man* was never so authentic, yet you must expect to answer for them before God.

You know that the Crimes you have committed are *evil* in themselves, and contrary to the *Light* and *Law* of *Nature*, as well as the *Law* of God, by which you are commanded that *you should not steal*, *Exod. xx. 15*. And the Apostle *St. Paul* expressly affirms, that *Thieves shall not inherit the Kingdom of God*, *1 Cor. vi. 10*.

But to *Theft* you have added a greater Sin, which is *Murder*. How many you may have killed of those that resisted you in the committing your former *Piracies*, I know not: But this we all know, that besides the wounded, you killed no less than *eighteen* Persons out of those that were sent by lawful Authority to suppress you, and to put a Stop to those Rapines that you daily acted.

And however you may fancy that that was killing Men fairly in open *Fight*, yet this know, that the Power of the *Sword* not being committed into your Hands by any lawful Authority, you were not impower'd to use any Force, or to *fight* any one; and therefore those Persons that fell in that Action, in doing their Duty to their King and Country, were *murdered*, and their *Blood* now cries out for *Vengeance* and *Justice* against you: For it is the *Voice* of *Nature*, confirmed by the *Law* of God, that *who so sheddeth Man's Blood, by Man shall his Blood be shed*, *Gen. ix. 6*.

And consider that Death is not the only Punishment due to *Murderers*; for they are threaten'd to have *their Part in the Lake which burneth with Fire and Brimstone, which is the second Death*, Rev. 21. 8. See Chap. 22. 15. Words which carry that Terror with them, that considering your Circumstances and your Guilt, surely the Sound of them must make you tremble; *For who can dwell with everlasting Burnings?* Chap. 33. 14.

As the *Testimony* of your *Conscience* must convince you of the great and many Evils you have committed, by which you have highly offended God, and provoked most justly his Wrath and Indignation against you, so I suppose I need not tell you that the only way of obtaining Pardon and Remission of your Sins from God, is by a true and unfeigned *Repentance*, and *Faith* in Christ, by whose meritorious Death and Passion you can only hope for Salvation.

You being a Gentleman that have had the Advantage of a *liberal Education*, and being generally esteem'd a Man of *Letters*, I believe it will be needless for me to explain to you the Nature of *Repentance* and *Faith* in Christ, they being so fully and so often mentioned in the Scriptures, that you cannot but know them. And therefore, perhaps, for that Reason it might be thought by some improper for me to have said so much to you, as I have already upon this occasion; neither should I have done it, but that considering the Course of your Life and Actions, I have just reason to fear that the Principles of Religion that had been instill'd into you by your *Education*, have been at least corrupted, if not entirely defac'd, by the *Scepticism* and *Infidelity* of this wicked Age; and that what time you allowed for Study was rather applied to the *Polite Literature*, and the vain *Philosophy* of the Times, than a serious Search after the *Law* and *Will* of God, as revealed to us in the *Holy Scriptures*: For *had your Delight been in the Law of the Lord, and that you had meditated therein Day and Night*, Psal. 1. 2. you would then have found that *God's Word was a Lamp unto your Feet, and a Light to your Path*, Psal. 119. 105. and that you would account all other Knowledge but *Loss*, in comparison of the *Excellency of the Knowledge of Christ Jesus*, Phil. 3. 8. *who to them that are called is the Power of God, and the Wisdom of God*, 1 Cor. 1. 24. *even the hidden Wisdom which God ordained before the World*, Chap. 2. 7.

You would then have esteem'd the *Scriptures* as the *Great Charter* of Heaven, and which delivered to us not only the most perfect *Laws* and *Rules* of Life, but also discover'd to us those Acts of *Pardon* from God, wherein we have offended those righteous Laws: For in them only is to be found the great *Mystery* of fallen Man's *Redemption*, which the *Angels* desire to look into, 1 Pet. 1. 12.

And they would have taught you that *Sin* is the debasing of *Human Nature*, as being a *Deviation* from that *Purity*, *Rectitude*, and *Holiness*, in which God created us; and that *Virtue* and *Religion*, and walking by the Laws of God, were altogether preferable to the Ways of *Sin* and *Satan*; for that the *Ways* of Virtue are *Ways of Pleasantness*, and all her Paths are *Peace*, Prov. 3. 17.

But what you could not learn from God's Word, by reason of your *carelesly*, or but *superficially* considering the same, I hope the Course of his *Providence*, and the present *Afflictions* that he hath laid upon you, hath now convinced you of the

same: For however in your seeming Prosperity you might make a *Mock at your Sins*, Prov. 3. 17. yet now that you see that God's Hand hath reach'd you, and brought you to public Justice, I hope your present unhappy Circumstances hath made you seriously reflect upon your past Actions and Course of Life; and that you are now sensible of the Greatness of your Sins, and that you find the Burden of them is intolerable.

And that therefore being thus *labouring, and heavy laden with Sin*, Matth. 11. 28. you will esteem that as the most valuable *Knowledge*, which can shew you how you can be reconciled to that supreme God, whom you have so highly offended, and which can reveal to you him who is not only the powerful *Advocate with the Father for you*, 1 John 2. 1. but also who hath paid that Debt that is due for your Sins by his own Death upon the Cross for you, and thereby made full Satisfaction to the Justice of God. And this is to be found no where but in God's Word, which discovers to us that *Lamb of God which taketh away the Sins of the World*; John 1. 29. which is *Christ* the Son of God: For this know, and be assured, that *there is none other Name under Heaven given among Men, whereby we must be saved*, Acts 4. 12. but only by the Name of the Lord *Jesus*.

But then consider how he invites all Sinners to come unto him, and *that he will give them rest*, Matth. 11. 28. for he assures us *that he came to seek and to save that which was lost*; Luke 19. 10. Matth. 18. 11. and hath promised that *he that cometh unto him, he will in no wise cast out*, John 6. 37.

So that if now you will sincerely turn to him, tho' late, even at the *eleventh Hour*, Matth 20. 6, 9. he will receive you.

But surely I need not tell you that the *Terms* of his *Mercy* is *Faith* and *Repentance*.

And do not mistake the *Nature* of *Repentance* to be only a bare Sorrow for your Sins, arising from the Consideration of the *Evil* and *Punishment* they have now brought upon you; but your Sorrow must arise from the Consideration of your having offended a gracious and merciful God.

But I shall not pretend to give you any particular Directions as to the Nature of *Repentance*: I consider that I speak to a Person whose Offences have proceeded not so much from his not *knowing*, as his *sighting* and *neglecting* his *Duty*: Neither is it proper for me to give Advice out of the way of my own Profession.

You may have that better delivered to you by those who have made Divinity their particular Study; and who by their Knowledge, as well as their Office, as being the *Ambassadors of Christ*, 2 Cor. 5. 20. are best qualified to give you Instructions therein.

I only heartily wish that what, in compassion to your Soul, I have now said to you upon this sad and solemn Occasion, by exhorting you in general to *Faith* and *Repentance*, may have that due Effect upon you, that thereby you may become a true *Penitent*.

And therefore having now discharged my Duty to you as a *Christian*, by giving you the best Counsel I can with respect to the Salvation of your Soul, I must now do my Office as a *Judge*.

The Sentence that the Law hath appointed to pass upon you for your Offences, and which this Court doth therefore award, is,

That you the said Stede Bonnet shall go from hence to the Place from whence you came, and from thence to the Place of Execution, where you shall be hanged by the Neck till you are Dead. And the God of infinite Mercy be merciful to your Soul.

On Wednesday December the 10th, 1718. the said Major Stede Bonnet was executed at the White-Point near Charles-Town, according to the above Sentence.



CXC. Proceedings of the House of Lords in Ireland against Jeffery Gilbert, Esq; Lord Chief Baron, John Pocklington, Esq; and Sir John St. Leger, Kt. Barons of the Exchequer there, for issuing Procefs in the Cause of Annesley and Sherlock, in opposition to an Order of that House, July 28. 1719. 5 GEO. I.

Alexander Burrowes, High-Sheriff of the County of *Kildare*, having been several times fined by the Court of *Exchequer*, for not obeying an Order of that Court, which he apprehended to be a Breach of a former Order of the House of Lords, presented the following Petition.

To the Right Honourable the Lords Spiritual and Temporal in Parliament Assembled, the Humble Petition of *Alexander Burrowes*, Esq; late Sheriff of the County of *Kildare*,

Most humbly Sheweth,



HAT on the 3d Day of *Octob.* 1717. your Lordships were pleased to Order, that the High Sheriff of the County of *Kildare* should forthwith put *Hester Sherlock* into the Possession of the Lands of *Little-Rath*, and other Lands in the said Order mentioned, which were to be held by her till she should receive thereout the Sum of 1507*l.* 14*s.* 8*d.* Farthing, chargeable upon the said Lands.

That *Charles Nuttal*, Esq; then High-Sheriff of the County of *Kildare*, in Obedience to, and by Vertue of your Lordships said Order, on the sixth Day of *Octob.* aforesaid, put the said *Hester Sherlock* into the Possession of the Premisses; and she was in the actual Possession thereof, when your Petitioner was appointed and sworn Sheriff of the said County of *Kildare* for the Year, ending at *Michaelmas* 1718.

That on the 15th Day of *March*, 1717. an Injunction issued out of the Court of *Exchequer*, Sign'd by the Right Honourable *Jeffery Gilbert*, Esq; Lord Chief Baron of the said Court; and under the Seal thereof, directed to your Petitioner, being then Sheriff of the said County; whereby your Petitioner was required immediately after Receipt thereof, pursuant to an Order of the said Court of *Exchequer*, bearing Date the 19th Day of *February* preceding, (although the Barons of the

said Court had due Notice of your Lordships said Order of the 3d of *Octob.* aforesaid) to restore *Maurice Annesley*, Esq; to the Possession of those Lands, whereof the said *Hester Sherlock* was then actually possessed by Vertue of, and under your Lordships said Order. And your Petitioner was also required by the said Injunction to support and keep the said *Maurice Annesley* in such Possession of the Premisses till the further Order of the said Court, or till the said *Maurice Annesley* shou'd be thereout Eviçted by due Course of Law, which Injunction was delivered to your Petitioner by *John Annesley* (the said *Maurice's* Brother) who required your Petitioner to give him the Possession of the said Lands, having a Letter of Attorney from his said Brother for that Purpose, (as he informed your Petitioner) but your Petitioner refused to execute the said Injunction, conceiving it to be a Breach of your Lordship's said Order of the 3d of *Octob.* 1717. and of the Rights and Privileges of this Honourable House.

Whereupon the said *John Annesley* in his proper Person, on the 13th Day of *May*, 1718. moved the said Court of *Exchequer* on his Affidavit, setting forth, that your Petitioner refused to execute the said Injunction, and pray'd that the said Affidavit might be read, which was order'd, and accordingly read by *John Beauman*, Gent. one of the Attornies of the said Court and the said Lord Chief Baron, and the Honourable *John Pocklington*, Esq; and Sir *John St. Leger*, Kt. two other of the Barons of the said Court, then sitting in the said Court of *Exchequer*, Ordered, that your Petitioner shou'd be fined 40*s.* if he did not return the said Injunction in four Days; and on several Motions afterwards made by the said *John Beauman*, the said Barons imposed several Fines on your Petitioner, which amount to 77*l.* *Sterl.* and upon said *Beauman's* Motion on the 30th Day of *June*, 1718. ordered an Attachment to the Pursuivant against your Petitioner, for the Matters aforesaid, which accordingly issued.

That on the 7th Day of *July*, 1718. your Petitioner returned the said Writ of Injunction, and thereon returned in *hæc Verba*, your Lordships said Order of the 3d Day of *Octob.* 1717. and the Resolutions of this Honourable House, bearing

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ing Date the 11th Day of *February*, 1703. on the Petition of *Edward* Earl of *Meath*, and *Cecilia* Countess of *Meath* his Wife; of which the said Barons had likewise due Notice. And that your Petitioner by reason of your Lordships said Order and Resolutions, and of the Rights and Privileges of this Honourable House, durst not restore the said *Maurice Annesley* to the Possession of the Premises, as by the said Writ of Injunction was required.

That all the said Fines being imposed on your Petitioner for not Returning said Writ, and your Petitioner having complied with the said Orders by Returning the same; the said Barons *Pocklington* and *St. Leger*, on the 16th Day of *July*, 1718. sitting publicly upon the Reducing of Fines in the *Exchequer* Chamber, and having heard the said several Fines imposed upon your Petitioner read unto them by the proper Officer, and being by him informed, that your Petitioner had Returned said Injunction, were pleased to reduce, and accordingly took off the said Fines, upon paying 6 *d.* in the Pound, (as by a Rule made by the Barons has been practis'd in such Cases, tho' the same was never taken before, as your Petitioner is informed;) but in the Afternoon of the said Day, *John Draycot*, one of the Attorneys of the said Court, (who paid the Box for your Petitioner on taking off the said Fines) was sent for by the said Lord Chief Baron to his Lordship's House, where the said other two Barons then were; and after the said Barons had heard the said Writ of Injunction and Return read, and what was offered in behalf of your Petitioner in Justification of the said Return, the said Barons were pleased at his Lordships said House, to oblige the said *Draycot* to take back the Money he so paid for taking off said Fines; and estreated the same, which have since issued in Process against your Petitioner; although the said Return was never complained off by the said *Maurice Annesley*, or his Council, nor had your Petitioner an Opportunity or Day given him to justify the Legality of the said Return, though the same was prayed by the said *Draycot* in behalf of your Petitioner.

That the said Barons, without having any regard to the said Return, on the 7th Day of *November* last, upon said *Beauman's* Motion, ordered the said Attachment to the Pursuivant to be renewed against your Petitioner; which having issued, your Petitioner was obliged to abscond, and keep as private as possible, so that he could not attend his Affairs, whereby your Petitioner has suffered very much in his Fortune.

That by Reason of the said Attachment to the

Pursuivant, so from time to time issued against your Petitioner, he could not come upon his Accounts before the said Barons in the said Court of *Exchequer*: your Petitioner being advised and well assured, that if he should appear in the said Court, the said Barons would commit your Petitioner into close Custody, for not obeying their said Injunction: and the said Barons taking Advantage of your Petitioner's said Circumstances, ordered your Petitioner to be Fined 1200 *l.* and upwards, for not coming upon his Accounts; tho' your Petitioner always was, and still is ready to give his Majesty a just and true Account of his said Office of Sheriff-wick, while he was concerned therein.

May it therefore please your Lordships to take the Premises into Consideration, and make such Order therein for your Petitioner's Relief, as to your Lordships in your great Wisdom shall seem meet.

And your Petitioner will ever Pray,

ALEX. BURROWES.

Upon reading this Petition, the House of Lords referred it to the Committee for Courts of Justice, who after an Examination into the Affair, made the following Report by the Lord Bishop of *Clogher* their Chairman.

My LORDS,

THE Lords Committees for *Courts of Justice*, to whom the Petition of *Alexander Burrowes*, Esq; late Sheriff of the County of *Kildare* was referred, do find,

That by the Order of this House of the 3d of *October*, 1717. *Hester Sherlock*, Widow, was upon the 6th of the same Month put into the actual Possession of the Lands of *Little Rath*, *Bodingstown*, *Darr* and *Mullenafooky* in the County of *Kildare*, by *Edward Conyers* Under Sheriff to *Charles Nuttall*, Esq; then High Sheriff of the said County; to continue therein till she should receive thereout the Sum of 1507 *l.* 14 *s.* 8 *d.* Farthing, chargeable on the said Lands; and the said *Hester* continued so possessed by Vertue of the said Order for near two Years.

That by the Minutes of the *Chancery* side of the *Exchequer* it appears, that the Lord Chief Baron of the *Exchequer*, on the 19th *February*, 1717. produced a Letter ^a dated *London* the 8th *February*, 1717. sign'd *Cowper*, C. in which two Papers ^b were inclosed, dated the 6th *February*,

^a *London*, the 8th *February*, 1717. My Lord Chief Baron, By Order of the House of Lords (a Copy whereof I herewith send you) I Transmit to your Lordship, and the rest of the Barons of his Majesty's Court of *Exchequer* in *Ireland*, the Order of the said House; whereby the Barons of that Court are commanded to Restore Mr. *Annesley* to the Possession of his Estate. Your Lordship will immediately communicate this to the rest of the Barons, and let me know, as soon as can be, what is done by your self, and the rest of the Barons, in pursuance to their Lordships Order, as you see by the above-mentioned Copy I am ordered to require of you. I am your Lordship's most faithful Servant,
Cowper, C.

To the Lord Chief Baron of the *Exchequer* in *Ireland*, and the rest of the Barons of the said Court.

^b *Die Jovis*, 6^o *Februarii*, 1717. Ordered, By the Lords Spiritual and Temporal in Parliament Assembled, That the Lord Chancellor do Transmit the Order of this House to the Barons of the *Exchequer* in *Ireland*, which requires them to cause Possession to be forthwith delivered to *Maurice Annesley*, Esq; of the Lands of which he was dispossessed, pending his Appeal in this House, commanding the Barons of the *Exchequer* at the same time to return to this House, as soon as they can, an Account of what shall be done therein.

Die Jovis 6 *Die Februarii*, 1717. Upon Report from the Committee of the whole House, to whom it was Referr'd, to consider by what Methods the Order of this House, for the Restoring Possession to *Maurice Annesley*, Esq; of the Estate in *Ireland*, whereof he was Dispossess'd, pending his Appeal in this House, may be most properly enforced and Executed: It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, that the Barons of the Court of *Exchequer* in *Ireland*, do cause the said *Maurice Annesley*, Esq; to be forthwith Restored to the Possessions of the Lands of which he was Dispossess'd, pending his Appeal, which was received by this House the 8th Day of *June* last.

William Cowper, Cler'. Parliamentor'.

1717, sign'd *William Cooper*, Cler' Parliamentor' directed to the Lord Chief Baron of the *Exchequer* in *Ireland*, and the rest of the Barons of the said Court; alledged by the Lord Chief Baron to be Orders from the Lords in *Great Britain*, requiring them to restore *Maurice Annesley*, Esq; to the Possession of the Lands he was dispossessed of; pending his Appeal in the *House of Lords of Great Britain*.

That on the said 19th Day of *February*, 1717. in pursuance of the said alledged Orders and Letter (inserted at the end of this Report) tho' no Affidavit had been made, that the said Orders or Letter were regularly Compared and signed, the said Lord Chief Baron, and the other Barons, without any Motion by Council or Attorney, ordered an Injunction for the restoring the said *Maurice Annesley* to Possession of the Lands he was dispossessed of; pending his said Appeal, in the Name of the *Chancellor*, *Treasurer*, and *Barons* of the said Court of *Exchequer*, whereby the Sheriff or Sheriffs of the County or Counties where the said Lands lay, was forthwith to put the said *Maurice* into the Possession of the said Lands.

That in order to make out the said Injunction, the said Court ordered the said *Maurice Annesley*, his Attorney, Agent, Solicitor or Council, shou'd forthwith attend the Chief Remembrancer, or his Deputy, with the Names of the Lands of which the said *Maurice Annesley* was so dispossessed of, and also the County or Counties where the said Lands lay.

That upon the 14th of *March*, 1717. Affidavit was made before the Lord Chief Baron by *John Annesley* of *Ballisax* in the County of *Kildare*, Esq; wherein *Hester Sberlock*, was made Plaintiff, and *Maurice Annesley*, Esq; Defendant; that he the said *John* was dispossessed of the Lands of *Little Rath*, *Darr*, *Bodinstown*, and *Mullenafooky*, which he the said *John* held by Vertue of a Lease from the said *Maurice Annesley*, pending his said Appeal; and that the said *John's* Lease was then in being and undetermined.

That upon the 14th of *March*, 1717. the said Affidavit of the said *John Annesley* was filed in the Chief Remembrancer's Office, in order to have the said Injunction made out; but before the said Injunction issued, it appears by the Examination, of Mr. *John Draycott*, Attorney for Mrs. *Sberlock* in the *Exchequer* (after having been sworn at the Bar of this House) that he the said *Draycott* attended Mr. *John Becher*, then Deputy Chief Remembrancer, at his Office, and in the Presence of the said *John Annesley* informed the said *Becher* that the said Affidavit was insufficient, and that the said *Draycott* was ready to prove, that the said *Maurice Annesley* was not at the time of his said Appeal, nor at any time since, in Possession of the said Lands mentioned in the said Affidavit; having sold the said Lands some Years before to *Andrew Wilson*, Esq; and Mrs. *Frances Harman*.

That by two Copies of Memorials out of the Register's Office (for Registering Deeds, &c. pursuant to Act of Parliament) proved by the said *Draycott* to be true Copies of the Memorials remaining in the said Office, it appears, that by Deeds of Lease and Release bearing Date respectively the 1st and 2d Days of *March*, 1714. the Lease being made between *Jeffery Paul*, Esq; on the one Part, and *Andrew Wilson*, Esq; of the other Part; and the Release made between the said *Jeffery Paul* of the first Part, said *Andrew*

Wilson of the second Part, and *Maurice Annesley*, Esq; on the third Part, whereby the several Lands of *Little Rath*, *Darr*, and *Bodinstown* in the Barony of *Naas*, and County of *Kildare*, were for the Considerations therein mentioned, conveyed to the said *Andrew Wilson* and his Heirs for ever: And the Right Honourable the Lord *Albani* upon his Honour declared, that he knew that *John Annesley* of *Ballisax*, Esq; had paid Rent to the said *Andrew Wilson* by Vertue of, and under the said Purchase; but believed that the Lord Chief Baron or the other Barons knew nothing thereof. It also appears, that by Deeds of Lease and Release, bearing Date respectively the 2d and 3d Days of *April* 1715. made between *Maurice Annesley*, Esq; of the one Part, and *Frances Harman* of the City of *Dublin*, Widow, of the other Part: By which said Release the said *Maurice Annesley* for the Considerations therein mentioned, conveyed to the said *Frances Harman*, and her Heirs for ever, the Lands of *Mullenafooky* in the said County of *Kildare*. That notwithstanding there was no County mentioned in the said Affidavit, and said Notice given of said Sale to the said Officer as aforesaid; neither did it appear by the said Affidavit, that the said *Maurice Annesley* was dispossessed of the said Lands therein mentioned, pending his Appeal; the said Injunction issued directly to the Sheriff of the County of *Kildare*, bearing Date the 22d *February*, in the Fourth Year of his Majesty's Reign, sign'd *Galfridus Gilbert*, and returnable into the said Court in *Quindec. Pasch.* then next ensuing.

That by an Affidavit sworn by *John Annesley* on the 7th of *May*, 1718. before Mr. Baron *St. Leger*, and filed in the Chief Remembrancer's Office the 9th of the same Month; wherein he made *Maurice Annesley*, Esq; Plaintiff, and *Hester Sberlock*, Widow, Defendant; in which the said *John Annesley* deposed, that on or about the 15th of *March* preceding, he delivered the before-mentioned Injunction to *Alexander Burrowes*, Esq; then High Sheriff of the said County of *Kildare*; and shewed the said Sheriff a Letter of Attorney from the Plaintiff, empowering the said *John Annesley* to receive the Possession of the Lands in the said Injunction mentioned; but the said Sheriff refused to execute the said Injunction.

That the said *John Annesley* in his proper Person, on the 13th of the said Month, moved the said Court upon an attested Copy of the said Affidavit; but the said *Draycott* insisting, that there was no such Cause in Court, the said *Annesley* was directed by the said Court to amend his Affidavit and move it again.

That the said *Annesley* thereupon erased and altered the said Copy, and made *Hester Sberlock*, Widow, Defendant; and swore the same before Mr. Baron *St. Leger*, and filed the said Affidavit so amended in the Chief Remembrancer's Office, without any Alteration made in the Body of the said Affidavit; which was proved by the Deposition of *Daniel Reading*, Esq; Deputy Chief Remembrancer; who was sworn at the Bar of this House, and examined before the said Lords Committees.

That the same Day (*viz.*) 13th *May*, upon reading the said Affidavit, the said Court was informed by Counsellor *Dixon*, that what was sworn in the said Affidavit could not be true: For that the said *Annesley* swore he had a Letter of Attorney from the Plaintiff (who was Mrs. *Sberlock* to receive Possession of the Lands therein mentioned; when

when, in truth, Mrs. *Sherlock* was then in actual Possession of the said Lands.

That the Lord Chief Baron said it was only a Mistake, and without rectifying the same, on Motion of Mr. *John Beauman* an Attorney, the Court ordered the said Sheriff to be fin'd forty Shillings, if he did not return the said Injunction in four Days; and on said *Beauman's* several Motions, there were Fines at several Times laid upon the said Sheriff for not returning the said Injunction, which amounted to 77*l.* which was proved by the Minutes of the said Court, and the Testimony of the said *Draycott*.

That the said *Draycott* likewise proved, that the said Lord Chief Baron, and the other Barons, had due notice of the said Order of this House; and the Resolutions thereof made the 11th *February*, 1703. before any Proceedings were had in the said Cause, subsequent to the said Order of this House of the 3d of *October*, 1717. and that the said *Annesley* and *Beauman* were served with Copies of the said Order and Resolutions, before any Motions were made by them in the said Cause.

That by the Minutes of the 13th *June*, 1718. taken in the said Court, it appears, that Mr. *Chancellor* of the *Exchequer* declared, That the Orders of the House of Lords of *England* being only directed to the *Barons* of that Court; and that he found, that the Order of that Court, which was made thereon, was made, as if done by him, and the *Treasurer*, as well as by the *Barons*; that he apprehended, that in regard the said Orders were not directed to him, or he present when the said Order of the Court of *Exchequer* was made, *That he had nothing to do therewith, and did not consent thereto.*

That it appeared by the Testimony of the said Mr. *Reading*, that the said Cause between *Sherlock* and *Annesley* was of the *Chancery* Side of the *Exchequer*; and that all Bills in the *Chancery* Side of the said Court were directed to the *Chancellor*, *Treasurer* and *Barons*, and believed, that if a Bill was directed otherwise, it would be Error.

That upon the 30th of *June*, 1718. on Motion of the said *Beauman*, an Attachment to the Pursuivant was awarded against the said *Burrowes* for not returning the said Injunction, bearing Test the 1st Day of *July*, in the Fourth Year of his Majesty's Reign, and returnable before the

Chancellor, *Treasurer*, and *Barons*. of the said Court, in *Craef. Animar.* then next.

That upon the 7th *July* 1718. the said *Burrowes* return'd the said Injunction, and the said *Beauman* was acquainted therewith by the said *Draycott*; who told the said *Beauman*, that he was ready to pay him the Cost of imposing the said Fines and Pursuivant, which the said *Beauman* refused, and told the said *Draycott*, that *he must first have the said Sheriff in Custody*: That the said *Draycott* applied again to the said *Beauman*; and the said *Beauman* said, *he must first lay the said Sheriff by the Heels.*

That by the Testimony of the said Mr. *Reading* and Mr. *Draycott*, *Barons Pocklington* and *St. Leger*, upon 16th *July* 1718. sat in the *Exchequer-Chamber* on the reducing of Fines: That the Fines imposed upon the said Sheriff were then read by Mr. *Becher* the Officer, who inform'd the said Barons, that the said Injunction was return'd; that a Pistole and seven Half-Crowns were paid to the Box, and the said Fines were then taken off by the said Barons.

That upon the same Day in the Afternoon, the said *Becher*, *Reading*, and *Draycott* were sent for to the Lord Chief Baron's House, where the two other Barons were with his Lordship; that the said Injunction was sent for, and said Injunction and Return thereon was read, and the Barons declared that it was no Return; that the said *Draycott* told his Lordship, that he hoped he would at least respite the said Fines till the then next Term, or give the said Sheriff an Opportunity to justify his said Return, which was refused: That the List of Fines, which was that Day read in the *Exchequer-Chamber*, was then call'd for, and the Fines imposed upon the said *Burrowes* were then read: That the said *Draycott* was obliged to take back the said Money, which he had paid to the Box for taking off the said Fines, and the same were then estreated.

That the Return made by the Sheriff upon the said Injunction, was to this Purpose, (*viz.*) That before the said Writ came to him, the Order of this House of the 3d of *October*, 1717. and the Resolutions of this House of the 11th of *February*, 1703. were delivered to him, which he recites in *hæc verba*. Which Return the Lords Committees have thought fit to annex to their Re-

^c The Return upon the Injunction. *Cancellar. Thesaurar. & Baronibus Infraſcript. humilimè Certifico quod ante adventum hujus Brevis mihi directæ quædam Resolutiones Præhonorabil. Dom. Procerum hujus Regni Hiberniæ factæ. in Parliament. apud Dublin. in hoc Regno Congregat. undecimo die Febr. Anno Dom. Millesimo Septingentesimo Tertio mihi deliberat. fuer. quæ sequuntur in hæc verba. scilicet. Resolutions of the Right Honourable the House of Peers, the Eleventh of February, 1703.*

Ordered on Motion, That the Petition of *Edward* Earl of *Meath*, and *Cecilia* Countess of *Meath*, his Wife, be read; read accordingly.

Ordered on Motion, That the Clerk of the Rolls do bring into this House the Roll of the Acts of Parliament of the 38th of *Henry* the Sixth.

Resolved on the Question, *Nemine Contradicente*, That by the antient and known Laws and Statutes of this Kingdom, her Majesty hath an undoubted Jurisdiction and Prerogative of Judging in this her High Court of Parliament, in all Appeals and Causes within her Majesty's Realm of *Ireland*.

Resolved on the Question, *Nemine Contradicente*, That the Determinations and Judgments of this High Court of Parliament, are final and conclusive, and cannot be revers'd or set aside by any other Court whatsoever.

Resolved on the Question, *Nemine Contradicente*, That if any Subject or Resiant within this Kingdom, shall hereafter presume to remove any Cause determined in this High Court of Parliament, to any other Court, such Person or Persons shall be deemed *Betrayers* of her Majesty's Prerogative and Jurisdiction, and the undoubted, antient Rights and Privileges of this Honourable House, and of the Rights and Liberties of the Subjects of this Kingdom.

Resolved on the Question, *Nemine Contradicente*, That if any Subject or Resiant within this Kingdom, shall presume to put in Execution any Order from any other Court, contrary to the final Judgment and Determination of this High Court of Parliament, such Person or Persons shall be deemed *Betrayers* of her Majesty's Prerogative and Jurisdiction, and the undoubted, antient Rights and Privileges of this House, and of the Rights and Liberties of the Subjects of this Kingdom.

En Sterne, Clerc' Parliamentor'.

*Et ulterius Certifico, quod ante Adventum istius Brevis mihi directæ. quidam Ordo factæ. per Præhonorabil. Domin. Spiritual. & Temporal. in Parliament. in hoc Regno Congregat. geren. dat. Tertio die Octobris, Anno Dom. Millesimo Septingentesimo decimo Septimo etiam mihi deliberat. fuit, qui sequitur in hæc verba, scilicet. Die Jovis Tertio die Octobris, 1717. Whereas by the Report made from the Lords Committees appointed to consider the properest Method for the relieving of *Hester Sherlock*, Widow, &c. pursuant to what was Ordered and Adjudged by this House, on the 19th Day of *June*, 1716. in a Cause*

wherein

port. That *Charles Nuttal*, Esq; late Sheriff of the County of *Kildare*, by Vertue of the said Order of the 3d of *October*, put *Hester Sherlock* into the Possession of the Premises, and that she was at the Time of the Return in Possession thereof; that by reason of their Order and Resolutions, he durst not restore *Maurice Annesley* to the Possession of the Lands in the said Injunction mentioned, in Prejudice and Violation of the Right and Privileges of this House.

That upon the 7th of *November*, 1718. upon Motion of the said *Beauman*, the said Attachment to the Pursuivant against the said *Burrowes* was renewed, bearing Test the 6th of *November* last, and returnable before the said *Chancellor*, *Treasurer* and *Barons* in *Octabis Sancti Hillarii* then next ensuing; and on the 30th *January* following, the said Attachment was again ordered to be renewed: That the said *Sheriff*, by Reason of their said Attachments, was obliged to abscond, and thereby prevented from coming upon his Accounts, and was upon that Account fined by the said Court 1200*l.* and upwards.

That upon the 4th *February*, 1718. the Lord Chief Baron, and Mr. Baron *Pocklington*, upon the Receipt of Three Papers, ^d which the said Barons alledged to be Orders from the House of

Lords of *Great Britain*, dated the 23d *January*, 1718. sign'd *William Cowper*, Cler' *Parliamentor'*. In a Letter produced by the said Barons from the Lord Chancellor, dated *London*, the 27th *January*, 1718. sign'd *Parker C.* which came by the Post; directed to the Lord Chief Baron of the *Exchequer* in *Ireland*, and the rest of the Barons of that Court; whereby it was Ordered, That the Barons of the said Court of *Exchequer*, should cause *Hester Sherlock* to account before them upon Oath, for the Rents and Profits of the Estate in Question, which she had made or received since her gaining the Possession thereof by the Order of the House of Lords in *Ireland*; and to answer and pay the same to *Maurice Annesley*, Esq; but without Prejudice in Case of an Appeal: Also, that the Barons of the said Court were directed to proceed by the most speedy and effectual Methods, to cause Possession of the Estate of the said *Maurice Annesley*, as required by their Order of the 6th *February*, to be restored to him; and also that the Chancellor of *Great-Britain*; should transmit to the said Barons the said Orders, and that they should give an Account of what should be done therein.

That without any Proof by Affidavit, (as usual in Courts of Equity) the said *Alledged Orders* were

wherein the said *Hester Sherlock*, Widow was Appellant, and *Maurice* and *John Annesley*, Esqrs; were Respondents: As also upon the Resolutions agreed to this Day by this House, it appears, That the Sum of One Thousand Five Hundred and Seven Pounds, Fourteen Shillings and Eight Pence Farthing was due to *Hester Sherlock*, the Appellant, upon the 19th Day of *February*, 1716. on Account of the Principal and Interest of the Portion of *Edward Sherlock*, decreed unto the said Appellant as Administratrix to the said *Edward*, by this House on the 19th Day of *June*, 1716; and that the Lands of *Little Rath Bodinstown*, *Darr*, and *Mullenafooky* in the Barony of *Naas* and County of *Kildare* are chargeable with, and liable to the Payment of the said Sum. It is thereupon Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the High Sheriff of the County of *Kildare* do forthwith put the said *Hester Sherlock* into the Possession of the said Lands of *Little Rath*, *Bodinstown*, *Darr*, and *Mullenafooky*, subject to the said Sum of One Thousand Five Hundred and Seven Pounds, Fourteen Shillings, and Eight Pence Farthing, to be held by her the said *Hester*, until such Time, as she shall receive the said Sum chargeable upon the said Lands as aforesaid, and this shall be a sufficient Warrant in that behalf.

TO CHARLES NUTTAL, Esq; High Sheriff of the County of *Kildare*.

En. Stern. Cler' *Parliamentor'*. *Virtut. cujus Ordin. prædict.* Carolus Nuttal posuit prædict. *Hester Sherlock in plen. quiet. & pacific. Possession. Omn. Vill. & Terr. prædict. & prædict.* *Hester Sherlock jam usq; Continuat in ead. Possession. Præmiss. prædict. secund. tenor. & effect. Ordinis prædict. Ratione quorum Resolution. & Ordin. in Præjudic. & Session. Privileg. Parliament. per Leges & Statut. hujus Regni Hiberniæ provis. infra Nominat. Mauric. Annesley, Ar. ad Possession. Seporal. Vill. & Terr. de Little Rath, Bodinstown, Darr, & Mullenafooky infra Menconant. restituer. non audeq. Sic Respond.*

Alex. Burrowes, Ar. vic.

^d *Annesley* vers. *Sherlock*. Die *Veneris* 23 *Januarii*, 1718. Ordered, By the Lords Spiritual and Temporal in Parliament assembled, That the Lord High Chancellor of *Great Britain* do transmit the two Orders made this Day on the Behalf of *Maurice Annesley*, Esq; to the Barons of the Court of *Exchequer* in *Ireland*, commanding them at the same time to return, as soon as they can, an Account of what shall be done therein.

William Cowper, Cler', *Parliamentor'*.

My Lord Chief Baron,

London the 27th *January*, 1718.

By Order of the House of Lords (a Copy whereof I herewith send you) I transmit to your Lordship and the rest of the Barons of his Majesty's Court of *Exchequer* in *Ireland*, two Orders of the said House, made in the Cause of *Annesley* against *Sherlock*; by one of which the Barons of that Court are commanded to proceed by the most speedy and effectual Methods, to cause Possession of the Estate of the Appellant *Maurice Annesley*, Esq; to be restor'd to him, as was required by Order of the said House of the 6th *February* last: and by the other, the said Barons are commanded to cause *Hester Sherlock* to account before them upon Oath for the Rents and Profits of the Estate in Question, which she has made or received since her gaining Possession thereof, by Order of the House of Lords in *Ireland*; and answer and pay the same to the said Appellant, *Maurice Annesley*, Esq; but without Prejudice to the Right, in Case of an Appeal to be brought by either Party from the Decree of the Court of *Exchequer* in *Ireland*.

Your Lordship will immediately communicate this to the rest of the Barons, and return as soon as you can, an Account of what shall be done by yourself, and the rest of the Barons, in Pursuance of your Lordship's said Orders, as you see by the abovementioned Copy I am order'd to require of you.

I am, Your Lordship's most faithful Servant.

Parker, C.

To the Lord Chief Baron of the *Exchequer* in *Ireland*, and the rest of the Barons.

Annesley vers. *Sherlock*. Die *Veneris* 23 *Januarii*, 1718. Upon Report from the Lords Committees, appointed to enquire into the Reason of the Delay, in not obeying the Orders of this House, relating to the Appeal of *Maurice Annesley*, Esq; and how the same may more properly be enforced: It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Barons of the Court of *Exchequer* in *Ireland* be, and are hereby directed to proceed by the most speedy and effectual Methods, to cause Possession of the Estate of the said *Maurice Annesley*, as required by Order of this House of the 6th of *February* last, to be restored to him.

William Cowper, Cler' *Parliamentor'*.

Annesley vers. *Sherlock*. Die *Veneris* 23 *Januarii*, 1718. Ordered, By the Lords Spiritual and Temporal in Parliament assembled, That the Barons of the Court of *Exchequer* in *Ireland* do cause the Respondent, *Hester Sherlock*, to account before them upon Oath, for the Rents and Profits of the Estate in Question, which she has made or received since her gaining the Possession thereof, by the Orders of the House of Lords in *Ireland*; and to answer and pay the same to the Appellant, *Maurice Annesley*, Esq; but without Prejudice to the Right, in Case of an Appeal to be brought by either Party from the Decree of the Court of *Exchequer* in *Ireland*.

William Cowper, Cler' *Parliamentor'*.

regularly

regularly signed and compared? and without Motion of Council or Attorney, it was ordered in the Name of the Chancellor and Treasurer, Lord Chief Baron, and the rest of the Barons of his Majesty's Court of Exchequer in Ireland, that the Injunction of that Court should forthwith issue, directed to the said Hester Sberlock, and to the several and respective Tenants of the Lands in Question; requiring them, and every of them, quietly to restore to the said Maurice Annesley, the Possession of the Town and Lands of Little Rath, Bodinstown, Darr, and Mullenafooky, lying and being in the County of Kildare; the said Lands by the said Barons supposed to be comprehended in the said Order.

That the said Injunction was ordered to be served upon the said Persons by the Pursuivant attending the said Court, or by any other Person or Persons whom the said Maurice Annesley, or his Agent should appoint: And the said Maurice Annesley, or his Agent, was thereby required to leave the Names of the several and respective Tenants of the said Lands at the proper Office, in order to be inserted in the said Injunction: And also ordered, that the Rents of the said Lands remaining in the several Tenants Hands from the Time the said Hester Sberlock was put in Possession, should be forthwith by them paid over to the said Maurice Annesley; and that a Copy of the said Order should be served upon the said several Tenants of the said Lands, together with the said Injunction: Tho' by the Order of the House of Lords of Great Britain, the Barons were only directed to oblige Hester Sberlock to account before them upon Oath, for the Rents of the said Lands, received by her since her gaining the Possession thereof; which she was to pay to Maurice Annesley, without Prejudice in Case of an Appeal.

That pursuant to the said Order of the 4th of February, an Injunction issued out of the said Court, sign'd Geff. Gilbert; bearing Test the 12th February last, directed to Hester Sberlock, and Twenty-one Persons as Tenants to the said Lands. That the said Hester Sberlock was never served with the said Injunction or Order: notwithstanding which, she was thereby dispossessed of the said Lands about the 20th February last, by the Attornments of the Tenants; except a small Part thereof in the Possession of Dennis Galvin.

That upon an Affidavit made by Richard Lyons, in a Cause of Annesley vers. Sberlock, sworn before Mr. Baron St. Leger, the 23d of February last; and upon Motion of said Beauman, an Attachment to the Pursuivant was the same Day ordered by the said Court, against said Dennis Galvin, for not obeying the said Injunction, though no such Person was named in the said Writ of Injunction.

The said Lords Committees had also the Oath administered to the Barons of the Exchequer, laid before them by Mr. Hartley Hutchinson, Deputy Clerk of the Crown in the High Court of Chancery, and is as follows, viz.

YE shall swear, That well and truly ye shall serve the King in the Office of Baron of his Exchequer; and that truly ye shall Charge and Discharge all manner of People; as well the Poor as Rich, and that for Highness nor for Riches, nor for Hatred, nor for the Estate of no manner of Person or Persons, nor for any good Deed, Gift nor Promise

of any Person the which is made to you, nor by Craft nor by Engine, ye shall Lett the King's Right, nor none other Persons Right ye shall Disturb; Lett nor Respitt against the Laws of the Land, nor the King's Debts ye shall put in Respitt where that they may goodly be Levied, and that the King's Needs ye shall speed before all other, and that for Gift, Wages, no good Deed ye shall Layne, Disturb nor Lett the Profit and Reasonable Advantage of the King, in the Advantage of any other Person nor of yourself: And that nothing ye shall take of any Person for to do Wrong or Right or Delay, or for to Deliver or to Delay the People which that have to do afore you; but as hastily as ye may them goodly to Deliver without Hurt of the King, and having no regard to any Profit, that might thereof to you be therein, you shall make to be delivered: And whereas ye may know any Wrong or Prejudice to be done to the King, ye shall put and do all your Power and Diligence that to Redress; and if ye may not do it, ye shall tell it to the King, or to them of his Council, which may make Relation to the King, if ye may not come to him, to the King's Majesty's Lieutenant, or other Chief Governour or Governours of this Realm for the time being, and the King's Council ye shall keep and Layne in all things, as God you help, and by the Contents of this Book.

The Committee humbly take leave to observe to your Lordships, That there is no Name of any Attorney to the first Injunction.

Which said Report being read, the House agreed to the same, and came to the following Resolutions:

RESOLVED on the Question, that Alexander Burrowes, Esq; late High-Sheriff of the County of Kildare, has fully proved the Allegations of his Petition, to the Satisfaction of this House.

Resolved on the Question, That the said Alexander Burrowes, Esq; late High-Sheriff of the County of Kildare, in not obeying the Injunction issued forth out of his Majesty's Court of Exchequer, dated the 22d February, 1717. in the Cause between Sberlock and Annesley, has behaved himself with Integrity and Courage, and with due Respect to the Orders and Resolutions of this House.

Resolved on the Question, That the Fines imposed upon Alexander Burrowes, Esq; by the Court of Exchequer, amounting to 77*l.* for not returning the Writ of Injunction in the Cause between Sberlock and Annesley, be taken off without Fees.

Resolved on the Questions, That the Fines imposed upon Alexander Burrowes, Esq; by the Court of Exchequer, for not Entering on his Accounts, amounting to 1200*l.* and upwards, be taken off, when he shall have made a just Account, without other Fees than such as are usual on passing Sheriffs Accounts.

Resolved, on the Question, That the Lord Chief Baron, and the other Barons of the Court of Exchequer, had due Notice of the Resolutions of this House, made the 11th February 1703. in the Cause of the Earl of Meath, and Lord Ward, before they made an Order for an Injunction to put Maurice Annesley into Possession.

Resolved on the Question, That the Lord Chief Baron, and the other Barons of the Court of *Exchequer*, had due Notice of the Order of this House of the 3d of October, 1717. in the Cause of *Sherlock* and *Annesley*.

Resolved on the Question, That *Jeffery Gilbert*, Esq; Lord Chief Baron of his Majesty's Court of *Exchequer*, in the Proceedings in the Cause between *Sherlock* and *Annesley*, as also against *Alexander Burrowes*, Esq; late High Sheriff of the County of *Kildare*, has acted in direct Violation of the Orders and Resolutions of this House.

Resolved on the Question, That *Jeffery Gilbert*, Esq; Lord Chief Baron of his Majesty's Court of *Exchequer*, in the Proceedings in the Cause between *Sherlock* and *Annesley*, as also against *Alexander Burrowes*, Esq; late High Sheriff of the County of *Kildare*, has acted in manifest Derogation to, and Diminution of the King's Prerogative of finally Judging in his High Court of Parliament in *Ireland*, as also of the Rights and Privileges of this Kingdom, and the Parliament thereof.

Resolved on the Question, That *John Pocklington*, Esq; one of the Barons of his Majesty's Court of *Exchequer*, in the Proceedings in the Cause between *Sherlock* and *Annesley*, as also against *Alexander Burrowes*, Esq; late High Sheriff of the County of *Kildare*, has acted in direct Violation of the Orders and Resolutions of this House.

Resolved on the Question, That *John Pocklington*, Esq; one of the Barons of his Majesty's Court of *Exchequer*, in the Proceedings in the Cause between *Sherlock* and *Annesley*, as also against *Alexander Burrowes*, Esq; late High Sheriff of the County of *Kildare*, has acted in manifest Derogation to, and Diminution of the King's Prerogative of finally Judging in his High Court of Parliament in *Ireland*, as also of the Rights and Privileges of this Kingdom, and the Parliament thereof.

Resolved on the Question, That Sir *John St. Leger*, Knt. one of the Barons of his Majesty's Court of *Exchequer*, in the Proceedings in the Cause between *Sherlock* and *Annesley*, as also against *Alexander Burrowes*, Esq; late High Sheriff of the County of *Kildare*, has acted in direct Violation of the Orders and Resolutions of this House.

Resolved on the Question, That Sir *John St. Leger*, Knt. one of the Barons of his Majesty's Court of *Exchequer*, in the Proceedings in the Cause between *Sherlock* and *Annesley*, as also against the said *Alexander Burrowes*, Esq; late High Sheriff of the County of *Kildare*, has acted in manifest Derogation to, and Diminution of the King's Prerogative of finally Judging in his High Court of Parliament in *Ireland*, as also of the Rights and Privileges of this Kingdom, and the Parliament thereof.

Resolved on the Question, *Nem. Con.* That it is the Duty of the Barons of the *Exchequer*, where there is any Wrong or Prejudice done to the King, in Matters lying before them, to inform the King, or the chief Governour, or Governours of this Kingdom, or the Council.

Resolved on the Question, That the Case of *Sherlock* and *Annesley*, as it lately lay before the Barons of the *Exchequer*, being Matter not only of Law, but of State, ought to have been laid before the King, the chief Governour or Governours of this Kingdom, or the Council of the same: It so nearly concerning his Majesty's Pre-

rogative, and the Interest of the whole Kingdom.

Dissentient.

Jo. Meath, *Donerayle.*
Welbore Kildare, *Middleton, Canc.*
Henry Killalla and Achonry, *Wm. Derry.*
Timo. Kilmore and Ardagh.

Resolved on the Question, That *Jeffery Gilbert*, Esq; Lord Chief Baron of the Court of *Exchequer*, *John Pocklington*, Esq; and Sir *John St. Leger*, Kt. Barons of the same, in their Proceedings in the Cause between *Sherlock* and *Annesley*, and against *Alexander Burrowes*, Esq; late Sheriff of the County of *Kildare*, have acted contrary to Law, and to the established Practice of the King's Courts.

Dissentient.

Jo. Meath, *Donerayle.*
Welbore Kildare, *Middleton, Canc.*
Henry Killalla and Achonry, *Wm. Derry.*
Timo. Kilmore and Ardagh.

Resolved on the Question, That *Jeffery Gilbert*, Esq; Lord Chief Baron of the Court of *Exchequer*, having taken upon him to put in Execution a pretended Order from *Another Court*, contrary to the final Judgment of this High Court of Parliament, in the Cause between *Sherlock* and *Annesley* is a *Betrayer* of his Majesty's Prerogative, and the undoubted, antient Rights and Privileges of this House, and of the Rights and Liberties of the Subjects of this Kingdom.

Dissentient.

Jo. Meath, *Donerayle.*
Welbore Kildare, *Middleton, Canc.*
Henry Killalla and Achonry, *Wm. Derry.*
Timo. Kilmore and Ardagh.

Resolved on the Question, That *John Pocklington*, Esq; Second Baron of the Court of *Exchequer*, having taken upon him to put in Execution a pretended Order from *Another Court*, contrary to the final Judgment of this High Court of Parliament, in the Cause between *Sherlock* and *Annesley*, is a *Betrayer* of his Majesty's Prerogative, and the undoubted antient Rights and Privileges of this House, and of the Rights and Liberties of the Subjects of this Kingdom.

Dissentient.

Jo. Meath, *Donerayle.*
Welbore Kildare, *Middleton, Canc.*
Henry Killalla and Achonry, *Wm. Derry.*
Timo. Kilmore and Ardagh.

Resolved on the Question, That Sir *John St. Leger*, Third Baron of the Court of *Exchequer*, having taken upon him to put in Execution a pretended Order from *Another Court*, contrary to the final Judgment of this High Court of Parliament, in the Cause between *Sherlock* and *Annesley*, is a *Betrayer* of his Majesty's Prerogative, and the undoubted, antient Rights and Privileges of this House, and of the Rights and Liberties of the Subjects of this Kingdom.

Dissen-

Dissentient.

Jo. Meath, Donerayle, Middleton, Canc.
Welbore Kildare, Wm. Derry.
Henry Killalla and Achonry.
Timo. Kilmore and Ardagh.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Right Honourable *Jeffery Gilbert*, Esq; Lord Chief Baron of the Court of *Exchequer*, shall, for the said Offences, be taken into the Custody of the Gentleman-Usher of the *Black-Rod* attending this House.

Dissentient.

Jo. Meath, Fitz-Williams, Middleton, Canc.
Welbore Kildare, Donerayle.
Henry Killalla and Achonry, Wm. Derry.
Timo. Kilmore and Ardagh.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That *John Pock-*

lington, Esq; Second Baron of the Court of *Exchequer*, shall, for the said Offences, be taken into the Custody of the Gentleman-Usher of the *Black-Rod*, attending this House.

Dissentient.

Jo. Meath, Fitz-Williams, Middleton, Canc.
Welbore Kildare, Donerayle.
Henry Killalla and Achonry, Wm. Derry.
Timo. Kilmore and Ardagh.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That Sir *John St. Leger*, Knt. Third Baron of the Court of *Exchequer*, shall, for the said Offences, be taken into the Custody of the Gentleman-Usher of the *Black-Rod* attending this House.

Dissentient.

Jo. Meath, Fitz-Williams, Middleton, Canc.
Welbore Kildare, Donerayle.
Henry Killalla and Achonry, Wm. Derry.
Timo. Kilmore and Ardagh.




CXCI. *The Trial of Hugh Reason and Robert Tranter, at the King's-Bench, for the Murder of Edward Lutterell, Esq; Feb. 3. 1721. Hil. 8 GEO. I.*

The Indictment was as follows :

In Banco Regis.

Dominus Rex vers. Hugonem Reason & Robertum Tranter.

“  HE Jury present, That *Hugh Reason* and *Robert Tranter*, not having the Fear of God before their Eyes, but being moved and seduced by the Instigation of the Devil, the 17th Day of *October* last, about the Hour of Ten of the Clock in the Forenoon of the said Day, by Force and Arms, at the Parish of *St. Clement Danes* in the County of *Middlesex*, in and upon one *Edward Lutterell*, Esq; in the Peace of God and of our Sovereign Lord the King, then and there being, feloniously, voluntarily, and of their Malice aforethought, did make an Assault; and that the said *Hugh Reason*, with a Pistol of the Value of five Shillings, then and there charged with Gun-Powder and leaden Bullets; which said Pistol the said *Hugh Reason* in his Right Hand then and there had and held into and against the aforesaid *Edward Lutterell*, then and there feloniously and of his Malice aforethought did shoot off and discharge: And that the said *Hugh Reason* with leaden Bullets aforesaid issuing and shot off out of the Pistol aforesaid, then and there by the Force of the said Powder, the said *Edward Lutterell* in and upon the Right Part of the Body of the said *Edward Lutterell*, under the Right Pap of the

“ said *Edward Lutterell*, then and there feloniously and of his Malice aforethought struck: And that the said *Hugh Reason* then and there feloniously, voluntarily, and of his Malice aforethought, gave to the said *Edward Lutterell*, with the leaden Bullets aforesaid, out of the said Pistol then and there by Force of the said Powder shot off and discharged in and against the Right Part of the Body of the said *Edward Lutterell*, under the Right Pap of the said *Edward Lutterell*, one mortal Wound of the Breadth of one Inch, and the Depth of nine Inches, of which said mortal Wound the said *Edward Lutterell*, from the said tenth Hour of the said 17th Day of *October*, until the tenth Hour in the Afternoon of the said Day he languished, and languishing lived, at which said Hour the said *Edward Lutterell*, at the Parish aforesaid, of the Wound aforesaid, died: And that the said *Robert Tranter* at the Time of the Felony and Murder aforesaid, by the said *Hugh Reason* in Manner and Form aforesaid, feloniously, voluntarily, and of his Malice aforethought, committed and perpetrated, feloniously, voluntarily, and of his Malice aforethought there was present, aiding, abetting, assisting, comforting and maintaining the said *Hugh Reason* to commit the aforesaid Felony and

“ Murder

“ Murder in manner and form aforesaid. And
 “ the Jury say, that the said *Hugh Reason* and
 “ *Robert Tranter* the said *Edward Lutterell* in man-
 “ ner and form aforesaid, at the Parish and County
 “ aforesaid, feloniously, voluntarily, and of their
 “ Malice afore-thought, did kill and murder a-
 “ gainst his Majesty's Peace, &c.

To this Indictment they severally pleaded, *Not Guilty*, and on *Febr. 3.* were brought to the King's-bench Bar to receive their Trial, which proceeded in the following manner.

Clerk of the Crown. You the Prisoners at the Bar, these Men which you shall hear called and personally appear, are to pass between our Sovereign Lord the King and you upon the Trial of your several Lives and Deaths, if you will Challenge them or any of them, you must do it as they come to the Book to be sworn, before they are sworn.

Robert Dennes, Esq; challeng'd.

Francis Lee, Esq; challeng'd.

James Haley, Esq; challeng'd.

Robert Sutton, challeng'd.

Benjamin Drake, challeng'd.

Edward Grosne, challeng'd.

Richard Newton, challeng'd.

1. *Giles Riddle, Jur.*

2. *William Pannett, Jur.*

John Mills, challeng'd.

3. *Thomas Beckington, Jur.*

4. *Abraham Harrison, Jur.*

5. *Charles Maddock, Jur.*

6. *Edward Bosvile, Jur.*

7. *John Parsons, Jur.*

8. *Thomas Cuthbert, Jur.*

9. *Thomas Cliff, Jur.*

10. *Miles Harper, Jur.*

11. *Robert Kent, Jur.* And

12. *John Salt, Jur.*

Clerk of the Crown. Cryer Make Proclamation.

Cryer. O yes, &c. If any one can inform our Sovereign Lord the King's Justices, the King's Serjeants, or the King's Attorney, of the Felony and Murder whereof the Prisoners stand indicted before this Inquest be taken between our Sovereign Lord the King, and the Prisoners at the Bar, let them come forth and they shall be heard, for the Prisoners now stand at the Bar upon their Deliverance.

Clerk of the Crown. *Hugh Reason* hold up your Hand, *Robert Tranter* hold up your Hand.

Gentlemen of the Jury look upon the Prisoners and hearken to their Cause; they stand indicted, for that they not having the Fear of God before their Eyes, but being moved and seduced by the Instigation of the Devil, the 17th Day of *October* last, about the Hour of Ten of the Clock in the Forenoon of the said Day, by Force and Arms, at the Parish of *St. Clement Danes* in the County of *Middlesex*, in and upon one *Edward Lutterell*, Esq; in the Peace of God and of our Sovereign Lord the King, then and there being feloniously, voluntarily, and of their Malice afore-thought, did make an Assault; and that the said *Hugh Reason*, with a Pistol of the Value of 5 s. then and there charged with Gunpowder and leaden Bullets; which said Pistol the said *Hugh Reason* in his Right

Hand then and there had and held into and against the aforesaid *Edward Lutterell*, then and there feloniously and of his Malice afore-thought did shoot off and discharge: And that the said *Hugh Reason* with the leaden Bullets aforesaid, issuing and shot off out of the Pistol aforesaid, then and there by the Force of the said Powder, the said *Edward Lutterell* in and upon the right Part of the Body of the said *Edward Lutterell*, under the right Pap of the said *Edward Lutterell*, then and there feloniously, voluntarily, and of his Malice afore-thought struck: And that the said *Hugh Reason* then and there feloniously, voluntarily, and of his Malice afore-said, gave to the said *Edward Lutterell*, with the leaden Bullets aforesaid, out of the said Pistol then and there by Force of the said Powder shot off and discharged in and against the right part of the Body of the said *Edward Lutterell*, one mortal Wound of the breadth of one Inch, and the depth of nine Inches, of which said mortal Wound the said *Edward Lutterell*, from the said tenth Hour of the said 17th Day of *October*, untill the tenth Hour in the Afternoon of the said Day he languished, and languishing lived, at which said Hour the said *Edward Lutterell*, at the Parish aforesaid, of the Wound aforesaid, died: And that the said *Robert Tranter* at the time of the Felony and Murder aforesaid, by the said *Hugh Reason* in manner and form aforesaid, feloniously, voluntarily, and of his Malice afore-said, committed and perpetrated, feloniously, voluntarily, and of his Malice afore-said there was present, aiding, abetting, assisting, comforting and maintaining the said *Hugh Reason* to commit the aforesaid Felony and Murder in manner and form aforesaid. And the Jury say, that the said *Hugh Reason* and *Robert Tranter* the said *Edward Lutterell* in manner and form aforesaid, at the Parish and County aforesaid, feloniously, voluntarily, and of their Malice afore-thought, did kill and murder against his Majesty's Peace, &c.

They likewise stand charged on the Coroner's Inquest for the said Murder.

Upon this Indictment they have been arraigned, and thereto have pleaded *Not Guilty*; and for their Trial have put themselves upon God and their Country, which Country you are: Your Charge is to inquire whether they be guilty of this Felony and Murder in Manner and Form as they stand indicted, or not guilty; if you find them guilty, you shall inquire what Goods or Chattels, Lands or Tenements they had at the time of the said Felony and Murder committed, or at any time since: If you find them not guilty, you shall inquire whether they fled for it: If you find that they did fly for it, you shall inquire of their Goods and Chattels as if you found them guilty; if you find them not guilty, and that they did not fly for it, say so and no more, and hear your Evidence.

Mr. Strange. May it please your Lordship, and you Gentlemen of the Jury, I am Counsel in this Case for the King. This is an Indictment against the Defendants *Hugh Reason* and *Robert Tranter* for the Murder of *Mr. Lutterell*. The Indictment sets forth, that the Defendants not having the Fear of God before their Eyes, but being moved and seduced by the Instigation of the Devil, on the 17th of *October* last at Ten of the Clock in the Morning, in the Parish of *St. Clement Danes* in the County of *Middlesex*, did make an Assault on *Edward Lutterell*, Esq; that the Defendant

Hugh

Hugh Reason with a Pistol charged with Gunpowder and Bullets, which he then and there held in his Right Hand, into and against the said *Edward Lutterell* then and there feloniously, and of his Malice afore-thought, did shoot off and discharge, and that the Prisoner *Hugh Reason*, with the leaden Bullets afore-said, issuing and shot off out of the Pistol afore-said, then and there by the Force of the said Powder the said *Edward Lutterell*, in and upon the right part of the Body of the said *Edward Lutterell*, under the right Pap of the said *Edward Lutterell*, then and there feloniously, voluntarily, and of his Malice afore-thought struck, and that the said *Hugh Reason* then and there feloniously, wilfully, and of his Malice afore-thought, did give to the said *Edward Lutterell*, with the leaden Bullets afore-said, out of the said Pistol, then and there by Force of the Powder shot off and discharged in and against the right Part of the Body of the said *Edward Lutterell*, under the right Pap of the said *Edward Lutterell*, one mortal Wound of the Breadth of one Inch, and the Depth of nine Inches, of which mortal Wound the said *Edward Lutterell*, from the said 10th Hour of the said 17th of *October*, to the 10th Hour in the Afternoon of the said Day languished, and languishing lived, at which time the said *Edward Lutterell* at the Parish afore-said, of the Wound afore-said, died: And that the other Defendant *Robert Tranter*, was aiding and assisting the said *Hugh Reason* to commit the said Felony and Murder in manner and form afore-said, and that they the said *Hugh Reason* and *Robert Tranter*, the said *Edward Lutterell* in manner and form afore-said, at the Parish and County afore-said, feloniously, wilfully, and of their Malice afore-thought did kill and murder, which is laid to be against the Peace of his Majesty, his Crown and Dignity, to which the Defendants have severally pleaded *Not Guilty*: they are likewise charged on the Coroner's Inquest for the said Murder. We shall call our Witnesses, and if we prove them guilty you will find them so.

Mr. *Serj. Cheshire*. May it please your Lordship, and you Gentlemen of the Jury, I am Counsel in this Case for the King, the two Prisoners at the Bar, *Hugh Reason* and *Robert Tranter*, stand indicted before you, and are charged before you on the Coroner's Inquest, for the murder of *Edward Lutterell*, Esq; and according to my Instructions, which I will keep exactly to, he came by his Death in this manner: On the 17th of *October* last this Gentleman coming out of his Lodgings in *Surrey-Street*, going towards the Water-side to take Water at the Stairs there, the two Prisoners came to him and did arrest him; and told him, they arrested him at the Suit of one Mr. *Rous*, for 10 l. He submitted to their Arrest, desired them to return with him to his Lodging and he would pay the Money: They consented, and both returned to the Door with him, but *Reason* was the only Person that went up with him: *Tranter* said he would go and fetch the Attorney or Solicitor's Bill: The Deceased went up one Pair of Stairs, *Reason* went with him, they were together in the Dining-Room, Words happened between them, as will come from the Evidence; they called him *Rogue*, *Rascal*, and *Minter*, charged him as a Person that refused to pay honest Debts, and sheltered himself under reputed Places of Security. He directed his Lady, who was then in her Bed-

chamber on the same Floor up one Pair of Stairs, to go and fetch the Money, by which it may be supposed that it was in order to pay the Debt, but the Witnesses did not hear the Sum, but it is reasonable to presume, he had told her what it did come to. The Defendant *Reason* said, *You must order more than that, I must have three Guineas for my Civility*: No, says the Deceased, *you have not used me so as to deserve three Guineas or any other Sum for Civility, without making any Demand you arrested me publicly in the Street*. My Lord, according to my Instructions, the Deceased went up one pair of Stairs and he returned down with a Case of Pistols; the Maid Servant, *Hester Gerrard*, seeing him with those Pistols, said to him, *For God sake what business have you with those Pistols? Pray lay the Pistols away, Mischiefs may happen*: Says he, *I design to do them no harm, they have used me ill, called me Rogue, Rascal, and Minter, I do not design to hurt them, but will not be ill used by them*. The Maid press'd him, *for God sake lay them down, your Lady will be frighted*. He went to the far end of the Room, laid down the Pistols, and retreated to the Fire-place. By this time there was a knocking at the Door, and the Boy *Thomas Hargrave* went to let in the Person that knock'd, and it proved the Defendant *Tranter*: *Tranter* run hastily up Stairs, and the Boy was following him, and hearing a Noise in the Dining Room, as my Instructions are, he hastened the earlier to see what the matter was; as soon as he came into the Dining Room, the first thing he saw was, *Tranter* holding the Deceased's Arm in his, and the other Defendant *Reason* stabbing him, and he saw the Stab: He was going to give the second Stab, but the Boy took hold of the sword Arm; *Reason* takes the Sword with his other Hand, and says to the Boy, *Damn you, if you don't get out of the Room, you shall die before your Master*: Upon this he saw a second Pass at the Gentleman, and he cryed *Murder*; Upon his crying *Murder*, the Maid Servant *Sarah* came, and she says she saw her Master upon his Back on the Floor with his Hands up begging for Mercy, and saw the Men stab him several times: she likewise cries out *Murder*, and as she went down the Stairs, and not till then, she heard a Pistol go off, which must be after the poor wounded mangled Man lay upon the Floor. Some time after, not two Minutes, she heard another Pistol go off, by this time the Noise was so great that the Neighbourhood came in, particularly one *Waters* a Waterman; *Waters* runs up Stairs, and he finds the Deceased at the further end of the Room, lying there in a strange mangled Condition; one of the Prisoners endeavour'd to make his Escape, but he was seized, and so was the other.

It was thought proper in this dying Condition, as it was apprehended the poor Gentleman was in, that they should send for the Curate of the Parish, Mr. *Peters*; Mr. *Peters* did come, and according to my Instructions, as they apprehended him to be dying, says a Friend of the Defendants, *Pray inquire of the Gentleman how this Accident happened*. He did so, and he will give you an Account of what pass'd between him and the Deceased before the Justices of the Peace came. But Mr. *Vernon* and Mr. *Haynes*, the two Justices of the Peace, soon after came in, and at their Request they having no Clerk with them, Mr. *Peters* was pleased to sit down and take the Examination in writing; having given him his Oath, Mr. *Peters* was pleased

to set it down; the Substance of what he did say was this, *The Bailiffs took the Pistols from my Table and shot me twice, the fat Man run me thro' and then drew my Sword, which I broke my self in his Hand, and beg'd for my Life: I never fired a Pistol, nor made one Push, they both run me thro', I offer'd to pay them the Money.* The Condition the Gentleman was in at that time was such, as it was not thought reasonable that he should sign it, but they will give you an account that he was perfectly sensible. My Lord, in the Afternoon somebody sent for Mr. Peters the Clergyman again, and it was with an Intent that the Deceased might receive the Holy Sacrament; and Mr. Peters, like a prudent Man, says, *According to the Account you have given you have been hardly used; however it becomes me to hope and desire, and you to express, that your are in Charity, before I Administer the Holy Sacrament.* Says he, *As I shall appear before the great God of Heaven, what I told you is true, I was barbarously murder'd; however I am in Perfect Charity with them, I forgive them, and I pray Almighty God to forgive them their Indiscretion.* My Lord, he did continue for some time in a languishing Way, tho' all Care was taken to save his Life. On Examination after his Death, (which is a sad Circumstance in the Case) there are found no less than ten Wounds on him, many of them mortal; he did continue till the 17th about Ten at Night and then he died. My Lord, here is a Case of great Consideration; and as on the one Hand the Defendants are Officers and Ministers of Justice, and must be protected in serving of their Process, and as long as they do their Duty must not be abused; yet when People submit to their Authority, they too must be protected, and the Law, that requires the one to submit, requires the other to protect and preserve their Lives; and if any Officer gives unreasonable Correction, where they make no Resistance in Cases of Durance only, where Hardships and Difficulties are put upon them, so as to shorten their Lives. I submit it to my Lord's Direction, whether they are not guilty of the Murder. To shew how careful the Law is of the Life of Man, my Lord Coke * says, *If any Man who is in Custody of a Goaler dies, the Coroner's Inquest must sit upon him;* and it is for this Reason, that the King may be apprized that the Subject had no foul Play, but came to a natural Death; this Policy of Law is a good one. These, Gentlemen, are the Bounds which will be taken into Consideration, and when we have called our Witnesses, it must be left to my Lord's Direction and your Consideration, whether the Defendants Case is a Case to be justified, or whether or no they won't deserve the Punishment due to Ruffians and Assassins.

Mr. Reeve. I am Counsel likewise in this Case for the King: The Facts have been fully open'd in every particular Circumstance, and I apprehend this is not a Matter proper for us to shew with its usual Aggravations; for considering the Prisoners are not allowed Counsel, we are only to lay the Matter fairly before the Jury and the Court, both in relation to Matters of Fact and of Law.

True, the Defendants are Officers of Justice, and as such are entitled to the Protection of the Law, so far as the Law authorizes them in what

they do but in case they exceed that Authority, and use Barbarity to their Prisoners, where there is no occasion for it, they exceed the Bounds of their Authority, and what happens afterwards by a needless Quarrel, they themselves are the occasion of, and if a Person is killed, I submit it to your Lordship if they are not guilty of Murder.

We agree, my Lord, if Resistance is made by a Person arrested, and it is necessary for the Preservation of the Prisoner, or for the Life of the Officer, if his Life is attempted by the Prisoner, and in doing what is necessary for their Defence, and for the keeping of their Prisoner, there happens a Quarrel commenced by the Fault of the Prisoner, we agree the Officers are not to be blamed: But if a Quarrel is commenced by the Officers against a Prisoner submitting to the Law, and to their Authority and willing to do that which the Laws requires, namely, to pay the Debt, then only for Civility Money they use Durance, and they used him ill, and they begin the Quarrel and fight with the Man on that account, we must submit it, whether it is not Murder. We must agree in our Evidence, that there was not any Person present at the time of the beginning of the Quarrel, nor who continued there during the Quarrel: But from the Circumstances, and the Evidence we have to lay before the Jury, it will amount to a Proof, that this Quarrel was begun by the Officer. It is true, there were Pistols fetch'd by the Deceased, but these Pistols, if we shew they were not designed to be made use of to injure the Bailiffs, but were only for his own Preservation, if he should be ill used by them; if after he had taken these Pistols he dismiss'd himself from the Custody of these Pistols, as we apprehend will appear from the Evidence, and they take up these Pistols, and with one of these Pistols shoot their Prisoner, we apprehend that will take off the Circumstances, that would seem in favour of them. My Lord, we will call our Witnesses, and prove all our Facts, and then we must submit it to your Lordship's Direction to the Jury, whether on those Facts it doth not appear that the Offence committed is Murder.

L. C. J. Call your Witnesses. Sir John Pratt: Thomas Hargrave sworn.

Mr. Hungerford. My Lord, Thomas Hargrave was the Deceased's Servant, and he saw more than any Body; he will give your Lordship an account of the Matter.

Serj. Cheshire. Thomas Hargrave, do you tell my Lord and the Jury, what you know in relation to your late Master Mr. Lutterell, what past between him and the Defendants, and either of them, tell from the beginning, and be sure you tell the Truth.

At the Prisoners Desire the other Witnesses were ordered out of Court.

Hargrave. The first beginning, my Lord, was my Master sent me out of the House to call a Pair of Oars to go up to Westminster on Tuesday between Nine and Ten a Clock.

L. C. Just. What Day of the Month?

Hargrave. I don't know; with that I went and call'd a Pair of Oars, and came back and told him I had called them; says he, *Thomas get your Hat and go along with me;* when we had got two or three Doors from our Lodging, a little Man,

whose Name is *Tranter*, clapt him on the Shoulder, and presently after came another Man *Reason*, and said they arrested him, with that my Masters says, *Gentlemen, if you will go with me, you shall have your Money, my Wife is with Child, and I am afraid she will be frightened.*

No, Damn you, we will go with no such Minter, with that with great Persuasion my Master got them to go to his Lodging; my Master said, *fetch the Attorney and I will pay the Money: Reason* sent *Tranter* for the Attorney, and *Reason* went up with my Master, who said to my Mistress, *My Dear, don't be frighten'd, here are two Rascals who have abused me in the Street*; and my Mistress said to me, *Go to my Nephew*, I went, but he did not immediately come; when I returned I went into the Room, and there was no harm then, my Master was walking about the Room, and *Reason* stood with his Back to the Ceiling with his Face to the Pistols. My Master said, *Let me see your Warrant: Reason* show'd it him, and he said, *wipe your Arse with it*, and throw'd it down upon the Ground. *Reason* ask'd for Civility Money; my Master said, *No, he would give him none, for he had not used him well.* At last *Tranter* came; I opened the Door to him, he run up Stairs, I staid to shut the Door, and I heard a Rustling, or Noise; upon which I ran up Stairs after *Tranter*, and I saw *Tranter* close with my Master and throw him against the Closet Door, and *Reason* took his Sword and run my Master through; I took *Reason* hold of the Sword Arm, and he said, *Damn me, if you don't go out of the Room you shall die before your Master*; I heard no Pistol all that time.

Serj. Cheshire. Did you go in after the Pistol was shot off to see your Master?

Hargrave. No, I did not see him till after he was carried into t'other Room.

Serj. Cheshire. Do you know of any Direction given by your Master about fetching the Money?

Hargrave. Yes, I heard my Master say to my Mistress, *Fetch the Money and I will pay these Rascals.*

Mr. Reeve. I think you say upon hearing of a Scuffle you ran up Stairs, and you saw *Tranter* run your Master against the Closet Door.

Hargrave. Yes, Sir,

Mr. Reeve. Had your Master any Weapon?

Hargrave. No.

Mr. Reeve. Where were the Pistols?

Hargrave. One was on the Table, and the other in the Window.

Mr. Hungerford. How far were the Pistols from your Master, were they within his Reach?

Hargrave. No, Sir.

Mr. Reeve. You say you saw him stab your Master.

Hargrave. Yes.

Mr. Reeve. Was there any Attempt to give another Stab?

Hargrave. Yes, he went to give another Stab, I took him by the Sword Arm, and he said, *Damn you, you shall die before your Master*; upon that I went and cried out *Murder.*

L. C. Just. You say that before that he demanded Civility Money.

Hargrave. Yes.

L. C. Just. What said your Master?

Hargrave. He said, *I will give no Rascals as you are Civility Money, for you have show'd me no Civility.*

L. C. Just. Then you went down by your Mi-

strefs's Direction to call her Nephew; when you return'd, before you came up, what did you hear? Did you hear any Noise, or Bustle, or Blow?

Hargrave. No.

L. C. Just. None at all?

Hargrave. No, it was after *Tranter* came that I went up Stairs again.

L. C. Just. When *Tranter* came you opened the Door to him, and followed him up Stairs.

Hargrave. Yes.

L. C. Just. Did you hear before *Tranter* enter'd the Room any Noise, or Stroke?

Hargrave. Only two or three Words.

L. C. Just. What were those Words?

Hargrave. I don't know.

Mr. Hungerford. What said *Reason*, when your Master told him he did not use him well?

Hargrave. Then he was mad, he swore and called him a great many Names, call'd him a Minter, and I don't know what.

Reason. Did not your Master request us to go to the Tilt-yard Coffee-house?

Hargrave. No, he said, *if you'll go with me I will pay the Money*; you said, *I will go with no such Minter.*

L. C. Just. Did your Master desire them to go to any particular Place?

Hargrave. He said, *If they would go with him to Westminster, he would pay them the Money*; but they refused and said, *they would go with no such Minter.*

L. C. Just. Did your Master propose to go to his own Lodgings?

Hargrave. Yes, when they would not let him go there.

L. C. Just. Why would he had them have gone to Westminster?

Hargrave. Because for fear of frightning his Wife, she was great with Child; with great Persuasion he got them to go to his Lodging.

Reason. Did he not ask us to go to his Lodging?

Hargrave. I don't know, I did not hear him.

L. C. Just. You said just now with much ado your Master persuaded them to go to his Lodging, now you say you did not hear him ask them to go; I only admonish you not to be too hasty in your Answers, but to consider. Who proposed going to your Master's Lodging?

Hargrave. Why my Master, when they would not go there.

Reason. Did not I ask him to go to the Crown-Tavern?

Hargrave. Not that I heard; I heard *Reason* bid *Tranter* go for the Attorney.

L. C. Just. Did you hear *Tranter* ask Mr. *Lutterell* to go to the Crown-Tavern?

Hargrave. No, Sir.

Tranter. At whose Desire did I go to the Attorney?

Hargrave. Why my Master said, *fetch your Attorney, and I will pay you your Money.*

Tranter. Did not I desire your Master to fend you, and he said, *Damn you, you shall go?*

Hargrave. No, I heard no such thing.

Hester Gerrard sworn.

Mr. Serj. Cheshire. Do you tell my Lord and the Jury what you know when the Defendants, or either of them were at Mr. *Lutterell's* Lodgings, and what pass'd there; begin at the beginning, tell all you know.

Hester. I happened to be in the Kitchen when my Master came in.

Serj. Cheshire. Tell us the Time and the Day of the Month.

Hester. I don't know indeed, it was of a *Tuesday*.

Serj. Cheshire. Do you know what Month?

Hester. I don't know. Being in the Kitchen I heard my Master return again, when he was but just gone out before; hearing his Tongue I step'd to the Stairs, and wondered he should come in again so soon; I saw him come in with another Man, I heard him go up Stairs, I listened, and I heard him speak loud; I understood he was arrested, I was surpriz'd at it; I staid a little while till he went up, then I went up to my Mistress, because she was with Child; I was afraid she would be frighted; when I came up she was in the Dining-Room with my Master and Mr. *Reason*, and in a little time she went out of the Dining-Room into the Bed-Chamber, and she was heaving, and in some time my Master and Mr. *Reason* was in the Room together, my Master talk'd and walk'd about the Room; I staid with my Mistress some time, and at last I heard my Master go up Stairs, and he came down immediately again; upon this I went into the Room, my Master had two Pistols, and he put them on each side of his Coat; I ask'd him, *What do you do with those Pistols? if my Mistress comes she will be frighted: Says he, I do not design to do any hurt.* Then he told me how they had abus'd him in the Street, and called him *Minter*; this Man (pointing to *Reason*) was in the Room all the time. *Sir, says I, pray lay down the Pistols,* and he came and lay down both the Pistols on the Table at my Request, and he had only his Cane in his Hand. I went into the Room again to my Mistress, and when I came there she was in her Closet taking out some Money: She got up, locked the Closet Door, and sat down on the Bed-side, and was frighted. I persuaded her not to be frighted: Afterwards I heard somebody knock at the Door, and I step'd out to the top of the Stairs to see who came in, and I saw I suppose that Man: (pointing to *Tranter*) the Boy let him in, I saw him come along the Entry and the Boy follow him: Upon that I went into my Mistress, and said there was a second Person come, I don't like him, shall I stop him on the Stairs; he went into the Room, and I saw the Boy follow him; I went into my Mistress again for fear she should be frightened; I heard a Noise, but did not know what it was; I heard the Noise grow greater; I step'd softly through the Passage, threw open the Dining-Room Door, and I saw this Gentleman (pointing to *Reason*) stabbing my Master with all his Might and Main, and he on his Back on the Floor, lifting up his Hands as if he beg'd for Mercy. The other Bailiff had his Back towards me, standing by the side of my Master; I ran to the Door and cried out *Murder*; then off went the Pistol: I was frighted, for I thought they had shot after me; and in about two Minutes there went off another.

Mr. Hungerford. In that Place where your Master was, could he come at the Pistols?

Hester. No, my Master had his two Hands lifted up thus.

Mr. Hungerford. Had your Master any thing in his Hand?

Hester. No.

Serj. Cheshire. What Condition did you leave

your Master in when you went out of the Room?

Hester. He was upon the Ground on his Back, and his two Hands lifted up thus, and Mr. *Reason* stabbing him when upon the Ground; he stab'd him upon the left side.

Serj. Cheshire. I ask you, consider, by the Oath you have taken, whether the Pistol did go off till after you had left your Master, and he was stabbing of him?

Hester. It was after that I saw him, within two Minutes after; upon my crying out *Murder* the People came up Stairs.

Reason. How long was this after *Tranter* came?

Hester. Immediately.

Reason. How long was it after *Tranter* came in before you saw this?

Hester. Not long, all the Action was not long.

Mr. Strange. You did not observe where the Pistols lay?

Hester. No.

Mr. Strange. Did you observe your Master had any thing in his Hand?

Hester. No, I did not.

L. C. Just. Did you see your Master when he went out in the Morning?

Hester. No, I heard him.

L. C. Just. You saw him when he returned?

Hester. Not till he was up in the Dining-Room.

L. C. Just. Had your Master any Sword on?

Hester. I believe he had, I did not mind.

L. C. Just. When your Master came in and *Reason* after him, you heard your Master talk of an Arrest, and that you had the Curiosity of hearing what past between them; did you hear any Words of Heat or Passion?

Hester. No, my Lord, I heard my Master talk something, by which I understood my Master was arrested.

L. C. Just. Did your Master seem angry?

Hester. Yes, because they seemed so uncivil that they did not come and give him Notice of it.

Mr. Hungerford. You say you saw your Mistress telling Money, can you guess at the Quantity of it?

Hester. No.

Mr. Hungerford. Can you tell for what Purpose she was telling the Money?

Serj. Cheshire. Did you hear Mr. *Lutterell* speak to his Lady to fetch any Money?

Hester. I was not in the Room.

Reason. Did I stay in the Room by my self when your Master went up Stairs?

Hester. Yes, you did.

L. C. Just. And when he came down he had a Case of Pistols?

Hester. When I saw him he had them in his Hand, and when I insisted upon his laying them down, he came and laid them down on the Table by me.

Hungerford. When did your Master die?

Hester. He died the Night following, I was with him all the time.

Thomas Waters the Waterman sworn.

Serj. Cheshire. *Thomas Waters*, will you tell my Lord and the Jury what you know on the Occasion of a Noise and crying out *Murder* at Mr. *Lutterell's* Lodging.

Waters. My Lord, I was at the Water-side when Capt. *Lutterell* came down to go by Water, I went down to carry him, there two Men crossed over the Way to him; I was gone down to my Boat to wait for him, but he not coming down, I came

I came back again, and seeing them go into the House, I went to the Water-side, and staid there some time, and the Lad running out of the House, and crying *Fire, Murder*, I run up, and run into the Door, and when I was about half way up Stairs, *Lord*, says the Boy, *they are murdering my Master*; I run to the Stair-head and heard the Pistol go off, and then said to the Boy, is there any more Pistols? Then I opened the Door, and went in, and met *Reason* with his Sword drawn in his Hand, and as he was putting it in it stuck.

Mr. Serj. *Cheshire*. Where was Captain *Lutterell*?

Waters. Laid down on the Floor, all in his Gore; when I came into the Room the young Man followed me in; I saw one Pistol lay upon the Table; *Tranter* was behind *Reason*, *Reason* was putting his Sword into his Scabbard, and it stuck, and as I came in *Tranter* shew'd me his Hand, and said, see how I am used, *Reason* was opening the Door, I took hold of him and said, you must go no further, here is Murder done; then the Constable came in, and I charged the Constable with them. The Captain's Sword was in the middle of the Room broke, he lay on his Right Side with his Arm on the Chair.

Mr. Serj. *Cheshire*. How far was the Table off?

Waters. The whole Breadth of the Room; he lay just before the Fire-Place; I saw but one Pistol; I came in when the last Pistol went off, and I met Mr. *Reason*, and put him by with my Hand, to come into the Room.

Tranter. What Wound did you see me have?

Waters. No more than in your Hand, he shew'd me his Hand.

L. C. *Just*. Did it appear to you upon looking on his Hand, that he had received a Wound in his Hand?

Waters. Yes, my Lord, I believe he was wounded, because he shew'd me his Hand, and it was bloody.

Tranter. Was my Head broke?

Waters. I did not see that.

L. C. *Just*. When you came into the Room, you saw but one Pistol?

Waters. I saw but one, and that upon the Table, just as I came into the Room.

L. C. *Just*. How far from Mr. *Lutterell* was it?

Waters. I believe three Yards.

L. C. *Just*. How far from the Prisoner, or either of them?

Waters. The Prisoner stood by the Table, as I came into the Room.

L. C. *Just*. Was the Sword in the Scabbard, that was broke.

Waters. It was out, and please you my Lord.

L. C. *Just*. Whose Sword was it?

Waters. It must be the Deceased's, because the other had his Sword with him in his Hand drawn. I saw the Blood: I desired the Constable to draw the Sword, and I saw it bloody a good way.

Mr. *Peters* sworn.

Mr. Serj. *Cheshire*. Mr. *Peters* will you tell my Lord and the Jury, whether on the 17th of *October* last you was sent for, and by whom?

Mr. *Peters*. On the 17th of *October* last, I think it was in the Forenoon, about 12 o'Clock, I was sent for to visit Mr. *Lutterell*; the Messenger told me he lay expiring: I came into his Room, where I found him on his Bed, in a wounded Con-

dition, and languishing of his Wounds; he seem'd desirous, that I would pray to Almighty God for his Soul, for he believed he had but a little time to continue in this World, and therefore he desired to make the best Use of it; I was ready to assist him; and desired him to consider how far he might be instrumental in bringing this Misfortune on himself. I desired him to consider, that as a dying Man great Weight would be laid on his Words, therefore if he said any thing not strictly true, he might involve innocent People in the Guilt, and the Punishment: Therefore I desired him to lay his Hand upon his Heart and consider.

He told me, *As a dying Man, as he expected to be tried for this very Fact at the Bar of Heaven, as well as the Persons, who had injur'd him, he assur'd me he was murdered in a barbarous manner.* Afterwards came in one *Church*, a Bailiff in the same Street, and desired me to put it home to him: I did; upon which he made me the same Answer, *That he was barbarously murder'd*; he wanted Spirits, or would have express'd himself more fully: On this I pray'd by him, and when I had done, I took my leave of him. In about an Hour afterwards I was sent for again; when I came there, I met Mr. *Vernon* and Mr. *Haines*, Justices of the Peace; one of the Justices gave Mr. *Lutterell* his Oath, and there being no Clerk there, desired me to take his Words in Writing, which I did; the Words were these; *The Bailiffs took the Pistols from my Table; they fired them twice; the fat Man drew his Sword, and run me into the Body with his Sword; and then drew my Sword, which I broke in his Hand, and begg'd for Life; I neither fired a Pistol nor made one Push; they both run me through; I offer'd to pay them the Money.* I think these are the very Words he said. After this I pray'd by him again, and still desired, that he would not lay any thing to the Charge of People that were not guilty: I left him then, and came again a third Time, and as I was praying by him, he interrupted me, and ask'd me, If it was not proper to receive the Holy Sacrament, which he was desirous to do: I ask'd him, if ever he had received the Sacrament; he told me he had; I desired him to consider; and to assist him, I put him into a Method; I told him one Thing which was necessary, which perhaps he might come into with Reluctance, and that was Charity and forgiving his Enemies. I told him he had been hardly dealt with I believed, yet it did behove him, as he died a Christian, to forgive them; he told me he did forgive them, and he hoped Almighty God at the last Day would forgive their Indiscretion; he died some time afterwards, but then in so doing a Condition, that I could not attend him to any purpose.

Mr. *Hungerford*. Did he say any thing about who fired the Pistol?

Mr. *Peters*. I mentioned it to him; when I ask'd him, if he had fired either of the Pistols, I told him one of the Bailiffs was wounded, and that there were two Balls taken out of his Hand; he assured me, as he was a dying Man, he fired neither of the Pistols.

Reason. Did not he confess, that he had broke one of their Heads?

Mr. *Peters*. No, he did not say, he broke one of their Heads, nor any thing like it; so far from that, that he said he did not design to hurt a Hair of their Heads.

L. C. Just. I think Mr. *Peters* you say, when you came there you met with two Justices of the Peace, Mr. *Vernon* and Mr. *Haines*, and because they had no Clerk there, they desired you to take the Examination.

Mr. *Peters*. Yes, my Lord, I did take it.

Mr. Serj. *Cheeshire*. My Lord, I apprehended we had it ready to produce, or else I had not opened it; but upon my calling for it, I am told, to my Surprise, that Mr. *Vernon* hath it, and he is gone into the Country.

Mr. *Peters*. I have a Copy of it.

L. C. Just. We must have the Original.

Mr. *Peters*. My Lord, there is a Copy of it in my Deposition before the Coroner.

L. C. Just. Is Mr. *Haynes* here?

Mr. *Haynes* called.

L. C. Just. You have given an Account of the Examination of this Gentleman, first before the Clergyman, afterwards before two Justices of the Peace, his Examination is taken and reduced into Writing, and if it was reduced into Writing, by the Rule of Law, unless you shew you are disabled to do it by some Accident or other, you must produce that Writing.

Mr. *Reeve*. I am very much surprized, I apprehended they had the Writing ready in Court to produce. My Lord, Mr. *Haynes* will inform you.

Mr. *Haynes* sworn.

L. C. Just. Mr. *Haynes* we have been inform'd by that Gentleman that stands before you, the Minister, that upon hearing of this unhappy Accident, you and one of your Brethren, Mr. *Vernon*, came there in order to inquire into the Matter, and take the Examination of the Prisoners; did you do it?

Mr. *Haynes*. My Lord, on the 17th of *October* last, the Prisoners at the Bar were brought before me, and charged with the Murder of Mr. *Lutterell*; I understood Mr. *Lutterell* was not actually dead, so Mr. *Vernon*, another Justice of the Peace, went with me to Mr. *Lutterell's* Lodging, and there we found him in a very weak Condition, but sensible; we administer'd the Oath, in order to take the Information in Form; Mr. *Vernon* and the Minister were there; my Hearing not being good, Mr. *Vernon* examined him, but before they could perfect his Examination in form he fainted away, and could not go on: then we went to my House, where the Prisoners were, and examined them, and afterwards committed them. What the Deceased said to Mr. *Vernon* and the Minister I did not hear, so can give no Account of it.

Mr. *Reeve*. Had you a Paper taken?

Mr. *Haynes*. There was a Paper taken, but it was imperfect.

Mr. *Reeve*. And I think that is not in your Custody, had you the Paper?

Mr. *Haynes*. No, I had it not.

Mr. *Reeve*. Do you know where it is?

Mr. *Haynes*. No, I do not.

Mr. *Peters*. I gave it to Mr. *Vernon*, and obtained it of him to shew the Coroner, and afterwards I gave it him again; I took a Copy of it.

L. C. Just. The Copy you took is from the Paper produced to the Coroner.

Mr. *Reeve*. You was examined before the Coroner.

Mr. *Peters*. I brought the Original Paper to the Coroner.

Mr. *Reeve*. Whether that, which is mention'd in your Affidavit before the Coroner, was a Copy from the Original Paper?

Mr. *Peters*. Yes.

Mr. *Reeve*. And did you examine it?

Mr. *Peters*. Yes.

L. C. J. We must have the Original.

Mr. *Hungerford*. We hope we may have Liberty to read the Deposition taken before the Coroner, if what the Gentleman says be so; he saw the Examination taken in the Presence of the Justices of the Peace, and the very Paper, the Words of the Paper, are contained in the Deposition taken before the Coroner.

L. C. J. That won't do, you have not the Examination of the Deceased. This is ill done of Mr. *Vernon*, he ought to have taken Care, and attended here, and had the Examination before the Court, and without that we can't arrive at the Truth of this Case; I doubt you must lay aside all the Evidence of this Gentleman for want of the original Examination.

Mr. *Reeve*. We must submit it to your Lordship, as to the Confession, that Part of it that is not contained in the Examination, which was not proposed to him at the Time of his Examination, whether that is not Evidence; there are two or three Things he gives an Account of, that he said before it was reduced into Writing. But suppose we can't have the Benefit of the Examination, yet the Discourse that was had with the Deceased at another Time, whether we may not be admitted to give that in Evidence, we must submit it to your Lordship. But suppose no Examination had been taken, we humbly apprehend what he said would be proper to lay before the Jury. Therefore when he gives an Account of what he said at another Time than that of his Examination, though we can't produce what he said at the Time of his Examination, yet we may give in Evidence what he said at other Times. There were two other Times which he gives an Account of; the first was, when he was sent for to pray by him, and one *Church* came in; he then declared on the Words of a dying Man, *He was barbarously murdered.*

L. C. Just. You know in the Court of *Chancery*, when the Party is examined on his Oath, he gives in a first Answer; and on Examinations taken to it, he gives in a second, and so a third; all these are taken but as one Answer and entire Confession of the Party.

Mr. *Reeve*. Here is not an Examination before a proper Officer.

L. C. Just. You are to be heard no more to it because you ought to produce it.

Mr. *Reeve*. I am sure it is a Surprise on all of us.

Mr. *Hungerford*. As to us, we have the very Confession in our Brief, and I believe, if we had thought it could not have been produced, we should not have opened it.

L. C. Just. And there is too an Examination in Print; that ought not to be, and the Person that did it ought to be censured; are Juries to be prepossessed; here is a printed Pamphlet, whereof the Title is, Mr. *Lutterell's Cry for Justice.*

Mr. *Hungerford*. I never saw it, but am told it is most in Favour of the Prisoners at the Bar.

L. C. J. If the Examination is true, it ought to be produced, and the Prisoners ought to

come fairly to their Trial, and, if guilty, God forbid but they should suffer, but not by passionate Insinuations in Print; and it is an unprecedented Thing, and if it comes out who did it, I shall take a Course with them: It is a way of preventing all Manner of Justice.

Mr. *Hungerford*. No doubt it is a very unjust Thing, and unwarrantable, no more to be justified, than Officers are, when under the Colour of Justice, they shall murder a Gentleman at his own Lodging; but as to the Case in *Chancery*, first, second, and third Answers are but one Answer. I speak it with all Deference, whether that be the same Case, the Words that he did deliver at other Times, when the Justices were not present, when he was a dying Person on the Brink of Eternity, and then said the same Words, and now this Paper can't be produced, whether the Words of the Paper may not be admitted as Evidence, we humbly submit it to your Lordship; and we believe the Witnesses will give you an Account of what he said at other Periods of Time, when there was no Examination in Writing, which was only when the Justices attended.

L. C. *Just*. Give an Account how it comes to pass, that you have not this Examination to produce, that was in Writing.

Mr. *Mitchell* sworn.

Mr. *Reeve*. Will you give an Account of this Paper, and whether there hath been any Application made to get it, and why it is not here?

Mr. *Mitchell*. I called at Mr. *Vernon's*, but they told me he was gone into the Country, and he had not fixed any one Place, which he not doing, they did not know where to send to him.

L. C. *Just*. Here is a printed Narrative goes about the Town. Do you know who was the Author of that?

Mr. *Mitchell*. No, my Lord, we have been enquiring in order to prosecute the Person; I have asked the Widow, and Mr. *Keat* her Nephew, and they say they know nothing of it.

Mr. *Hungerford*. It sets out with this Fact, that the Deceased struck first; and if so, it is very reasonable to suppose, that this Paper was done rather in Favour of the Prisoners at the Bar, than of the Prosecutors.

L. C. *Just*. The Justice of Peace that had not the Examination doth appear, but he that hath it is out of the way. Mr. *Peters*, how many Times was you with the Deceased?

Mr. *Peters*. Three Times; at 12 o'Clock, about an Hour after, and about an Hour after that, the third Time.

L. C. *Just*. When was it you reduced what he said into Writing?

Mr. *Peters*. The second Time; the third Time I administer'd the Sacrament.

L. C. *Just*. And when you examined him the first Time, and afterwards a second and third Time, the Design of that was to perfect the Examination which you took the first Time, and then it is all of a piece.

Mr. *Hungerford*. My Lord, the third Examination was after the taking any thing in Writing; when he took the Sacrament on the solemn Occasion, he declared, &c.

Mr. *J. Powis*. The last Examination therefore was an Advice to a forgiving Temper.

Mr. *J. Eyre*. Mr. *Peters* should declare what he said the first and the third Time.

Mr. *Peters*. I press'd him to consider and recollect whether what he had said was true, he said it was.

Mr. *J. Eyre*. What did he say the first time?

Mr. *Peters*. The first time he told me, *he was barbarously murdered*: As I told you before there came in one *Church* a Bailiff, and then I put him to consider, whether he was not Accessary to his own Misfortune; to which he returned the same Answer, *that he was barbarously murdered, that he did not draw his Sword, nor fire his Pistol*.

L. C. *Just*. Did you ask him about any Blow, or Provocation given?

Mr. *Peters*. I ask'd him, to which he said, *he did not design to hurt a Hair of their Heads*.

L. C. *Just*. I must confess for my part I am not entirely satisfied: Mr. *Peters* at his first coming examines him, and after that he comes to him a second time, and then he is examined in the Presence of two Justices of the Peace, and by their Authority; and he says the Intent of that was to perfect the first Examination; and being so examined a second time, his Examination is taken in Writing; whether or no the first and second do not make an entire Examination, and so that you can't produce the first without the second; I make no doubt it might be produced, if there had not been a second; but he that examines him first, examines him afterwards a second time, in order to perfect that Examination, and when he doth it, it is reduced into Writing; to me it seems a Matter of great Consequence, if the first is allowed without producing the second.

Mr. *Just. Eyre*. It can't properly be called an Examination.

Mr. *Hungerford*. The first time he examined him as a Christian, as a Minister; as to the second Examination, Mr. *Peters* had no more to do in it than as a Justice's Clerk.

L. C. *Just*. The Examination taken before the Justice, was to confirm the former Examination, and upon that Examination all was reduced into Writing.

Mr. *J. Eyre*. That which is set down in Writing, if it be an Examination taken in Writing of a Prisoner before a Justice of the Peace, you can't give Evidence of that Examination *vivâ voce*, unless the Examination be lost; but what Declaration or Confession was made at any other time, may be given in Evidence; the particular Examination of what he said before the Justices, and was reduced into Writing, cannot be proved but by that Writing; but as to what he said at any other Time, the first and third Time, and not before the Magistrates, that may be given in Evidence.

Mr. *J. Powis*. The great Matter I observe is, that Mr. *Peters* did say, he did look upon the second Examination to perfect the first, the first was not so perfect, and then it was to be ascertained by a second, and which they not caring to trust to their Memory put into Writing; that Writing indeed the Justice of Peace hath; it is not produced, but if it be agreed that it was put into Writing, and after it was reduced into Writing, it seemed to be all of a piece, so as plainly to relate to what was done the Time before, how will they ascertain the whole, but by producing the writing? Then this writing can't be seen, the

Justice of Peace hath it, and doth not come here to produce it.

Mr. *J. Eyre*. I don't know how to call this perfecting the former Examination, you can't call the Discourse between him and Mr. *Peters* an Examination, when there was no Justice of Peace present; it is not an Examination what pass'd between Mr. *Peters* and this Gentleman. It is always taken so at the *Old-Bayley*, where Evidence is allowed to be given *viva voce* of what was said by People at other times besides the time of Examination.

Mr. *J. Powis*. What doth Mr. *Peters* mean by perfecting the Examination?

Mr. *Peters*. I beg your Pardon, it was not my Word.

L. C. Just. Not to differ about Words, whether this is an Examination before the Minister, when the Justices of Peace was not there; it is very likely this Minister came to inquire of this Gentleman about the Circumstances of his Death: after that the same Gentleman is present when the Justices of Peace come; thereupon the Justices of Peace desire him to take it in Writing; he asks the same Question as he did before, and they are taken in Writing; he takes it, designing to make the first Examination more authentic to charge the Person that gives the Examination. Now really when all this is done, the Examination of him before the Justice, taken in Writing by the same Person that inquired of him before, and all this done in order to perfect and consummate the Examination, whether you will not take them both together as one entire Account given by the Deceased? He gives the Account, he gives it as true in the Presence of the Justice; they were not present the first time, but the same Person that asked him the first time, he asks him when the Justices were there, if what he said before was true, and on that an Account is taken in Writing: Now upon this, when there is an Examination in Writing in the Presence of the same Person, and when they give you no reasonable Excuse why they don't produce it, there ought to be the less Credit given to them.

Mr. *J. Eyre*. I think there is the less Credit to be given, because the Examination is not produced; however it is Evidence.

Mr. *J. Powis*. If they were both of equal Validity you say something, but it is confessed on all Hands, that the second Examination was more solemn and valid, because two Justices of the Peace were present, and there was the Awe of Magistracy over the Person, and the second Examination relates to the first.

Mr. *J. Fortescue*. It is a hard Case on the Prisoners at the Bar; it is the Confession of Mr. *Lutterell*, and if they had that in Evidence, they might be compared together; but they not having that, I own, as to point of Law, they cannot give it in Evidence: It is a great Hardship, but where it lies I cannot tell; I think it ought to be censured in a proper Time. The most material of what is said by word of Mouth is detained from us, and not produced; but I think we should allow what was said at other times to be given in Evidence, because the first is no Examination, because no Justice of Peace then present; so that the Examination stands distinctly by it self, and that Evidence is to be laid aside and not produced: but shall we not allow

that to be Evidence which he said at other times, because he had an Examination taken in Writing? Therefore we shall hear no other Evidence, the first was no Examination, only what Mr. *Peters* will take upon him to say passed between them.

L. C. Just. Go on with your Evidence.

Mr. *Hungerford*. There can be no doubt of the third Declaration; my Lord, the third Examination was certainly the most honest Examination; as to the second Examination, it had the Solemnity of two Justices of the Peace, one happens to be deaf, the other to be absent; whether what a Man says just as he is going to die, and on his receiving the Holy Sacrament, is not to be regarded?

Mr. *J. Eyre*. He should distinguish between what passed in the first Discourse, without any regard to what is contained in the second Examination.

Mr. *Reeve*. Mr. *Peters*, you hear the Opinion of the Court, that what passed at the writing of this Paper you must not take any Notice of, but give an Account of what passed at any other Time.

Mr. *Peters*. I told your Lordship before I was sent for to visit him the first time, when I found him dangerously ill; after I had talked to him some time to put him in mind of Death, I desired to know of him, how far he had been any way instrumental or necessary to bring this Misfortune upon himself; he said, *As he was a dying Man, and expected to be judged at the last Day, they murdered him barbarously*. I repeated it to him again at the Request of Mr. *Church* a Bailiff, and the last time I came to him, when he received the Sacrament.

L. C. Just. Mr. *Peters*, I desire you to consider with your self, did you not ask him whether he had struck any of the Bailiffs?

Mr. *Peters*. I did not.

L. C. Just. Did you ask him if he had given them any Provocation.

Mr. *Peters*. I did, to which he answered, *He had given them no Provocation*.

L. C. Just. Did you ask who gave the first Blow?

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

L. C. Just. Did you see the Wound; did he say he gave that?

Mr. *Peters*. I told him, it appears one of the Bailiffs is wounded in the Hand, and it is probable he was the Person that discharged that Pistol; upon which he assured me, *He fired neither of the Pistols; he neither drew his Sword, nor fired either of the Pistols*.

L. C. Just. When you had this Discourse with him, did you reduce it into Writing?

Mr. *Peters*. What I reduced into Writing, was only my Deposition, which I writ with my own Hand, and which Mr. Justice *Harper* swore me to, and I believe he hath it in his Custody.

L. C. Just. Here this Gentleman is allowed to give an Account of what Discourse passed between him and Mr. *Lutterell* the first time; the Justice of Peace can't be allowed to give an Account of what is said at his other Examination, because it was reduc'd into Writing, and that Writing can't be produced.

Mr. Reeve. I beg you would give an Account of what he said at any other Time, when this Paper was not written: When you talk'd with him about this Matter, you say he said, *The Bailiffs did barbarously murder him without any Provocation*; that he said, *He gave them no Provocation*: And when you ask'd him about the Wound that one of the Bailiffs had, he said, *He fired neither of the Pistols, nor drew his Sword*; I desire to know at any other time, whether there was any thing material passed between you at any other time than at that time when the Paper was wrote: Can you recollect?

L. C. Just. You discoursed him three times, the first you have given an Account of, the second time it was reduced into Writing, that Writing doth not appear; what pass'd the third time, pray repeat it again?

Mr. Peters. As he was going to receive the Holy Sacrament, I beg'd of him to consider whether what he had said was true: He said, *Every Article he had said, as he was a dying Man, and as he hoped to receive Benefit by the Sacrament, every thing he had said was strictly true*.

Mr. Reeve. We shall trouble your Lordship with one Evidence more, that is, the Surgeon, who will give you an Account of his Wounds.

Mr. Sparham sworn.

Mr. Reeve. I think you was sent for as a Surgeon, give an Account in what Condition you found the Deceased, how many Wounds, and of what Nature.

Mr. Sparham. I found him labouring with a Wound under the Right Pap with a Shot; upon this I examined him, and putting him into a proper Posture, found several other Wounds; one near the Liver, the lower part of the eighth Rib, near the Back-bone; several other Wounds with a Sword, three or four on his Belly. Upon opening of his Body I found that the Wound with the Bullet had penetrated about nine Inches towards the Back, which Wound was mortal, the first to be of the Lungs, having a Hole thro', and the second to be torn, and the *Diaphragma* wounded: I found one other Wound with a Sword near the eighth Rib, three Inches and a half broad, penetrating the *Thorax*, and wounding the *Diaphragma*, which was also mortal; I found eight other Wounds with a Sword about a Quarter of an Inch wide each, and a Quarter of an Inch deep, one near the left Pap, four others on the right side of the Belly, two more on each side the Back Bone.

Mr. Reeve. So you look'd upon two of the Wounds to be mortal, one whereof was with the Pistol-shot.

Mr. Sparham. Yes, I saw two leaden Pieces taken out of his Body.

Mr. Strange. Who attended at the same time?

Mr. Sparham. Mr. Gifford.

Strange. Did he or you take out those Bullets?

Mr. Sparham. We both took them out, I think.

Mr. Reeve. My Lord we have done.

L. C. Just. What say the Prisoners? The Counsel for the King have called what Witnesses they think proper, it is now your time to answer for your selves.

Reason. If your Lordship please, we arrested the Gentleman in *Surrey-street*, and he desired me to go to his Lodging; when we came there, he

said he would pay the Money, says he, *Go and see for the Attorney, and I will pay the Money*; upon that *Tranter* went to the Attorney for his Bill, I went up Stairs with the Gentleman into the Dining-Room; when he came up, says he, *My Dear, I am arrested, it is for Mr. Rous's Bill*. He began to look a little angry, with that he went to his Scrutore and took something out of it, a Key, and he went up Stairs and fetched his Pistols, and when he came down again, he clap'd one to my Breast, and threatened to shoot me; I was surpris'd, his Lady runs out of the Room, with that I gave him good words; says he, *Sirrah I will let you live a little till your Partner comes back, and then I will send all your Souls to Hell together*: Then the Foot-boy came back and said, the Gentleman was coming; he ordered the Boy out of the Room, and one knocked at the Door; when the Boy was gone, he clap'd his Pistols one on one side of his Bosom, and the other on t'other, and my Partner came, and when he came into the Room he gave him a Blow over the Head; with that he clos'd in with him, and then one of the Pistols went off and wounded him; then he drew his Sword, and I drew mine, and then the other Pistol went off, which was the Occasion of his Death.

L. C. Just. Have you any Witnesses?

Mr. Twine sworn.

Mr. Twine. My Lord, I was employ'd by the Plaintiff Mr. Carr, to take out a Writ against Mr. Lutterell, on an Indors'd Note; I did take out a Writ and gave it to Mr. Reason, and he got the Warrant upon it, and afterwards came to me, and desired to know where Mr. Lutterell was to be found, and that I would describe him to him, whether young or old, &c. I told him where to go, and described him to them; then they went and arrested him, and after he was arrested *Tranter* came to me and told me the next Morning, they had taken the Captain: they said they took him at the lower End of *Surrey-street*, and that he was very angry, and said they had not used him civilly.

L. C. Just. What *Tranter* said is not Evidence.

Mr. Twine. I know no more, my Lord; *Tranter* came to me for the Bill, and I gave him a Bill of the Debt and Charges.

L. C. Just. Did you give the Bill of the Debt and Charges to *Tranter*?

Mr. Twine. I did; he told me they had just taken the Captain, and then I gave it him; the Bill of Charges was one Pound thirteen Shillings.

Mr. Tims sworn. *The Warrant shew'd to him*.

Mr. Tims. This is the Warrant made out upon the Bill of *Middlesex*, at the Suit of Mr. Carr, to arrest the deceased; *The Warrant read, and also the Bill of Middlesex produced and read*.

Mr. Hickman sworn, and the Warrant shew'd to him.

Mr. Hickman. This I know to be my Hand, I made out this Warrant all of it.

Mr. Hungerford. I would humbly offer it to your Lordship's Observation, here is a Fact we have omitted to prove, here is a Witness in Court, one Lucas, can prove that Reason shot off the Pistol.

L. C. Just. It is irregular; but altho' you have omitted it, and come out of time, I would have the whole Fact, and if my Brothers please we will hear it.

Constance Lucas sworn.

Mr. *Hungerford*. Mrs. *Lucas*, what do you know of shooting off the Pistol?

Const. Lucas. I was opposite to the Captain's Lodging in *Surrey-street*, in a Room up two Pair of Stairs, and I heard a Pistol go off, upon that I went to the Window, and I saw a lusty fat Man take a Pistol out of the Window in the Captain's Lodging up one Pair of Stairs, and let it off towards the Fire-side.

Mr. *Strange*. Do you know Mr. *Lutterell*?

Const. Lucas. Yes.

Mr. *Strange*. Can you take upon you to say it was not Mr. *Lutterell*?

Const. Lucas. Yes, I am sure it was not he.

L. C. Just. When you saw a lusty fat Man take a Pistol off from the Window and discharge it, was any Body by him at that time?

Const. Lucas. No Body that I saw.

L. C. Just. What sort of Man was Mr. *Lutterell*?

Const. Lucas. He was a little Man.

One of the Jury. Was there any Light in that Room to distinguish one Man from another?

L. C. Just. What she said was, she saw a lusty fat Man come to the Window, and take up a Pistol and discharge it, and that she saw no Body else at the Window.

Mr. *Hungerford*. The Coroner's Inquest came into this Room, and was satisfied, that from thence she might see into this Window.

Mr. *Gifford the Surgeon* sworn.

Mr. *Gifford*. On Tuesday the 17th of October last, about ten or eleven o'Clock in the Morning, I was sent for to a Gentleman, Mr. *Lutterell*; when I came to him, I found him sitting on a Chair, and he leaned back with his Shirt and Clothes very bloody; Mr. *Sparham* was with him in order to look to his Wound; we put him to Bed, we found a Wound about an Inch below the right Pap, by Gun or Pistol shot, and we dressed it and all the other Wounds we could find; I went into the Parlour, and there were the two Prisoners at the Bar; I was told one of them was wounded; upon that I went to examine into it: Upon coming into the Parlour I examined *Tranter*, and there I found two pieces of Balls which were lodged in his Hand; we extracted the Balls; I found a small Wound in his Wrist, and a Razure on his Head; that was a small Wound which was on the Wrist, it seemed to be from a Prick, something that had entered the Skin. Then I went to Mr. *Lutterell* again, as he was in a good State of Sense; I ask'd Mr. *Lutterell*, *Whether he had fired a Pistol?* I asked him several Times, he denied it a first, second, and third Time, and he used this Expression, *I call God to Witness, I neither fired a Pistol, nor drew my Sword, but was barbarously murdered.* I was there again when Mr. *Peters* gave him the Sacrament, when he was asked the same Question; he then answered, *He neither did the one or the other.* In the Afternoon Mr. *Keat* and I went together, he was then in a calm State, seemed reasonable, and we asked him, *Sir, you can give some Account of this Matter, your Reason and Judgment are strong; I have heard that you fetched down the Pistols:* He told me, *He had, but with no malicious Design, only he would not be forc'd out of his Lodgings.* I ask'd him, *If there was any Blow given:* He said, *They had given him abusive Language, which induced him to strike one of them; upon that*

they immediately seiz'd him, the lusty Man seiz'd him and drew his Sword, he tumbled down, and he stab'd him; he often beg'd them to spare his Life; the other said, Damn him, draw his own Sword and stab him. Mr. *Lutterell's* Finger and Thumb were cut, as if it was with grasping of a Sword. Then he said, *The lesser Man took a Pistol and clap'd it close to his Breast, and shot him in the Body, and the lusty Man held the other Pistol to his Head and shot it off;* which I the rather believe, because he had some Powder Spots or Marks on his Face.

Reason. He owned to you that he struck one of us.

Mr. *Gifford*. Yes, but it was upon your giving fawcy Language.

L. C. Just. When you ask'd him about bringing down the Pistols, and upon what Account, what said he?

Mr. *Gifford*. He acknowledged he brought down the Pistols, but with no evil Intent; but as he was willing to pay his Debts, he was not willing to be forc'd out of his Lodging and be expelled.

Mr. *Bonner* sworn.

Mr. *Bonner*. My Lord, just as Mr. *Lutterell* was got to Bed I came up Stairs, and asked him, if he had fired the Pistol; he disown'd it, and said, *He had no Design to do them any Harm, or make any Resistance, but (said he) they kill'd me cowardly and cruelly.*

Reason. After that he had declared to you that he had no Design to make any Resistance, what followed?

Bonner. When I came out of the Room, says Mr. *Gifford* to me, Mr. *Bonner*, Mr. *Tranter* is shot in the Hand; it is certain Mr. *Lutterell* shot him in the Hand; therefore let us go back and ask him; we went and ask'd him both of us, and he said, *No, as God should judge him he did not, nor had he any Design of doing them any Harm, but he did threaten them several times.* He spoke inwardly and seem'd to be faint, and desired we would leave him.

Reason. Please to take notice, that my Partner is shot in the Right Hand.

Tranter. My Lord, I have lost the Use of my Thumb.

Blake the Surgeon sworn.

Blake. My Lord, Mr. *Tranter* was wounded in the Thumb of the Right Hand, and in his Left he had a Wound here in his Wrist, I did not take the Ball out of his Hand, but I dressed it.

L. C. Just. What was that Blow on his Head? what do you think it was done with?

Mr. *Blake*. It seemed to be done with a Cane.

L. C. Just. Was it a Wound or a Bruise?

Mr. *Blake*. A Wound, the Skin was broke. Mr. *Reason* had a little Wound in one of his Fingers, which seemed to be done with the Point of a Sword.

Thomas Hargrave called again.

L. C. Just. Heark you, young Man, hear the Question and consider well; upon your former Examination you say, when *Tranter* knocked at the Door you went down to let him in; that *Tranter* made up to the Dining-Room, and you follow'd him; you heard a little Bustle before you came in, but the first thing you saw, when you came, was *Tranter* running your Master against the Closet Door, and *Reason* pricking him with a Sword: I ask you this Question, whether or

no, when you was going up Stairs after *Tranter*, before you enter'd the Room, you did not hear a Blow?

Tho. Hargrave. I heard a Blow, but did not know who struck it.

Mr. J. Eyre. Did you see to whom the Blow was given?

Hargrave. No, I saw nothing at all of it.

L. C. Just. The Reason of my calling him again, was to be satisfied as to this Particular; for the Coroner informs me, that before him, he had swore to the same Effect; he answered hastily before, but I believe not with any Design; he said he did not hear any Blow, his Meaning then might be, tho' he did hear a Blow, yet not seeing who gave it, therefore he thought it not material; I did not believe he did it with any Design.

L. C. Just. Have you any other Witnesses?

Reason. My Lord, we had none but ourselves, we are Officers of the Court; he assaulted us and brought down his Pistols and stuck them in his Bosom.

L. C. Just. Did he not afterwards take them out and lay them on the Table?

Reason. No, my Lord.

Tranter. While I was gone, I did not know what happen'd, but when I came back, the Minute I enter'd the Room he struck me over the Head with his Cane, and the Pistol went off, and shot me in the Hand.

The Clothes were produced, and by the Hole in the Waistcoat is appeared, that the Wound given by the Pistol under the Right Pap could no way happen by any Position of the Pistols in the Bosom of the Deceased, by the Pistol going off of itself.

Reason. My Lord, we are Officers of the Court, and what we did was for our own Security.

L. C. Just. What says *Tranter*?

Tranter. My Lord, we have no more to say?

Mr. Reeve. My Lord, I beg leave to observe a few Things by way of Reply. They have endeavour'd to differ the Case with respect to three Particulars; the first Particular is with relation to the Blow given by *Mr. Lutterell*; they say *Mr. Lutterell* himself being press'd very much, did own that he had given one of the Bailiffs a Blow on the Head; there appears Reason to think that to be true, because the Surgeon says he dress'd him of a Wound received by a Blow with a Cane; we submit it, whether that is a sufficient Justification of the Officers for what followed, to kill *Mr. Lutterell* in this manner, supposing it to be true. What the Boy says, he saw afterwards, immediately upon his coming into the Room, in an instant, as soon as he heard the Blow, he found *Mr. Tranter* running him up against the Wainscot, and the other Bailiff stabbing him, he swears *Mr. Lutterell* had then no Sword or Stick in his Hand, so that whether or no after the Bailiff had received a Blow on his Head, it will be a Justification sufficient for the Bailiffs to murder him? Another Part of the Evidence is in relation to the bringing down of the Pistols; I beg leave to observe, my Lord, he did confess that the Pistols were brought down, but not with an Intention to do them any Prejudice; that he

laid them on the Table; they don't pretend *Mr. Lutterell* fired either of them, but in the Struggle, the Pistols were in his Breast, and there they went off of themselves. One Wounded the Prisoner, the other went into his own Breast. As to what is said with relation to the Intention of *Mr. Lutterell* he did own he did threaten them: If he did, yet he had not Power over the Pistols, one was on the Table, and the other was in the Window, and they say the Pistols were not fired by any of them: Our Witness the Maid-Servant, just a little before the Pistols were fired off, saw *Mr. Lutterell* on the Ground upon his Back, and his Hands lifted up, and them stabbing him, and this before any one of the Pistols went off; there is another Witness swears expressly, she saw a fat Man take a Pistol out of the Window, and fire it towards the Chimney: *Mr. Lutterell* was not a fat Man, so it must be somebody else that fired the Pistol, and not *Mr. Lutterell*, in all probability. It was *Mr. Reason*, as to the Evidence given in relation to the Cloaths, because here is a Hole in the Waistcoat, the Pistol that was in his Breast must go off of itself, and make that Hole. It can be no such Thing, the Jury have seen the Cloaths, and where the Wound is given, and in what Position *Mr. Reason* himself hath attempted to place the Pistols, and it is impossible the Pistols should go off, and give that mortal Wound. We submit it to your Lordship's Discretion upon the whole, whether it is a sufficient Justification, though they are Officers of Justice, and ought to be protected, yet suppose such a Misbehaviour, where there is no Necessity for it, they are not to be justified.

L. C. Just. There will be two Points in Law; the one is whether the Officers are to be justified in what they have done; if they have done nothing, but what was proper to secure their Prisoner, and their own Lives when they were assaulted, they are not guilty of Felony; and if they are guilty of Felony, then of what Degree, whether of *Murder* or *Manslaughter*.

Mr. Reeve. My Lord, we must submit it whether a Man striking another over the Head be a Justification for him immediately to kill him, and take it with this Circumstance, that they had given him ill Language.

L. C. Just. Is ill Language a Justification for Blows? Besides you will consider, whether there was not ill Language on the other Side.

Mr. Hungerford. My Lord, I won't take up much of your Lordship's Time, if your Lordship will spare me a Word or two. Here is a Man's Life taken away by two Persons, that had a Precept from a Court of Justice to arrest, the only thing they had to do, was to secure the Person, to make him answerable to Justice, whether that could not be done without this Outrage? Whether Officers of Justice may execute their Process with so much Cruelty? It amounts to as great premeditated Malice as can be conceived. There is a Malice contained in Cruelty; I need not mention the Matter; it hath been fully laid before you; I shall only mention a Precedent or two; one is that of *Holloway's* Case: There was something of a Provocation, but the Judge there in that Case did enter into the Fact, whether the Provocation was sufficient to justify the killing of the Boy. The Boy was stealing Wood in his

Park, and had a Rope about his Middle, and as he was up in a Tree, he bid him come down out of the Tree, and he took hold of the Rope and dragg'd him so, that he was killed, and this was not a sufficient Provocation. Another Case is that of *Mawgridge*^b, it is reported by my Lord Chief Justice *Holt*, there was a Provocation; *Cope* had desired *Mawgridge* to go out of the Room, and then turned him out of the Room; and there the turning him out of the Room was not a sufficient Provocation, and it is a very just Observation of my Lord Chief Justice *Holt*; when Cases are attended with so much Cruelty and Barbarity (as appears to be here, here are nine Wounds, eight besides that with the Pistol on the same Person, and certainly two lusty Men as the Prisoners at the Bar are, might have made him answerable to Justice, without any such barbarous Treatment.) The Observation my Lord Chief Justice *Holt* made is, that the Law should be so construed. As to the Business of the Cloaths, it seems to be absurd, that the Pistol went off, and made that Wound on the Right Side; by no Position he could put the Pistols in, could their going off make that Wound.

Mr. *Strange*. My Lord, I would only observe two or three Things. If Mr. *Lutterell* at the time they assaulted him with a Sword, had held his Pistols in his Hand, and their own Lives had been in danger, the Case had been different: but when he had put the Pistols out of his Hand, and they were between him and the Pistols, so that it was impossible for him to do them any such Harm (for I do admit if it was in Mr. *Lutterell's* Power at that Time, and he had shew'd an Intention, that if they did not kill him, he would kill them, that might be something of a Justification) they are the less excusable in doing what they did. As to the Circumstance of the Pistols firing of themselves, as they were in Mr. *Lutterell's* Bosom, and so giving this Wound, it seems to be impossible it should be so, and that this must be a Wound given by a Pistol levelled directly at him.

L. C. *Just*. I think you mentioned the Case that is in *Keilyng*, and if you have read that Case lately, you will remember, there a Blow is a Provocation, and if a Blow be first given, it will not be Murder, tho' Death do ensue upon it.

L. C. *Just*. Gentlemen of the Jury, the Prisoners at the Bar, *Hugh Reason* and *Robert Tranter*, are charged by the Coroner's Inquest, and by an Indictment, with the Murder of Mr. *Lutterell*; they say they are not guilty of this Murder, and whether they are guilty or not is your Business to enquire, and receive Satisfaction in. In order to prove them guilty, they have called several Witnesses for the King. The first is *Thomas Hargrave* who it seems was a Servant to Mr. *Lutterell*; he tells you, that upon *Tuesday*, but he doth not remember the Month, or the Day of the Month, but it comes out from the other Witnesses, that it was the 17th Day of *October*, he says his Master was going down to the Water-side in order to take Boat, for it seems he lodged in *Surry-Street*, and he says a little Man ran after him, and clapp'd him on the Back. He did not then know him, but now says his Name is *Tranter*; on that his Master told him, he would pay the Money. He did differ in the Evidence he gave, at first he did not remember, that he desired them to go to his

Lodging, but he desired them to go with him to *Westminster*. But the Officers thought, that was not reasonable; then afterwards he says, that with much Persuasion he prevailed with them to carry him back to his Lodging: and that his Officers did carry him back to his own Lodging; he says his Master went up Stairs, he followed after; when he came up Stairs his Master demanded of the Officer, that was with him, the fat Man, which is *Reason* (for *Tranter* was gone to get a Bill of Costs from the Attorney) he demanded of the Officer his Warrant; the Officer did shew him his Warrant; he said, he took the Warrant in his Hand, and afterwards threw it on the Ground, using a very indecent Expression, *he should take it and wipe his Back-side with it*. He tells you while he was there somebody knock'd at the Door, with that he went down to open the Door, and he says he let in *Tranter*, and he ran up to the Dining-Room, and he followed him. Now he says on his second Examination, before he came into the Dining-Room, he did hear the Noise of a Blow given; formerly the Lad giving his Evidence hastily, and not so well considering, he said he did not hear any Blow given, but on his second Examination, he doth say he heard a Blow given before he came into the Dining-Room. He says when he came into the Dining-Room *Tranter* had got hold of Mr. *Lutterell*, and was running of him against the Wainscot, and that *Reason* had his Sword drawn and was striking at him with his Sword; and he says, as he was preparing himself to make another Thrust, he took hold of his Sword-Arm, and prevented that, and *Reason* with some Passion said, *Damn you, get you out of the Room, or else you shall die before your Master*. With that the Boy went out of the Room, and went down Stairs and cried out *Fire and Murder*, in order to alarm the Neighbourhood, he tells you while he was there he heard a Pistol go off, and before he could get up Stairs he heard another Pistol go off, this is the Evidence given by *Hargrave*. They have called another Witness, *Hester Gerrard*; she says she heard her Master go out in the Morning, and in a little time after she heard him return again, and there came with him *Reason*, one of the Prisoners at the Bar. Observing this, that her Master came in so short a Time after he went out, she had the Curiosity to hearken what the Meaning or Occasion of her Master's returning so soon was; she says, she heard her Master talking of an Arrest, and he seem'd to be in a Passion with the Bailiff, that was with him, and said he had not used him well, but should have given him notice before he arrested him in the Street; she says she withdrew afterwards into her Mistress's Bed-Chamber, which was near the Room where they were, and in a little time she heard her Master go up Stairs, and in a short time after return again; with that she had the Curiosity to go in, and see what was the Matter; her Mistress being big with Child she was therefore more curious than ordinary to prevent the Misfortune falling on her Mistress; she found her Master with two Pistols in his Hand, he stuck one of the Pistols on one Side, and the other on the other Side in his Coat; she says she admonish'd her Master, and desired him to consider the Condition of her Mistress, and not to do any thing to fright her; upon that

he said the Bailiffs had affronted him, and abused him, and called him *Minter*, however he did not design to do them any harm with the Pistols, and her Master at her Desire laid down the Pistols on the Table; with that she went out of the Room; but soon after hearing a great Noise she came into the Room again, and found her Master on his Back on the Floor, and the Bailiffs stabbing him: She says she went out with an Intent to give notice of it to the Neighbourhood, and that she cried out *Murder*; that while she was doing this, she heard one Pistol go off, and presently after another; but before either went off, she saw her Master lying upon his Back, and the Prisoner at the Bar (*pointing at him*) stabbing him. Then they call *Thomas Waters*, a Waterman, he was standing by the Water-side, and seeing Mr. *Lutterell* coming down, who was one that usually employ'd him, he expected a Fare from him, and that he should carry him, as he usually did; he saw Mr. *Lutterell* make back again and go into his own Lodging; but still he said he expected his Master to come down, and go by Water; but he not coming in so short time as he expected, he made towards his Lodging, and as he came near he heard the Boy cry, *Fire and Murder*: He went up into the Room, where he found Mr. *Lutterell* lying in the Room wounded all in Blood. The next Witness is Mr. *Peters*, who is a Reverend Divine, and came to do his Office and Duty on this melancholly occasion; he hearing Mr. *Lutterell* was wounded, and in danger of dying, came to him to perform his Office on that Occasion: He says, that he requested and admonished him to tell him, if he was not accessary to his own Misfortune, and that it may be, if it was not discovered whilst he was living, it might be the Occasion of an innocent Person's Suffering. When he admonished him to tell the Truth, he did with the most solemn Affelevation, as he was to answer at the dreadful Day of Judgment, say, *That he was barbarously murder'd*; but did not you give any Provocation or Occasion for it? *No, I gave none*. With that, says he, I told him I understood one of the Bailiffs was wounded with a Pistol; did not you discharge either of the Pistols? *No, upon the Word of a dying Man, and as he was to answer it to Almighty God, he never discharged either of the Pistols, nor did he run his Sword at them, drew his Sword at them, or give them any Provocation*. The Minister says, he advised him to be very serious and examined him as to the Fact, and said it would be of very dangerous Consequence, if he should die with any Fallity in a Case of this Nature, and it would draw present Ruin on innocent Persons; he said, *He never drew his Sword, nor discharged either of the Pistols, but was barbarously murder'd*. Mr. *Peters* then went away, and a little time after came again, when Mr. *Vernon* and Mr. *Haynes*, two Justices of the Peace, came to take an Examination from Mr. *Lutterell* himself; he says he was present at that Time, that because they had no Clerk with them, he was desired to take an Account in Writing of what was said; he press'd him as formerly, and having taken an Account in Writing, that ought to be produced, but it is not produced, and therefore no regard is to be had to it, for a Person is to give the best Evidence the Thing is capable of, especially where a Person's Life is concerned, and he of his own shewing, says it was

taken in Writing, and that Writing is not produced, and no Account is given that they are disabled to produce it, but the Justice of the Peace that hath it is out of the Way, and it doth not appear, that proper Endeavours have been taken to have him here, that this Examination might appear more perfect than the former. He tells you afterwards he came to him a third Time, and the End of his coming a third Time was to admonish him with respect to his Fate in the other World, and at that Time he desired to take the Sacrament; he told him what was necessary, that he might take the Sacrament worthily, and that it was proper above all Things that he should discharge himself and his Conscience, and give a true Account of what happen'd on this melancholly Occasion, that so no innocent Person might suffer. He still insisted, *That he was barbarously murder'd*, and said, *that every Article of what he had said was true*. He said to him further, before you receive the Holy Sacrament, and as you are going before God, and there hope to have Remission of your Sins, it is necessary for you to forgive even your Enemies; and with that says he, he told me, *He did heartily forgive all the World, and did forgive the Persons that had been guilty of this Indiscretion, and hoped God Almighty would forgive them*: He gives it a soft Term there, *their Indiscretion*. Indeed I should have been very glad if the Examination that was reduced into Writing was here, that it might be laid before you. Mr. *Peters* is a very worthy Person, there is no Reason to doubt, but he swears upon his Memory; and when a Man swears upon his Memory, he may mistake; and the Mistake of a few Words may alter the Sense; therefore it was very proper to have had the Examination here; that might possibly have corrected his Memory; and tho' he hath shew'd himself a Man of great Probity and Worth, yet he might be mistaken in some Particular; and it seems strange, that of two Justices of Peace the one appears, and the other, Mr. *Vernon*, with whom the Examination is left, doth not appear, nor any Endeavours used to have him here; and therefore it must be taken as an Objection, not as to his veracity, but that the Prosecutor hath not produced the Evidence that is proper, and only relies on the Memory of the Witnesses, and this seems to affect the Evidence that is given by Mr. *Peters*. They have called another Witness, whom they called at last after they had closed their Evidence; she lived in an House over against Mr. *Lutterell's* Lodgings; she was in a Chamber two Pair of Stairs, and she saw a lusty fat Man come to the Window, take up a Pistol, and as she thought discharged the Pistol; and she saw no other Person but this Man, and therefore concluded the fat Man fired the Pistol: This is the Evidence given for the King. The Prisoners are asked what they have to say for themselves, in answer to this Charge, which seems to be a weighty one given against them: They tell you they are Ministers of Justice, and they give you an Account not only by their own opening, but by the Evidence they have produced, in what manner they behaved themselves; that upon the first Arrest, at the Request of the Prisoner that then was, they submitted to carry him back to his own Lodging: I must confess this doth seem to make some Impression, it is what Bailiffs are

not bound to do, they are usually rough, and not easy to be intreated, unless well paid for it; this shews, that these Men went beyond the Bounds of their own Duty, for when they had arrested him, they ought to have secured him by carrying him to Jail, or some Place of Safety; it was incumbent on them to give him an Opportunity of paying the Money, or sending for Bail, in Case he desired to be discharged that Way; but when a Bailiff hath arrested a Man, to carry him back to his own Lodging, is an unusual way of treating Prisoners and ought not to have been; but still it is not to be imputed to the Bailiffs, as an Aggravation in the Charge, they were too favourable in trusting him in his own Lodging. What is next? When they had him there, *Tranter* is sent for the Attorney's Bill, this is pretty extraordinary when they had taken him, not only to give him Leave to go to his own Lodgings, but one of them goes upon an Errand, which Mr. *Lutterell* might have sent his own Servant upon, and leaves none but *Reason*; this was extreme civil Usage, and not often done by Men of their Character; what then? *Lutterell* goes up Stairs, what did *Reason* then do? When he had carried him to his own Lodging and sent his Partner away, he gives him leave to go into another Chamber; this doth not seem to be ill Treatment of the Deceased, but shews excessive Favour to their Prisoner, which they could not in Strictness justify: He went up Stairs and returned again, and the Maid Servant of Mr. *Lutterell* tells you, she saw him with a Case of Pistols, one stuck on one Side of his Coat, and the other on t'other; if their Treatment was so extraordinary and civil, this seems to be an untoward return of Mr. *Lutterell's*, when he was trusted to go out of the Room, for to Return with a Case of Pistols; but the Maid-Servant says, he said, *He had no Malice towards them, and would not hurt a Hair of their Heads, he only brought down the Pistols that he might not be imposed upon.* I don't know what he meant, when he was in Custody of the Officers, and had been so civilly used, to bring down a Case of Pistols to prevent his being ill used, seems an untoward Return, and to affright the Officers, that they might not carry him away. This is not all, Mr. *Gifford* says, that he being a Surgeon was call'd to give his Assistance on this very unhappy Accident; he gives an Account of the Wounds, and the Discourse that pass'd on that Occasion, and upon what he had done, and how the Bailiffs had treated him. Says he, *I confess*, although he says he had examined, and asked him several Times before, and that he refused to give any Account then, but did persist in it, that he did not give any Provocation, but at last when Mr. *Gifford* repeated it with some Earnestness, out it comes at last, *That he did give one of the Bailiffs a Stroke on his Head with a Stick.* He goes on, and ask'd him the Intent of bringing down the Pistols; he says, *I did not design any Harm; I have no Malice, but brought them down, that I might not be ill used:* This was ill Behaviour, where he had been treated civilly, to declare that he brought down his Pistols, that he might not be ill used: It was the Duty of the Bailiffs to carry him off, and he brought down his Pistols to prevent that; as to the Blow, say the Bailiffs, the Assault begun on his Side; the young Man hath told you he heard a Blow given:

Mr. *Lutterell* declared, he brought down the Pistols to prevent their carrying him off, and that he did give one of the Bailiffs a Blow with a Cane; it is surprizing, that immediately when *Tranter* came back he should run him against the Wainscot, and the other assault him with a Sword; this Behaviour is not of a Piece with the other, that *Tranter* should come back, and without any Provocation run him against the Wall, and *Reason* should take his Sword and stab him: There must be a Provocation; the Boy says there was a Blow given, but he can't tell who gave it. Mr. *Lutterell* declares he gave a Blow, and another Surgeon confirms it; so that it appears beyond Contradiction, by the Evidence, that the Pistols were brought down with a Design to prevent his being carried off, and that he did give one of the Bailiffs a Blow with a Stick: Then Mr. *Bonner* hath given you an Account of several Matters, but that which is material is, that he did not discharge any of his Pistols, or draw his Sword; that he did not intend it, but did threaten it several Times. One *Blake*, who was another Witness, says, that upon Examination afterwards there appeared, that there had been a Blow on the Head of *Tranter*. This is the Nature of the Evidence given on the Side of the Prisoners. Upon the whole Matter, I think it is plain beyond Contradiction, that the Prisoners at the Bar did kill Mr. *Lutterell*. It is plain that first of all, when *Tranter* had him against the Wall, that *Reason* stabb'd him, and when lying upon the Floor, that *Reason* stabb'd him; and it appears afterwards by the Evidence of the Witnesses, who says she saw the fat Man take up the Pistol and discharge it, that *Reason* shot off the Pistol; so that I think there can be no doubt at all, but the Prisoners at the Bar did give these Wounds, of which he died. The Surgeons give an Account, and I think there are some eight or nine Wounds with a Sword, one of them only mortal; a Wound with a Bullet that is mortal; several other Wounds he speaks of, that are but slight. Then the Question will be, whether upon this Evidence the Defendants are guilty of Felony, and if guilty, then in what Degree, whether of *Murder* or *Manlaughter*. Gentlemen, it hath been opened truly, that the Bailiffs are Ministers of Justice; they are arm'd with the Authority of Law, and those, who resist a Bailiff in the Execution of his Office, resist the Law. They are not bound to give way and let their Prisoner Escape, but they being to execute their Warrant, if in doing what is necessary for this purpose, for obtaining their Prisoner, and the Security of their own Persons, Death doth ensue, the Bailiffs having the Authority of the Law on their side, it is not so much as Felony; and it is very necessary it should be so, for without it all our Properties would be precarious. When any Man offers an Injury to another, there is no Remedy but by bringing an Action at Law, and in order to bring the Person to do Justice a proper Officer must be employed; and therefore it is highly reasonable that Bailiffs should have an Authority to carry off the Persons they have arrested, and if in doing of it Death ensues, the Party must thank himself. That being the Question, I would recommend to your Consideration these Circumstances; it appears in the beginning, that the Bailiffs treated Mr. *Lutterell* with all Civility, gave

gave him leave to go to his Lodging; one of them sends his Companion away, and gives him leave to go up Stairs; but altho' they did do that, that will not justify them for being guilty of any Barbarity, without any just occasion offer'd; therefore you are to consider what happen'd afterwards: It appears Mr. *Lutterell* brought down the Pistols, he did do this to prevent his being carried off; that is, to prevent the Bailiffs from carrying him from his Lodgings, which was their Duty to do in case the Money was not paid, or Bail given in; and if so, this is good introductory Evidence to that, which they offer to prove, namely, that he endeavour'd to rescue himself: He says, he did not discharge either of the Pistols, or draw his Sword upon them; that he did not intend to do any Mischief, but he threaten'd them; then see how this is when taken together: Here is Mr. *Lutterell* under an Arrest, fetches down his Pistols with an Intent to prevent his being carried off; I doubt his threatening must have reference, that he threaten'd to discharge his Pistols, or draw his Sword upon them; then when his Pistols are brought down with that intent, when he threatens what Use he would make of his Pistols or Sword, what is done afterwards? Mr. *Lutterell* gives one of the Bailiffs a Blow with his Cane; it is proved undeniably that there was a Blow given, that is proved by the Boy, that the Blow was given by Mr. *Lutterell*; that appears by what he own'd himself. Then consider, here are Pistols brought down with a Design to make Opposition; that he threatened them, and not only so, but gave one of them a Blow with his Cane; what is the Consequence; *Tranter* runs him against the Wall, and *Reason* stabs him: If this were all that was in the case, when Pistols are brought down, and Threatenings used, and a Blow given, the Officers are not to stand still till they are murdered, nor could they tell what Mr. *Lutterell's* Intention was: As he had made an Appearance of Resistance, and had made an Assault, you are to consider whether this was not a necessary Defence of the Officers to secure their Prisoner. It is of no weight what Mr. *Lutterell* said, that he intended to do them no harm; if he made an appearance of Resistance, and actually assaulted them, the Question is, whether the Bailiffs, in this case, are not justified in what they have done; you will consider their Circumstances. The Maid tells you, when the Pistols were brought down, at her Persuasion her Master laid them on the Table; so one would think that was an Indication that no ill use was intended to be made of them: It doth not appear whether one or both were in the reach of Mr. *Lutterell*. Then it appears, that notwithstanding the running him against the Wall, he had in some measure rescued himself from that Force, and there was a struggling, and throwing down, which shews this Man was not so in the power of the Bailiffs, so as they could be secure of preserving their Prisoner, or their own Lives. It must be left to your Consideration, whether there was any Design of Mr. *Lutterell* to rescue himself; but if you think they had a just Provocation, and they had Reason to be apprehensive of losing their Prisoner, the Law does allow them to do what is necessary for their own Security, and the Security of their Prisoner. This is what I recommend to your Consideration, whether or no it appears to you that this was done out of Heat, and out of a Passion by the Bailiffs, when there was no just Cause for them

to apprehend the Prisoner's being rescued; if you believe that, then the Prisoners will be guilty of Felony: But if you believe there was just occasion for the Prisoners to be apprehensive they were in danger of their Lives, and of losing their Prisoner, then whatever is done in their own Defence to secure their Prisoner, and their own Lives, it will not be Felony. I must confess it looks barbarous to think, that when a Man was in his Blood on the Ground, they should follow their Blows, giving him more Wounds; this is carrying the thing a great way, and it looks like some Barbarity. But if Mr. *Lutterell* gave the first occasion, whatever happened after, if done for the Security of their own Lives, and of their Prisoner, won't make them guilty of Felony; but suppose you should be of Opinion that the Bailiffs have done more than they should, then the next thing to consider is, in what degree they are guilty: It appears a Blow was given, and that by the Boy before he came up Stairs; it appears by Mr. *Lutterell* that he gave the Blow; Gentlemen, I don't know, Men of Honour are not to justify themselves by saying, saucy Language is given them, and therefore I am to be my own Avenger; Mr. *Lutterell* gave one of them a Blow over the Head, afterwards the rest fell out as you have heard.

The Question is, whether it be *Murder*; it must be done maliciously, and without Provocation, or else it is not *Murder*: Blows have always been allow'd to be Provocations, and here this is accompanied with fetching down the Pistols, threatening the Bailiffs what he would do, and afterwards giving one of them a Blow; and if so, the Defendants will not be guilty of *Murder*, but only of *Manslaughter*: First, you are to assert a just and true Authority of the Bailiffs; on the other side you must not encourage the Bailiffs on a few angry Words immediately to fall into a Passion, and take away the Life of a Man. Here it appears, that a Blow was given under untoward Circumstances, after the Bailiffs had been threaten'd with a Design to prevent his being carried off by them; and if it be so, the most you make of it will be *Manslaughter*.

They did behave themselves civilly at first, shew'd him their Warrant, which he threw down and bid them wipe their back-side with it; that is a Matter which if this Gentleman had not suffered in the manner he hath done; must have been resent'd in its place; then two or three times they are called *Rogues* and *Rascals*, and that might provoke the Bailiffs: I think this unhappy Business was occasioned by too great a Lenity of the Bailiffs in carrying back their Prisoner to his own Lodging; that was not well done of them. However I must leave it to your Consideration, whether or no they are guilty of Felony; and if they be guilty of Felony, then in what degree, whether of *Murder* or *Manslaughter*. I forgot one thing, the Surgeon did swear that one of the Bailiffs had a Wound in his Hand by a Bullet, each of them had a Wound, tho' it doth not appear how; all this is likewise to be consider'd: you will consider the whole, and give your Verdict accordingly.

Reason, as hath been proved, said, he hoped he would give him Civility Money; he said he would give nothing to such Rogues as they were, for they had given him no Notice, but had arrested him in the Street; that is the great Ground

of Complaint, and at that the Offence is taken; they did not give him due Notice, therefore it was not civilly done, which if they had done, and it had come before us, we should have punished with great Severity.

Upon this the Jury withdrew, and after staying out about an Hour, brought them both in *Guilty of Manslaughter*: Upon which they prayed the Benefit of the Clergy, and were immediately burnt in the Hand.



CXCII. *The Trial of John Woodburne and Arundel Coke, Esq; at Suffolk Assizes for Felony, in wilfully slitting the Nose of Edward Crispe, Gent. March 13, 1721. 8 GEO. I.*



N *Tuesday* the 13th of *March* 1721, at the Assizes held at *Bury St. Edmonds* in the County of *Suffolk*, *John Woodburne* and *Arundel Coke* were arraigned upon an Indictment found by the Grand-Jury: And the Court proceeded thus.

Clerk of the Arraignments, John Woodburne, hold up thy Hand; *Arundel Coke* aliàs *Cooke*, hold up thy Hand; which they severally did.

You stand indicted by the Names of *John Woodburne*, late of the Borough of *Bury St. Edmonds* in the County of *Suffolk*, Labourer; and *Arundel Coke* aliàs *Cooke*, of the Borough aforesaid, Esq; for that you, after the twenty fourth Day of *June*, in the Year of our Lord one thousand six hundred and seventy one, viz. the first Day of *January* in the Eighth Year of our Sovereign Lord *George*, of *Great Britain*, &c. intending one *Edward Crispe*, Gent. then and yet being a Subject of our said Sovereign Lord the King, to maim and disfigure at the Borough aforesaid, in the County aforesaid, by Force and Arms, &c. in and upon the said *Edward Crispe*, in the Peace of God, and of our said Sovereign Lord the King, then and there being, on purpose, and or Malice fore-thought, and by lying in wait, did unlawfully and feloniously make an Assault. And that you the said *John Woodburne* with a certain Bill value a Penny, which you the said *John* then had and held in your right Hand, the Nose of the said *Edward Crispe*, on Purpose, and of your Malice fore-thought, and by lying in wait, did then and there unlawfully and feloniously slit, with an Intent by so doing, the said *Edward Crispe* to maim and disfigure. And that you the said *Arundel Coke*, at the time of the Felony aforesaid, by the said *John Woodburne* in manner aforesaid; unlawfully and feloniously done and committed; to wit, the said first Day of *January*, in the eighth Year aforesaid, at the Borough aforesaid, in the County aforesaid, on Purpose, and of your Malice fore-thought, and by lying in wait, unlawfully and feloniously was present, aiding and abetting the said *John Woodburne* the Felony aforesaid, in manner aforesaid, feloniously to commit and do. And so the Jury aforesaid, upon their Oaths say, that you the said *John Woodburne* and *Arundel Coke*, the said first Day of *January*, in the eighth Year aforesaid, at the Borough aforesaid, in the County aforesaid, by Force and Arms, &c. on Purpose, and of your Malice fore-thought, and by lying in wait, the Felony aforesaid, in

manner aforesaid, did, and each of you did, commit, and do against the Peace of our Sovereign Lord the King, his Crown and Dignities, and also against the Form of the Statute in that Case made and provided. [Vid. *A true Copy of the Indictment itself in Latin, at the end of this Volume.*]

Clerk of the Arraigns. How say'st thou, *John Woodburne*; art thou guilty of the Felony whereof thou stand'st Indicted, or not Guilty?

Prisoner. Not Guilty.

Cl. Arr. Culprit. How wilt thou be tried?

Prisoner. By God and my Country.

Cl. Arr. God send thee a good Deliverance.

How say'st thou *Arundel Coke* aliàs *Cooke*, art thou guilty of the Felony whereof thou stand'st Indicted; or not Guilty?

Prisoner. Not Guilty.

Cl. Arr. Culprit. How wilt thou be try'd;

Prisoner. By God and my Country.

Cl. Arr. God send thee a good Deliverance:

You *John Woodburne*, and *Arundel Coke* aliàs *Cooke* the Prisoners at the Bar, hearken to what is said to you. Those good Men that are now called and do here appear, are those that are to pass between our Sovereign Lord the King and you, upon your several Lives or Deaths; if therefore you or either of you will challenge them or any of them, you must challenge them as they come to the Book to be sworn, before they are sworn, and you shall be heard.

Cl. Arr. Cryer, give the Book to
Thomas Buckingham, *George Cross,*
Nicholas Alger, *Samuel Bridge,*
Ambrose Gallant, *Jonathan Clements,*
George Goddard, *Thomas Taylor,*
Robert Gall, *Simon Reeve,*
William Scott, *William May.*

Cl. Arr. Count these.

Cryer. Are you all sworn Gentlemen?

Jury Yes.

Cl. Arr. Make a Proclamation.

Cryer. O Yes, If any of you can inform my Lord the King's Justice, the King's Attorney or Solicitor General, of any Treason, Murder, Felony, or other Misdemeanour committed by the Prisoners at the Bar, or either of them, come forth, and you shall be heard, for the Prisoners at the Bar now stand upon their Deliverance: And all Persons bound by Recognizance to prosecute them, or either of them, come forth and prosecute, or you'll forfeit your Recognizances.

Cl. Arr.

Cl. Arr. John Woodburne, and Arundel Coke aliàs Cooke, hold up your Hands. Gentlemen of the Jury, look upon the Prisoners, and hearken to their Charge: They stand indicted by the Names of John Woodburne, late of the Borough of Bury St. Edmonds, in the County of Suffolk; Labourer, and Arundel Coke aliàs Cooke, of the Borough aforesaid, Esq; for that they (as in the Indictment before-mentioned) upon which Indictment they have been arraigned; and pleaded severally Not Guilty: Your Charge is to enquire whether they, or either of them, are Guilty of the Felony whereof they stand indicted, or Not Guilty.

Mr. Lee. May it please your Lordship; and you Gentlemen of the Jury, I am of Council for the King against the Prisoners at the Bar, who are indicted for Felony on the 22^o and 23^o Car. II. entitled, *An Act to prevent malicious Maiming and Wounding*. And the Indictment sets forth, that the Prisoners, the first Day of January, in the eighth Year of his present Majesty, at Bury St. Edmonds in this County, did on Purpose, and of Malice fore-thought, and by lying in wait, make an Assault unlawfully and feloniously upon Edward Crispe, Gent. and that the Prisoner John Woodburne with a Bill which he then had in his Right Hand, did on Purpose, of Malice fore-thought; and by lying in wait, slit the Nose of the said Edward Crispe, with an Intent in so doing to disfigure the said Edward Crispe; and that the Prisoner Arundel Coke at the Time of committing the said Felony, on Purpose, and of his Malice fore-thought; and by lying in wait, was unlawfully and feloniously present, aiding and abetting the said John Woodburne to commit the said Felony: All which is laid to be done contrary to the Form of the Statute. If we who are Counsel for the King prove this Matter, you will find them Guilty.

Serj. Selby. May it please your Lordship; and you Gentlemen of the Jury; I am Counsel, *pro hac Vice*, for the King against the Prisoners at the Bar, who stand indicted upon the Statute of the 22^o of King Charles II. the one for maliciously maiming and disfiguring of Edward Crispe, the other for abetting that Fact, which by that Act is made one and the same Offence; I said, Gentlemen, I was Counsel for the King, for that his Majesty, as the Father of his People, and for their Safety, out of his natural Goodness, hath been graciously pleased particularly to regard this Prosecution for so horrid and bloody an Assassination. And though, Gentlemen, 'tis difficult to stand in this Place without the greatest Tenderness to our Fellow-Creatures, yet these, who have divested themselves of all Humanity, now cease to be such; 'tis even Cruelty to the King's People not to stand up against them so far as is consistent with Law and Justice. Their Prosecution is become the common Concern of Mankind; for so long as these Prisoners have a Being here, the Life of every Man is precarious, and but at the Will of so infernal a Contriver as the one, and so hellish an Executioner as the other. We shall first, Gentlemen, prove the Fact committed, and that by Mr. Crispe himself, who by a particular Providence hath survived this horrid Attempt, and is here to give Evidence of it, and that he was invited with his Wife by Mr. Coke (who married Mr. Crispe's Sister, and who was to have Mr. Crispe's Estate by his Decease) to sup

at his House; that Mr. Coke proposed to him to go after Supper to make a Visit to Mrs. Monke (whose Name we mention without any the least Imputation) to which Mr. Crispe consented; that Mrs. Monke's House opens into the Church-yard; which is but cross the Way from Mr. Coke's House; that Mr. Coke took Mr. Crispe along with him about ten or eleven at Night, it being dark; into the Church-yard, and walked him about near Mrs. Monke's Door without going in; and then making some Noise or Whistling, a Person came up to him and knocked him down; after which he was not sensible; that being left for dead; after some Time he got up, and returned; he did not know how, to Mr. Coke's House; where the Company received him with great Consternation, as did Mr. Coke himself, who soon returned after walking out with Mr. Crispe; out of Breath, and called for a Glass of Wine; and being asked what was become of Mr. Crispe; said he was stumbling home in the dark. This we shall prove by Mr. Brown, another Relation. We shall prove by Mr. Sturgeon, who was called as his Surgeon, the Condition of his Wounds; and by Carter, a Blacksmith, that Mr. Coke about the Friday before the Fact was committed; sent for him; and asked (after a previous Discourse of Carter's Poverty, and how he might live well in the World) if he would cut off ten Men's Heads without Remorse; which when Carter said he could not, If he would cut off one Man's Head, and lay it before Coke; which Carter refusing, Mr. Coke bid him consider on't, and come again; then gave him a Glass of Brandy; and dismissed him, bidding him send Woodburne to him. We shall prove by one Moone, a Taylor; that Mr. Coke about three Years since solicited him to the like Effect. We shall prove by Willet the Constable, that after Woodburne was taken up; he confessed the Fact; said he did it with a Hedging-Bill, and gave him Directions where to find it, and he found it accordingly; which Woodburne, when shewed him, acknowledged to be the same; and which we have here to produce. We shall prove by Mr. Wetherell the Goaler, that Mr. Coke, since he was in his Custody, confessed the whole Fact, and that Woodburne was placed in a Porch of an empty House near Mr. Coke's, to come out on a Whistle to do the Fact; and that he delivered Mr. Crispe to Woodburne, and was present when the Fact was committed. And after this Evidence, there can be no doubt, Gentlemen, but you will find the Prisoners at the Bar guilty of this Indictment.

Serj. Brantbw. My Lord, the Defendants are indicted of Felony, upon an Act of Parliament made 22^o & 23^o Car. II. by which Act; if any Person or Persons, on Purpose; and of Malice fore-thought, and by lying in wait, shall unlawfully cut out or disable the Tongue; put out the Eye, slit the Nose, &c. with an Intention in so doing to maim or disfigure; the Person or Persons so offending; their Counsellors, Aiders, and Abettors, knowing thereof, are Felons without Benefit of Clergy. The Indictment charges the Defendants with feloniously making an Assault on Mr. Crispe; that Woodburne slit his Nose with a Bill or Hook; that Coke was aiding and assisting therein. We shall be able by undoubted Evidence to prove and make clear the Charge of the Indictment; and every Particular thereof; as has been opened to you; and that the manner

of doing it was attended with such Circumstances of Inhumanity, Baseness, and Villany, as no Instance can parallel. Mr. *Crispe* is Brother-in-Law to Mr. *Coke*, who on the first Day of *January* last, under the Colour of Friendship and Affection, invites Mr. *Crispe* and Family to Supper at *Coke's* House. Before this Invitation he had agreed with *Woodburne* for Hire, to lie in wait on Purpose to effect the designed Mischief. When *Woodburne* was lying in wait, *Coke* came several times to him to encourage him in his vile Purpose. After Supper, Mr. *Coke*, unmindful of all the Obligations of brotherly Love, of Hospitality, and of the Protection due to Mr. *Crispe*, by false and vile Arts and Persuasions entices him into the Church-yard, the Place designed and agreed upon for the Execution of their wicked Purposes. When he had got Mr. *Crispe* into this Place, by Sign he gave notice of it to *Woodburne*, who had follow'd at some distance; and then delivered him into the Possession of *Woodburne*, and was present at the striking several Blows with the Hook. By the Nature of the Instrument every Blow must maim and disfigure; and the Blows being given by the Order and Direction of Mr. *Coke* by *Woodburne*, Mr. *Crispe's* Nose was slit on purpose to maim and disfigure by one lying in wait: Which are all the Circumstances required by the Act of Parliament to make them guilty of the Felony with which they are charged. Which several Facts we shall call our Witnessess to make out, and doubt not but the Jury will find them guilty.

Serj. *Selby*. We desire in the first Place, Mr. *Edward Crispe* himself may be sworn, (*which was done accordingly*.) Mr. *Crispe*, give an Account to my Lord and the Jury of the whole Matter.

Crispe. On *New-Year's-Day* last I was invited to sup at Mr. *Coke's*, and being there, he propos'd to me to go to Mrs. *Fanny Monke's*.

Sir *Peter King*. L. C. *Just*. Was this before or after Supper?

Crispe. This was before Supper: We supped about seven, and after Supper about ten o' Clock he called me out of his Parlour, I follow'd him; we went into the Church-yard: It was then very dark, the Moon did not shine. He took three or four Turns before the House where Mrs. *Monke* dwelt, then he stood still and made a Noise.

L. C. *Just*. What kind of Noise did he make?

Crispe. It was like a Hollowing.

L. C. *Just*. Were you under any Fear or Apprehension from that Noise?

Crispe. Yes, my Lord, I was afraid, and made up towards the Wall; but in a Quarter of a Minute somebody came behind me, and knocked me down.

L. C. *Just*. Did you then know who that Man was?

Crispe. I did not.

L. C. *Just*. Can you tell what was done to you afterwards?

Crispe. My Lord, I cannot, for on that Blow I lost my Senses for some time.

L. C. *Just*. How long was it before your Senses returned?

Crispe. My Lord, I cannot tell, but in some time I got up, and returned to Mr. *Coke's*.

Serj. *Selby*. In what Condition did you find yourself?

Crispe. I was ready to die and faint, and I was found very much wounded.

Serj. *Brantbw*. Did any Surgeon come to you at Mr. *Coke's*?

Crispe. Yes, Sir, Mr. *Sturgeon*.

L. C. *Just*. After the Person came up who knocked you down, did you hear Mr. *Coke* say any thing?

Crispe. No, my Lord.

L. C. *Just*. Can you tell whether he staid any time, or what became of him?

Crispe. No, I cannot.

L. C. *Just*. Was he there when the first Blow was given?

Crispe. Yes, he was.

L. C. *Just*. Will the Prisoners ask Mr. *Crispe* any Questions?

Coke. Mr. *Crispe*, was I present when you were knocked down?

Crispe. Yes, Sir.

Coke. Do you remember that you saw me?

Crispe. Yes.

Coke. How near was I to you?

Crispe. You were close by me when I was knocked down.

Serj. *Selby*. Call Mr. *Brown* and swear him, (*which was accordingly done*.) I think you are a Relation of Mr. *Coke's*?

Brown. Yes, Sir, I married his own Sister, and he married Mr. *Crispe's* Sister.

Serj. *Selby*. Was you at Mr. *Coke's* House last *New-Year's-Day* at Night?

Brown. A Day or two before last *New-Year's-Day*, I and my Wife and Daughter were invited to sup with him, and accordingly we went. I came about six o'Clock, and found Mr. *Coke* and Mr. *Crispe* drinking a Glass of Wine in the Parlour before Supper.

Serj. *Selby*. Was there any other Company with them?

Brown. No, the Women were above Stairs. I sat down with them, and we three staid in the Parlour till Supper-time. When Supper was ready, we went up Stairs. Then after Supper, between eight and nine, we three came down into the Parlour again. Some time after, *Coke* went out of the Room, and then came back again and gave a Call, or beckoned to Mr. *Crispe*, who follow'd him out of the Room.

Serj. *Selby*. At what Time of Night was this?

Brown. After nine o' Clock at Night.

Serj. *Brantbw*. How long was it before Mr. *Coke* returned?

Brown. He was gone about ten Minutes and then returned.

Serj. *Brantbw*. Was he in any Disorder when he returned?

Brown. He seem'd to be out of Breath, as if he had been walking faster than ordinary.

Serj. *Brantbw*. How far distant is the Church-yard, where this Gentlewoman dwelt, from Mr. *Coke's* House?

Brown. The Church-yard is about twice the Length of this Shire-House from Mr. *Coke's* House.

Serj. *Brantbw*. What did *Coke* do when he came in?

Brown. Immediately he drank a Glass of Wine to me, and after he had sat some time, he went out of the Room. I heard a Noise up Stairs, and being told my Daughter was ill, I went up, and in a little time came down again into the Parlour, where I found Mr. *Coke*.

Serj. *Brantbw.* Did you ask him what was become of Mr. *Crispe*?

Brown. I did then ask him what was become of Mr. *Crispe*, and he told me that he believed he was gone home in the dark. In about two or three Minutes after, Mr. *Crispe* came in. He was very much wounded and bloody. I was so surprized that I could not take particular notice of him.

Mr. *Raby.* How long was it from *Crispe's* going out to his coming in again?

Brown. It was near half an Hour.

L. C. *Just.* So then *Coke* returned in about ten Minutes, and *Crispe* in near half an Hour.

Brown. Yes, my Lord.

Serj. *Selby.* Did Mr. *Coke* see Mr. *Crispe* when he came back to his House?

Brown. Yes.

Serj. *Selby.* What did he say?

Brown. He seemed to be in a great Consternation.

Mr. *Raby.* Do you know of any Estate that would have come to Mr. *Coke* after Mr. *Crispe's* Death?

Brown. I cannot positively say it of my own Knowledge.

Mr. *Raby.* We will ask Mr. *Crispe* that Question. Pray Mr. *Crispe*, would any Estate have come by your Death to Mr. *Coke*?

Crispe. In case I had died, one hundred Pounds per Annum would have come to his Wife, as one of my Sisters.

L. C. *Just.* Have you then no Children, nor Brothers?

Crispe. No, my Lord; my next of Kin are three Sisters, one of which is Mr. *Coke's* Wife, she would have been one of my Heirs.

Serj. *Selby.* Call Mr. *Sturgeon*; (who appeared, and was sworn.) What do you know concerning this wounding of Mr. *Crispe*?

Sturg. I am a Surgeon by Profession; and the first Day of *January* last at Night, about eleven o' Clock, I was sent for to Mr. *Crispe* at Mr. *Coke's* House: When I came, I found him very much wounded and cut, and in a very weak Condition, and that he had lost a great deal of Blood. I examined his Wounds: One Wound began at his Right Ear, divided the fleshy Part of his Cheek, and ended on his upper Lip just under his Right Nostril; the Flesh was all divided, and the Jaw left naked. Another Wound divided the Right Side of the Nostril, and made an oblique Cross over the Wound, and ended near the Right under Jaw.

Serj. *Selby.* Was his Nose slit?

Sturg. Yes, Sir, the Nose was cut from without into the Nostril; the Edge of the Nose was not cut through, but there was a Cut or Slit in the Nose that went through: I sowed it up: It was indeed but with one Stitch; it is yet visible, and the Nose was cut through.

Serj. *Selby.* Were there any other Wounds?

Sturg. There was another deep Wound under his Chin, that reached from one Jaw to the other. There was another Wound, which began at his Chin, crossed the Left under Jaw, and tended towards his Ear. There was also a small Wound on his Left Cheek, another on his upper Lip, and another on his Left Temple.

Serj. *Selby.* How many Wounds had he in all?

Sturg. Seven.

Serj. *Selby.* Do you think there were seven

distinct Wounds; that had seven distinct Blows?

Sturg. I take it, that every one of the seven Wounds had a distinct Blow.

Serj. *Selby.* With what Instrument did you apprehend those Blows were given?

Sturg. It was cut so clean, that I thought it was done either by a Knife or Razor.

L. C. *Just.* Let the Jury see Mr. *Crispe's* Wounds.

[Then his Face and Wounds were shewn to the Jury for their Observation.]

Serj. *Brantbw.* Swear *Charles Willet*; (which was done accordingly.) I think you are a Constable in *Bury St. Edmonds*?

Willet. I am.

Serj. *Brantbw.* Had you any Occasion to speak to *Woodburne* concerning this Matter; and what did he say?

Willet. I had a Warrant from Alderman *Wright* and Mr. Serjeant *Reynolds* to apprehend *Coke* upon *Woodburne's* Examination.

Serj. *Brantbw.* The Question asked you is, What you know of *Woodburne's* Confession, and what he hath said to you about this Matter?

Willet. After *Woodburne* was committed, I was with him, and asked him, Whether he was concerned in the wounding of Mr. *Crispe*? He told me, Yes, he was. I asked him how long *Coke* staid with him: He said that he had struck *Crispe* three or four Blows before *Coke* left him.

Serj. *Brantbw.* What else did you ask him, or did he say to you?

Willet. He told me, that he was walking up and down in the Church-yard when *Coke* whistled to him, and that on that Signal he went up and assaulted Mr. *Crispe*.

Serj. *Brantbw.* Did he give you any Account how long and where he waited before the Fact was done?

Willet. He told me, that he was desired by Mr. *Coke* to be up and down in the Church-yard about nine o' Clock that Night; and that being a cold Night, *Coke* gave him a Bottle of Brandy, and told him he could not tell what time *Crispe* would come home; but desired him to be ready and to stay let it be never so long.

Serj. *Brantbw.* Did he tell you with what Instrument he did it?

Willet. He told me, he did it with an Hook or Bill, that was new ground for the Purpose, and that it was in his House at the Right Hand of his Door. I went according to his Direction, and found it, and brought it to him; and he said, that was the Hook.——The Hook I have brought with me, and this is the Hook that I have now in my Hand.

Mr. *Raby.* Call *William Wetherel*; (who was sworn.) Give my Lord and the Jury an Account what you know of this Matter.

Weth. I am the Goaler; and the Day after Mr. *Coke* was committed to me, about five Minutes after One, he sent for me up into his Chamber, where his Wife was crying and in great Disorder, as he seemed to be likewise. She was desiring her Husband to discover. When he came to himself, he told me, that he and *Woodburne* had had a Design to murder Mr. *Crispe*, and had attempted it several Times; and desired me to go and secure *Woodburne*. I went to the Alderman, and told him of it, and he gave me the like Orders. Coming from the Alderman I met Mr. *Coke's* Man, who asked me, whether I had found

found him ; on which I asked him, who and what he meant, thinking him to be ignorant of his Master's Confession : But he told me, that his Master had discovered it to him, and had sent him to take up *Woodburne*. Whilst we were talking, we saw *Woodburne* coming up, and we desired one *John Carter*, a Smith, who was shoeing a Horse, to assist us ; which he did, and we secured *Woodburne*.

L. C. Just. Did Mr. *Coke* confess any thing to you concerning this Fact, and the manner of doing it ?

Weth. Yes, my Lord, he did. He told me several Times, that he had a Design to murder *Crispe*, and that he employed *Woodburne*, and deliver'd *Crispe* into his Hands.

L. C. Just. Did he tell you that ?

Weth. He did tell me so : He told me also, that it was done with an Hook ; and that he bid *Woodburne* to cut his Weasand or Wind-pipe ; and that if *Woodburne* had not been a cow-hearted Dog, he would have so done, and secured *Crispe* from telling Tales.

Mr. Raby. Did *Coke* tell you what Means he used to do this to Mr. *Crispe* ?

Weth. He said, that he called him out of his House, went into the Church-yard with him, and there he delivered him into *Woodburne's* Hands.

Mr. Raby. Did he say what Signal was given ?

Weth. Not that I remember ; but he said, that *Woodburne* was placed there by his Appointment.

Mr. Raby. For what Design ?

Weth. With an Intent to murder him. When *Woodburne* struck him, *Coke* said, he went away immediately.

Mr. Raby. What have you heard *Woodburne* say concerning this Fact ?

Weth. I have heard *Woodburne* say, that he and *Coke* had lain in wait several Times, and at several Places to murder Mr. *Crispe*.

Mr. Raby. Did *Woodburne* give you any Account what he did at this Time to Mr. *Crispe* ?

Weth. Yes he did ; he said that he struck him a Blow with his Hook, and that not quite striking him down, he gave him a second Blow which did ; and that *Crispe*, as he was falling, (who was never used to swear) cried out, God damn him ; and that then it went to his very Heart to think that he should kill a Man with an Oath in his Mouth.

Mr. Raby. Did he say he gave him several Blows ?

Weth. He said he gave him several Blows, and that he thought he was dead.

Mr. Lee. Call *Robert Moon* ; (who appeared, and was sworn.) What did you know of this Matter ?

Moon. When I heard what happened to *Crispe*, I said, I knew the Person who did it, or the Person who employed him to do it ; and the Reason was, because three Years, or three Years and a half ago, Mr. *Coke* sent for me, and said to me, at first I thought it to be in a jesting Way, that he wish'd Mr. *Crispe* out of the World, he was a good for nothing Fellow ; his Wife had a Trick of playing away his Estate, and he wish'd somebody would knock him on the Head. Sir, said I to him, what Advantage would that be to you ? He shook his Head, and said, a very good Estate. Said I, I thought *Crispe* had but a small Estate.

Yes, said he, a very good one. Then I began to think there was something in it. After some little time, said he, I do not value ten or twenty Guineas to knock him on the Head. Then I began a little to reflect that he should have such an Opinion of me, that I should be such a Sort of a Person.

Mr. Lee. What then did you say to him ?

Moon. I told him, that I would not kill the greatest Villain in the World for ten such Towns as *Bury*.

Mr. Lee. What did he say afterwards ?

Moon. I do not remember, I have forgot if there was any thing else.

Mr. Lee. How came you to remember this ?

Moon. When I heard of this Fact committed on Mr. *Crispe*, then it came fresh into my Memory.

Serj. Selby. Call *John Carter* ; (who appeared, and was sworn.) What Trade are you of ?

Carter. A Blacksmith.

Serj. Selby. Did *Coke* at any time send *Woodburne* for you, and what past thereon ?

Carter. On the *Friday* before *New-Year's-Day* last, which was on a *Monday*, Mr. *Coke* sent *Woodburne* to me, who told me his Master *Coke* wanted to speak with me.

Serj. Selby. Did you go ?

Carter. Yes, I went to his House, and he ordered me to come up to him in his Chamber. When I came up, he told me that he wanted a good strong Horse to carry his Weight. I told him I did not know of any one then ; but when I did, I would let him know. Upon that he said, by God, how do you go on, Boy ? I hear you have lost most of your Business, you have got no Iron nor Coals, and you are afraid of a Goal ; I have a Thing now in Agitation that will make a Man of you as long as you live. I said I should be very glad of that. Said he, can you keep a Secret ? Yes, said I, as well as any one to serve myself and my Friend. Said he can you keep one of the biggest Secrets in the World ? I told him, as well as any body. Said he, you are pretty much in Debt, and if you will serve me in this, I can make a Man of you as long as you live : Do you think you could cut five or six Men's Heads off without Scruple of Conscience ? I told him, No ; it was too much for a Man's Conscience to bear. Said he, what, a Scruple of Conscience to do such a Thing as that ? There are those above who have done ten times worse. I suppose, Sir, said I, you mean the *South-Sea* Gentlemen. Yes, said he, so I do ; they have ruined Families, and beggar'd Gentlemen : To cut Men's Heads off is but a Trifle to them. Said I, Mr. *Coke*, I believe you speak only in Joke, by way of Merriment. Said he, what do you think I sent for you by way of Joke ? I told him I could not do any such Thing. Then, said he, do you think you can cut off one Man's Head without Scruple of Conscience ? I told him, No. Then, said he, if you can't cut off a Man's Head, and lay it down upon the Table before me, you are not for my Turn : On that he fetched a Bottle of Brandy, and gave me a Glass or two, and then said to me, *Carter*, I would have you go home, and consider of it for two or three Days, and if you can cut off a Man's Head without Scruple of Conscience, you shall have Plenty of Gold and Silver, and any thing else you ask. I told him, I needed no Consideration, for I could

could not do it. Then, said he, send *Woodburne* to me. And as I went out, I saw *Woodburne* at the Door, and sent him in to Mr. *Coke*.

Serj. *Selby*. Did he say any thing else to you, or any thing about Mr. *Crispe*?

Carter. I live in a House of Mr. *Crispe's*, and Mr. *Coke* had been formerly his Steward, and *Woodburne* acted under him. And Mr. *Coke* said, that he heard my House was out of Repair, that it would be his after Mr. *Crispe*, and whether I should not like it better for him to keep it in Repair, as he had done before.

Serj. *Selby*. I think, my Lord, we have done with our Evidence, and have sufficiently proved Mr. *Coke* and *Woodburne* to be guilty not only within the Intention, but the Letter of the Statute of the 22d of *Car. II.* upon which they stand indicted. We have proved the Malice premeditated and fore-thought, the Intention to maim and disfigure, by slitting the Nose (for Mens Intentions must be construed by their Actions) and the maiming and disfiguring accordingly; and that Mr. *Coke* was privy to, and the Aider and Abetter of the Offence: And therefore, Gentlemen of the Jury, we can't doubt but that you will find them both guilty; and that your Verdict and their Conviction will be with the Suffrage of all Mankind.

Mr. *Raby*. My Lord, having gone through our Evidence, you will now permit me to make some few Observations upon what has been offer'd, and from which we humbly apprehend it will most clearly appear, that we have fully prov'd and made out every thing necessary to maintain this Indictment.

My Lord, it must be agreed, that this is an Offence created by a particular Act of Parliament, usually call'd Sir *John Coventry's* Act, made on the Occasion of the like barbarous Usage he met with, to punish that Offence, and to prevent the like for the future: And I also agree, that the Prisoners must appear to be guilty of those very Facts, which by that Act are made Felony, or otherwise they cannot be punished by that Law. But we humbly apprehend, that when that Law, and the Evidence which has been given against the Prisoners are considered, they will appear to be guilty within the express Words of that Law; for which End I beg leave to mention that Act, which is the 22 and 23 *Car. II. cap. 1.* The Words are these. "That if any Person or Persons, on Purpose, and of Malice fore-thought, and by lying in wait, shall unlawfully cut or disable the Tongue, put out an Eye, slit the Nose, &c. with an Intention in so doing to maim or disfigure, in any the Manners before-mentioned; the Person or Persons so offending, their Counsellors, Aiders, and Abettors (knowing of and privy to the Offence aforesaid) shall be Felons, &c."

From this Clause it appears the Offence must be done;

1. Of Malice fore-thought.
2. By lying in wait.
3. By slitting the Nose, &c.
4. With an Intention to maim or disfigure.

And we humbly submit it, that from the Evidence which has been given against the Prisoners, it most plainly appears, that the Defendants are guilty of this Offence in every Circumstance described by this Act of Parliament.

1. For certainly there cannot be the least Que-

stion, but that this was done of Malice fore-thought, when it appears from the Evidence to have been under Consideration and premeditated for three Years and an half: And Mr. *Coke* had tried several Persons, before he could find any so hardy as to execute his base Purpose, or comply with so inhuman an Attempt: And therefore we apprehend there cannot be any Colour to say, this was not of Malice fore-thought.

2. And that this Offence was also done with lying in wait is as clear: For does it not fully appear upon the Evidence of Mr. *Crispe*, that when he came out of Mr. *Coke's* House, Mr. *Coke* gave a Whistle or Signal? In vain had Mr. *Coke* given that Signal, if no Person had been in waiting to have heard it: To what end had that Signal been given, if Mr. *Coke* had not known there was some Person to have heard it? It appears plainly *Woodburne* came upon the Signal given; and what ensued you have heard, I need not repeat.

3. The third Thing made material by this Act, is, *That the Nose should be slit*; and that the Nose was slit appears from the Surgeon's Evidence, who has given a very particular Account of the seven Wounds Mr. *Crispe* received in his Face and Head: And he says, the Nose (the Nostril) was cut through.

4. Whether the other Circumstance, that this was done with an Intent to maim and disfigure, does sufficiently appear, or not, is the only Question that remains: And we submit it to your Consideration, as that which is very clear from this Evidence.

Mens Acts are the best Interpreters of their Intentions: If a Man kills another without Provocation; tho' no express Malice or malicious Intent appears, yet the very Act of the Party has always been taken to be a sufficient Proof of his Intent and Malice fore-thought. The Intent is latent in the Mind, and can seldom be known otherwise than by the Act which is done: And as there the malicious Intent is collected from the Act of the Party, so here 'tis as reasonable to collect his Intent to disfigure from the Act which is done, the maiming and disfiguring Mr. *Crispe*; and the very Manner of doing it speaks it.

Whoever looks upon this Gentleman (Mr. *Crispe*) sees too plainly how much he is disfigur'd: And could a Man cut another seven Times on the Head and Face with this Iron Bill, with this Weapon, without disfiguring him? Is it to be imagined? And when he has done the very Act, when he has disfigured him, shall he say, he had no such Intent? The Act done, and the Manner of doing it, speak it too plainly. 'Tis confess'd the Intent was to murder; this is what both the Prisoners admit to be the End design'd; but did they not also intend the Means? It would be in vain to intend the End, and reject the Means to effect it: The Means chosen to effect it have appear'd to be to cut him to death, by striking him with a Bill on the Head and Face: Is it possible to expect to cut him to Death on the Face with the Weapon produced, and not to disfigure him? This is the Act *Woodburne* has done; and *Coke* was present when *Woodburne* struck, even when he did this Fact, and *Coke* was a Counsellor, Aider and Abettor; he was present, and, in the Words of the Act of Parliament, knowing of the Offence. And therefore upon this Evidence we submit it, whether we have not given Satisfaction

faction to the Court and Jury, that the Prisoners are guilty.

This is not a Prosecution of the Party injured, arising from Revenge or Repentment, but is carried on by the Public, by the Crown, for the sake only of Public Justice, that by the Punishment of this Offence, the Subjects may have that Protection they ought to have by a due Execution of the Laws: And all we pray is, that the Jury will give such a Verdict as is agreeable to Justice.

L. C. Just. Woodburne, what have you to say for yourself?

Woodburne. May it please your Honour, my Lord, the first Time that *Coke* began with me about this Matter was on a *Wednesday* in last *Barley-Harvest*. He sent for me to mend his Copper, and after I had done it, he bid me go to the further End of the *Mill-Lane*, and there he must speak with me, and which came first should stay for the other. I was there before him; when he came he was on Horse-back, and his Horse kick'd about in a furious Manner, that the People took notice of it. When they were gone, he told me, that he had a Thing for me to do, but not to be done presently, and that if I did it I should want for nothing. I ask'd him what it was. He said about Mr. *Crispe*, to set him aside, that is, to kill him: But he said, it was not to be done presently: So he put his Hand in his Pocket and gave me Eighteen Pence. I told him, I never did such a Thing in my Life; I could not do it. Said he, it is not to be done presently, we have Time to consider. A while after he sent for me again, and ask'd me, whether I had consider'd of it. I told him, I could not do it. Said he, we must set *Crispe* aside; for Mrs. *Crispe* hath got a Trick to play; she will make away what there is from me and my Child. I said, I never did any such Thing; I could not do it, and desired him to forbear. I went away and left him in his Chamber. Within a while after he came to my House; said he, *John*, what is the Reason you can't do this for me? Said I, I cannot do it. Said he, what signifies it, I would do it for you. I said, I could not do it. Then he went away very uneasy, and in a Week or Fortnight sent for me again to his Chamber, and there was at me again. I told him I could do no such Work. Said he, why can't you do this Work? I have been a good Master to you, I made myself look little to bail you when you were in Goal. I turned about and cried. Said he, what makes you cry? Your crying signifies nothing? the Money that I shall give you will do you and your Family a Kindness. Said I, I can do no such thing. Said he, it signifies no more the killing of him, than to kill a Dog, for they do no good with what they have. Yes, said I, Mr. *Crispe* is a very good Master; I work'd for him and his Father before him: And so I went away. Afterwards my Wife died three Days before *Gunpowder-Treason* last: She was buried on that Day, and being very poor, I sent my Daughter to desire a little Money of him to have the Bell toll'd for my Wife; but he sent me none. My Wife was buried on a *Sunday*, then on the *Monday* he sent his Boy for me; I went down to him, and when I came, I fell a weeping for the Loss of my Wife, and having ten Children. Said he, what makes you cry? You must pull up a good Heart; tho' your Wife be dead, you may have Friends; here is that which

will do you a Kindness hereafter. Said I, I am very sorry for the Loss of my Wife. Said he, what signifies that? She was carried well into the Church, and is, no doubt, happy; she is gone before you; we must all go in our Time: I was a Friend to you in her Illness; I sent her a good Doctor at my own Charge: This twenty Pounds that I will give you will be a brave Estate for you.

L. C. Just. What were you to have this twenty Pounds for?

Woodburne. It was to kill Mr. *Crispe*; he told me that I must set aside Mr. *Crispe*; he offer'd me twenty Pounds to do it; but I then refus'd it.

On *Monday, New-year's-day* in the Morning, *Coke* sent his Boy for me to come to him; and between eight and nine in the Morning I went to him. He was in his green Room. Now, said he, *John*, we shall have the fairest Opportunity to kill Mr. *Crispe*. I told him, I was loth to do it; it was very cold, and I had an Ague. Said he, I will give you that which shall warm you. He went to his Closet, and gave me out of the Bottle that he used to carry in his Pocket, half a Pint of Brandy, and told me, that happen how it will I must not come near his House any more that Day, lest afterwards there should be some Suspicion; but said he, whether Ague or not, you must be at Mr. *Morrice's* Porch, which is in the Church-yard, about eight o'Clock in the Evening. I went there between eight and nine; about nine *Coke* came out, and gave me a Whistle: On that I went up to him; he told me, Mr. *Crispe* was very jolly, and he believed it would be late before he came out. I told him, I did not care to stay. Said he, you must stay now; this is the Time that will do it. I staid till ten o'Clock; then he came to me again in Mr. *Morrice's* Porch, and told me, that he believed *Crispe* would not go till eleven o'Clock; but the later the better. Then he went from me again, and a little Time after ten *Coke* and *Crispe* came out together, and on *Coke's* Whistling I came up to them; *Crispe* was then before, and coming to get against the Wall. I came up to *Coke*; he bid me have a care not to hit him instead of *Crispe*, being very dark; so he took me by the Sleeve to lead me up to *Crispe*; and said to *Crispe*, Brother, stand still; on that I hit him two Strokes with my Hook; tho' I never heard him swear before, yet he now swore, God damn him: On that *Coke* said, what! doth he swear? Secure him, down with him. He stood by him till I gave him several Blows, and then he went away. *Coke* desired me to take away his Watch; for, said he, as to his Money, he don't carry above half a Crown or three Shillings in his Pocket; and when I go to *London*, I will sell the Watch for you.

L. C. Just. What *Woodburne* saith against *Coke*, is no Evidence against *Coke*, and should not have been mentioned by him; but what he saith relating to himself before the Fact, is so twisted with *Coke*, that without the Whole it is not so intelligible as to himself. However, the Jury are to take notice, that what *Woodburne* saith, is only Evidence against himself, and not against Mr. *Coke*.

L. C. Just. After you had given him those several Blows with your Hook, what did you next?

Woodburne. I began immediately to reflect on what I had done, and went away forthwith to my own

own House, where I was about to take a Line to hang my self.

L. C. Just. Have you any Witnesses, or any body to speak for you?

Woodburne. My Lord, here are my two Daughters in the Court; I desire your Lordship would be pleased to hear them, *Ann Woodburne* and *Sarah Woodburne*; who being called, appeared, and were sworn.

L. C. Just. What say you, *Ann Woodburne*?

Ann Woodburne. On the *Wednesday* before *New-Year's-Day* *Coke* sent for my Father by his Boy; I told the Boy my Father was in Bed, and sick of an Ague, and could not come. The Boy came again, and said, my Father must by all Means come; but he would not then go, but he went to him on *New-Year's-Day* in the Morning, and came Home again. About five or six a-Clock in the Evening, my Father went out with a Hook in his Hand; and he said, he should not be at home till eleven or twelve at Night; and if any body came for him, he bid us not take any Notice but that he was at home. We thought he took the Hook to cut some Wood with.

L. C. Just. Have you any thing more to say?

Ann Woodburne. When my Mother died, I went to Mr. *Coke's* to borrow five Shillings of him, to have the great Bell toll for my Mother, and told him, that my Father would pay him again. He said, What signified the ringing out of the great Bell? her Soul would be never the better for it; but if he will satisfy me in my Request, he shall have five times five Shillings.

L. C. Just. What say you, *Sarah Woodburne*?

Sarah Woodburne. *Coke* did frequently send for my Father at all times, both of Day and Night; and he would often come to my Father, and when he came, they would go out, and walk down the Back-side, and talk together. After this Fact was done, *Coke* sent his Boy for my Father, and the Boy said, they must not go together; for if they did, People would take Notice of them.

L. C. Just. *Woodburne*, have you any thing more to say?

Woodburne. This Day nine Weeks, which was a Week after the Fact committed, *Coke* sent for me, and said, *John*, I wish you would have done the thing I ordered you; but you have been before Alderman *Wright* and the Recorder, and have told your Story well; but hold you fast, they will examine you again; I shall——

L. C. Just. This is subsequent to the Fact, and is not Evidence against *Coke*. If you *Woodburne* have done, then Mr. *Coke* what have you to say for your self?

Coke. May it please your Lordship, I am much ashamed, and very unable to defend myself; I am ashamed to think I should be concerned in so heinous a Crime against Mr. *Crispe's* Life; I am even confounded at it; it is indeed a very great Crime, and I know not what to say for myself. As for *Woodburne*, he hath asserted against me several things that are false.

L. C. Just. I have told the Jury, that what he hath said is no Evidence against you.

Coke. When I first spoke of this Matter to *Woodburne*, he said, he should value it no more than the cutting off the Head of a Dog. I did, indeed, go out with Mr. *Crispe* that Night, but

I was not near him when *Woodburne* struck him, but retreated to my own House in a Moment. My Lord, I am very sensible that a Point of Law may arise on the Statute whereon I am indicted.

L. C. Just. Whereon?

Coke. With respect to my Intention.

L. C. Just. Your Intention is Matter of Fact, and must be tried by the Jury, whether your Intent was to maim and disfigure; this doth not seem to me to be a Point of Law; if there be any Point of Law that shall arise, you shall have Counsel to speak to it; but whether you slit Mr. *Crispe's* Nose with an Intention to disfigure him, is a Matter of Fact.

Coke. My Intent was to kill Mr. *Crispe*, and not to maim or disfigure him.

L. C. Just. But that is the Question the Jury are to try, whether you did not of Malice slit his Nose, with an Intent to disfigure him. If the Jury do not find that you so did, you must be acquitted on this Indictment. Supposing your Design was to kill, yet your Design might be likewise to maim; and this the Jury must try; this is Matter of Fact for their Consideration.

Coke. This is a very penal Statute, and I am unable to plead my own Cause; I beg your Lordship to assign me Counsel.

L. C. Just. If any Point of Law doth arise upon the Statute, you shall have Counsel; but as yet there is nothing but Matter of Fact; whether the Fact proved doth support the Charge in the Indictment; or in other Words, whether the Evidence be sufficient to make good the Charge; this must be left to the Jury; I will state the Fact to them, and they are on their Oaths to give in their Verdict.

Coke. This is a very penal Statute, and I cannot argue it for myself; I hope your Lordship will assign me Counsel; this is the first Indictment that ever was upon this Statute.

L. C. Just. What do the King's Counsel say to it?

Serj. Selby. After so full an Answer as your Lordship has given, I think it but vain to say any thing; I always thought that no Matter of Law could arise upon this Fact and Indictment; for *Woodburne* did the Fact of Malice forethought, by lying in wait, and with an Intention to maim; Mr. *Coke* was aiding, abetting, and privy to the Fact: Therefore, though it was an Intent to kill, it must be to maim also; he could not intend to kill him with such an Instrument, without intending to maim him first; and therefore, if there were two Intentions and but one executed, there is no Pretence to say, that what was executed was not intended. Mr. *Coke* says, that never was any Indictment before upon this Statute; if not, it must be because no Man before ever thought of being guilty of so horrid an Action.

L. C. Just. If any Point in Law doth arise you shall have Counsel; but the Fact must be agreed and stated, before the Law can come in debate. You say, your Intent was only to murder; but that is not yet agreed or found to be the Fact: It is the Point now in Trial, whether you did it not with an Intention to maim or disfigure; and according as that Intention shall appear to the Jury, so will they either acquit or convict you; therefore if you have any thing more to say, I desire you to go on.

Coke. I submit to your Lordship's Judgment.

L. C. Just. Gentlemen of the Jury, this is an Indictment of the Prisoners at the Bar, *John Woodburne* and *Arundel Coke*, for Felony, by lying in wait, and purposely and maliciously slitting the Nose of *Edward Crispe*, with Intention, in so doing, to maim or disfigure the said *Edward Crispe*. *John Woodburne* is indicted for the principal Actor, or the Person who did the Fact; and *Arundel Coke* is indicted for being present, aiding and abetting. This Indictment is founded on a Statute made in the two and twentieth Year of King *Charles* the Second, intituled, *An Act to prevent malicious maiming and wounding*; whereby it is enacted, That if any Person or Persons, from and after the twenty fourth Day of *June*, in the Year of our Lord 1671, on Purpose, and of Malice fore-thought, and by lying in wait, should unlawfully cut out, or disable the Tongue, put out an Eye, slit the Nose, cut off a Nose or Lip, or disable any Limb or Member of any Subject of his Majesty, with Intention in so doing to maim or disfigure, in any the Manners before-mentioned, such his Majesty's Subject, that then, and in every such Case, the Person or Persons so offending, their Counsellors, Aiders and Abettors (knowing of, and privy to the Offence, as aforesaid) shall be, and are thereby declared to be Felons, and shall suffer as in Cases of Felony, without Benefit of the Clergy. Now the Question on this Indictment is, whether *John Woodburne* did on Purpose, and of Malice fore-thought, and by lying in wait, unlawfully slit the Nose of *Edward Crispe*, with an Intention to maim or disfigure him therein? And, whether *Arundel Coke* was feloniously present at the Fact, aiding and abetting *Woodburne* in the Commission and perpetration of it? To make out this Matter several Witnesses have been called; the first Witness was *Edward Crispe* himself, who informs you, that *Arundel Coke* married his Sister, and *Mr. Brown*, *Coke's* Sister; and that last *New-year's-day* they were invited to sup at *Mr. Coke's*; and that before Supper *Mr. Coke* proposed to go to *Mrs. Monke's*; and that after Supper, about ten a-clock at Night, *Mr. Coke* called *Mr. Crispe* out of the Parlour to go to this *Mrs. Monke's*; and that when they had walked three or four Turns before the House where *Mrs. Monke* dwelt, *Coke* stood still, and made a Noise like a hollowing, which made *Mr. Crispe* afraid, being dark, so he made toward the Wall; but in a quarter of a Minute's time a Man came and knocked him down: Who that Man was, nor what was then further done to him, he could not then tell, because by the Blow he lost his Senses for some time; but afterwards he got up again, and returned to *Mr. Coke's* House, from whence he came, but in a sad Condition, much wounded and bloody, where *Mr. Sturgeon* the Surgeon came to him, from whom you have the Particulars of his Case. He says, that *Coke* was close by him when he was knocked down; but did not hear *Coke* say any thing. He also says, that upon his Death one hundred Pounds *per Annum* would have gone to *Coke's* Wife, as one of his Sisters and Co-heir.

The next Witness is *Mr. Brown*, who married *Coke's* Sister; and he says, that he, his Wife and Daughter were invited to sup at *Mr. Coke's* the Evening of *New-year's-day*; that he came about

six a-clock, and found *Mr. Coke* and *Mr. Crispe* drinking a Glas of Wine in the Parlour before Supper; that he sat down and drank with them till Supper; that after Supper they three came into the Parlour again, and some time after *Coke* went out of the Room; and then came back again, and called *Mr. Crispe* out of the Room, who followed him; that *Coke* returned again in about ten Minutes, and seemed to be out of Breath, as if he had been walking faster than ordinary; that *Coke's* House is distant from the Church-yard about twice the length of the Shire-house; that *Coke*, after he came in, drank a Glas of Wine; and that *Brown* asked *Coke* what was become of *Mr. Crispe*; and that *Coke* said, he believed he was gone home in the Dark; and that in about two or three Minutes after *Mr. Crispe* came in much wounded and bloody; and that it was about half an Hour between the Time of *Mr. Crispe's* going out and returning again.

Mr. Sturgeon the Surgeon swears, that being sent for, he came to *Mr. Crispe* about eleven a-Clock that Night; that he had lost a great deal of Blood, and was very much wounded; and that in the whole he had received seven distinct Wounds, which he apprehends were by so many several Blows. He hath given you a particular Description of the several Wounds; the second Wound is that which is alledged to be within this Statute. He tells you, That this Wound divided the right side of the Nostril; and that though the Edge of the Nose was not cut through, yet it was cut through in another Place; the Nose was slit; there was a Cut from without into the Nostril; indeed the Slit was not very great, for he sewed it up with one Stitch; but he is sure that a Slit there was, and you have seen *Mr. Crispe's* Nose. Now the slitting of the Nose is one of the particular Facts mentioned in the Statute.

Mr. Willet the Constable swears, That he was with *Woodburne* after his Commitment, and that he told him, he was concerned in the wounding *Mr. Crispe*; that he had been there waiting for that Purpose; and that when *Coke* whistled to him, he went up and made the Assault upon *Mr. Crispe* with an Hook or Bill, that was new-ground for that purpose, and directed him where to find it at his House, which he accordingly did, and brought it to *Woodburne*, who said that was the Hook; and the Hook hath been now produced before you, and you have seen it.

The next Witness is *Mr. Wetherell* the Goaler, who swears, That the Day after *Coke* was committed to his Custody, *Coke* sent for him up into his Chamber, and told him, That he and *Woodburne* had had a Design to murder *Mr. Crispe*, and had attempted it several times, and desired him to go and secure *Woodburne*, which he accordingly did. He hath given you an Account how and in what manner he secured him; and he swears moreover, that *Coke* told him several times that he had a Design to murder *Crispe*, and that he employed *Woodburne*, and delivered *Crispe* into his Hands; that *Woodburne* did it with an Hook, and that he bad *Woodburne* to cut his Windpipe; and that if *Woodburne* had not been a Cow-hearted Dog, he would have so done, and secured *Crispe* from telling Tales. *Wetherell* likewise swears, that *Coke* told him, that he called *Crispe* out of his House, went into the Church-yard with him, and there delivered him into *Woodburne's*

burne's Hands; and he farther swears, as to *Woodburne*. That *Woodburne* own'd that he and *Coke* had lain in wait several Times, and at several Places, to murder Mr. *Crispe*; and as to this particular Fact; he gave him this Account, That he struck him a Blow with a Hook, and that not quite striking him down, he gave him a second Blow; and that as *Crispe* was falling, he cried out, God damn him; and that then it griev'd him to kill a Man with an Oath in his Mouth.

Robert Moon swears, That when he heard what was befallen Mr. *Crispe*, he said, that he knew the Person that did the Fact, or him who employ'd the Person; and the Reason was, because about three Years and a half before Mr. *Coke* sent for him, and told him, That he wish'd Mr. *Crispe* out of the World, and that some body would knock him on the Head; and that when he ask'd him what Advantage that would be to him? He replied, A very good Estate; and afterwards told him, he did not value ten or twenty Guineas to knock him in the Head: This made *Moon* reflect upon himself, and was concerned that he should have such an Opinion of him, and thereon told him, that he would not kill the greatest Villain in the World for ten such Towns as *Bury*.

John Carter swears, That on *Friday* before *New-year's-day* last, *Coke* sent *Woodburne* to him, to tell him that his Master *Coke* wanted to speak with him; that thereon he went to his House, and was ordered to come up to him in his Chamber, which he did; and there *Coke* first enquired, whether he could help him to a good strong Horse? And then told him, that he heard he had lost much of his Business; he had no Iron, nor Coal; and that he had a thing in Agitation that would make a Man of him as long as he lived; and thereon ask'd him, whether he could keep a Secret, and of one of the biggest Secrets in the World? And upon his telling him that he could, he ask'd him whether he could cut five or six Mens Heads off without Scruple of Conscience? And when he told him that that was too much for a Man's Conscience to bear, he told him, there were those above meaning the *South-Sea* Gentlemen, who had done ten times worse, ruin'd Families, and beggar'd Gentlemen; and that to cut Mens Heads off was but a Trifle to them. That hereon *Carter* told him, he believed he spoke only in Joke, and by way of Merriment; but *Coke* ask'd him, Whether he thought he sent for him only by way of Joke? And then ask'd him, whether he could cut off one's Man's Head without Scruple of Conscience? And when *Carter* told him, No: Then *Coke* told him, if he could not cut off a Man's Head, and lay it down on a Table before him, he was not for his Turn; and then gave him a Glas of Brandy, and bid him consider of it for a Day or two, and if he could cut off a Man's Head without Scruple of Conscience, he should have plenty of Gold and Silver, and any thing else he should ask: Whereto *Carter* replying, that he needed no Consideration, he could not do it; then he bid him send *Woodburne* to him, which he did:

In all this discourse between *Carter* and *Coke* I do not find that *Crispe* was the Person named on whom this Outrage should be committed; but *Carter* who is a Tenant of a House of Mr. *Crispe's*, says, That *Coke* told him he heard the House

was out of repair; that it would be his after Mr. *Crispe*; and ask'd him, Whether he would not like it better for *Coke* to keep it in repair, as he had done before, whilst he was *Crispe's* Steward?

This is the Substance of the Evidence given against the Prisoners at the Bar, to prove that they maliciously, and by lying in wait, have slit Mr. *Crispe's* Nose, with an Intent to disfigure him therein.

Woodburne doth not deny the general Fact, that is, the designed lying in wait to assault Mr. *Crispe*, nor the cutting or knocking him down with his Hook; his Confession is not Evidence against *Coke*, but it is against himself; and you hear what he hath own'd; that last Barley-Harvest *Coke* sent for him to mend his Copper, and then ordered him to meet him at another Place, which was accordingly done; where *Coke* told him, That he had a thing for him to do, but it was not to be done presently; and if he would do it, he should want for nothing. And when he ask'd him what it was? He said, To set *Crispe* aside, that is, to kill him; and *Coke* gave him eighteen Pence. That then he told him, he could not do it; that *Coke* solicited him several times afterwards to murder *Crispe*; the Particulars whereof I do not enumerate, because they principally relate to *Coke*, against whom it is not Evidence; but yet they so far relate to *Woodburne*, as to shew his Knowledge and Deliberation in this Matter; therefore to come to the Day whereon this Fact was done, *Woodburne* saith, That about eight or nine in the Morning *Coke* sent for him, and told him, that that Day they should have the fairest Opportunity to kill Mr. *Crispe*; and it was agreed between them; that *Woodburne* should be in the Church-yard, at Mr. *Morrice's* Porch; about eight a-clock in the Evening. He accordingly went with his Hedge-Hook or Bill, which hath been here produced. *Coke* came out to him twice by himself, and the third time a little after ten a-clock, *Coke* and *Crispe* came out together; and then *Coke* whistled, which was the Signal between them; and thereon *Woodburne* came up, and owns, that with his Hook he cut and knock'd down *Crispe*, and that tho' he never heard *Crispe* swear before, yet that now, as *Crispe* was falling, he swore God damn him; whereon he gave him those several other Wounds and Blows that *Crispe* received; and then reflecting on what he had done, immediately went to his own House, where he was about to take a Rope to hang himself.

By this Defence of *Woodburne*, you see that he doth not deny the assaulting and wounding of Mr. *Crispe*; but that that he chiefly insists on is, that what he did was by the Solicitation and Procurement of Mr. *Coke*; which is no Justification or Excuse. However, he hath call'd two Witnesses, *Ann* and *Sarah Woodburne*, his two Daughters, to prove that *Coke* did frequently send for their Father, and often came to him at his own House, and would be in private Conference together, which probably was about this Matter; but if it were, this only confirms what *Woodburne* insists on, that he was solicited and hired by *Coke* to do this Fact; which, as I said, will neither justify nor excuse him; for no Man is to obey the unlawful Commands, or hearken to the illegal Advices of any other Person whatsoever.

As for Mr. *Coke*, that which he principally puts his Defence upon is, that his Intent was to kill and murder Mr. *Crispe*, but not to maim him, or to slit his Nose, or to disfigure him in so doing; and therefore, tho' in Pursuance and Execution of the Attempt to murder Mr. *Crispe*, they slit his Nose, or might thereby disfigure him, yet that not being their Intention, and Design, he is to be acquitted on this Indictment, wherein the Intent of the Party is one of the principal Ingredients to make him guilty. This same Defence will serve also for *Woodburne*, that they intended to murder, but not to maim; and if they did maim, it was with an Intention to kill, and not to disfigure. Now this Indictment is, as I told you, founded on the 22d and 23d *Car. II. c. 1.* for that on Purpose, of Malice fore-thought, and by lying in wait, the Prisoners did unlawfully and feloniously slit the Nose of *Edward Crispe*, with Intention in so doing to maim or disfigure him. *Woodburne* is charged as the Actor or principal Agent, *Coke* as being present, aiding, and abetting; which, in Point of Law, is the same, as to the Guilt and Conscience, both being in Law Principals.

That this Attempt on Mr. *Crispe* was designed, malicious, and by lying in wait, the Evidence is very strong; there hath been also very strong Evidence given, that the Nose of Mr. *Crispe* was slit by *Woodburne*, and that *Coke* was present on the same Design with *Woodburne*.

But the Thing chiefly insisted on is, that the slitting of Mr. *Crispe's* Nose was not with an Intention in so doing to maim or disfigure him; and if it were not with that Intent, then the Prisoners will not be guilty upon this Indictment.

Now Gentlemen, what the Intent of these Persons was in slitting Mr. *Crispe's* Nose, you are to try; this is a Matter of Fact for your Consideration and Determination: It is the same in other Felonies, where the Intent of the Party makes the Crime. Burglary is breaking open an House in the Night-time, with an Intent to commit a Felony; tho' no Felony be committed, yet if there was an Intent to do it, it is Burglary; which Intent is to be tried by the Jury. Larceny, or Theft, is taking away another Man's Goods, with an Intent to steal; if it were without such an Intent, it would only be a Trespass, and no Larceny; but whether it were or were not with such an Intent, is a Matter of Fact to be inquired into and determined by the Jury. Nay, the Intent is so necessary in all Felonies, that a Person who hath no Intent or Design, as a Madman, Lunatick, Infant, &c. cannot commit Felony for that very Reason; because he cannot have any Intent or Design in his Actions. So that in this Case you are to try no other Matter than what is tried in other Felonies, *viz.* The Intent of the Party.

Now how is the Intent of the Party discovered in other Cases? By the Facts themselves, by the precedent, concomitant, and subsequent Circumstances of the Facts, by the Manner of doing, and the like.

There are some Cases where an unlawful or felonious Intent to do one Act, may be carried over to another Act, done in Prosecution thereof; and such other Act will be Felony, because done in Prosecution of an unlawful or felonious Intent: As, if a Man shoots at a wild Fowl, wherein no Man hath any Property, and by such shooting

happens unawares to kill a Man; this Homicide is not Felony, but only a Misadventure or Chance-Medley, because it was an Accident that happened in the doing of a lawful Act: But if this Man had shot at a tame Fowl, wherein another had Property, but not with Intention to steal it, and by such shooting had accidentally kill'd a Man, he would then have been guilty of Manslaughter, because done in Prosecution of an unlawful Action, *viz.* committing a Trespass on another's Property: But if he had had an Intention of stealing this tame Fowl, then such accidental killing of a Man would have been Murder, because done in Prosecution of a felonious Intent, *viz.* an Intent to steal. So a Man of Malice intends to burn one House, in Execution thereof he happens to burn another House; this is a malicious and felonious burning of this other House, because sprung out of a malicious and felonious Intent: The like may be instanced where Poyson is intended to be given to one Person, and another takes and eats it, and thereby dies. And other Cases there are of the like Nature, where Acts done in Prosecution of felonious Intents, partipate of the Nature of their Original from whence they spring.

But now the Indictment on this Statute is for a certain particular Intent; for purposely, maliciously, and by lying in wait, slitting Mr. *Crispe's* Nose, with an Intention in so doing to maim or disfigure: And you are to consider, whether the Ingredients necessary to make this a Felony within the Statute, have been proved to your Satisfaction. The Facts necessary to be proved on this Indictment are, that on Purpose, and of Malice fore-thought, and by lying in wait, then unlawfully slit the Nose of Mr. *Crispe*, with Intention in so doing to maim or disfigure. As to the Fact of slitting the Nose, that is directly and positively sworn: There can be no doubt but that it was an unlawful slitting. Then the next Thing for your Consideration will be, whether this unlawful slitting was on Purpose, of Malice fore-thought, and by lying in wait. As to this, a great deal of Evidence hath been given; and what pass'd before, and at the Time of the Fact, will guide you herein. And if on a Review of the Evidence, you shall be of Opinion, that this unlawful slitting of the Nose was on Purpose, of Malice fore-thought, and by lying in wait; then the next Question will be, whether this was an Intention to disfigure? Facts do in some measure explain themselves; and the Circumstances preceding and accompanying those Facts, and the Manner of doing them, do many times more fully explain and declare the Intent of the Party. The Prisoner Mr. *Coke*, (which Defence goes both to him and *Woodburne*) insists, that their Intention was to murder, and not to maim; and that if they did maim or slit the Nose, it was with an Intention to kill, and not with an Intention to maim or disfigure. On the other Side, it is insisted on by the King's Counsel, that tho' the ultimate Intention might be to murder, yet there might be also an Intention to maim and disfigure; and tho' the one did not take effect, yet the other might: An Intention to kill, doth not exclude an Intention to maim and disfigure. The Instrument made use of in this Attempt was a Bill or Hedging-hook, which in its own Nature is proper for cutting and maiming; and where it doth cut or maim, doth necessarily, and by consequence dis-

disfigure. The Attempt intended on Mr. *Crispe* was immediately to his Person, to do him a personal Injury. Besides, the Manner of doing and perpetrating this Fact is proper to be considered; That it was done by Violence, and in the dark, where the Assailant could not well make any Distinction of Blows; but knock'd and cut on any Part of Mr. *Crispe's* Body, where he could, till he had sunk him down, and done to him whatever else he pleas'd. And if the Intention was to murder, your are to consider, whether the Means made use of, in order to effect and accomplish that Murder, and the Consequences of those Means, were not in the Intention and Design of the Party; and whether every Blow and Cut, and the Consequences thereof, were not intended, as well as the End for which it is alledg'd those Blows and Cuts were given.

All these several Things, which I have mentioned, are proper for your Consideration: You will add to them your own Observations; and if, upon the whole, you are satisfied from the Evidence, that *Woodburne* did on Purpose, and of Malice fore-thought, and by lying in wait, unlawfully slit the Nose of *Edward Crispe*, with Intention, in so doing, to maim or disfigure; and that *Arundel Coke* was feloniously present at the Commission of this Fact, and aiding and abetting therein; then you will find them Guilty: But if this hath not been prov'd to your Satisfaction, then you are to acquit them, and find them Not Guilty.

Then the Jury withdrew to consider of their Verdict, and in about half an Hour return'd again.

Cl. of the Arr. Gentlemen, answer to your Names.

Here, and so the rest.

Cl. of the Arr. Gentlemen, are you all agreed on your Verdict?

Jury. Yes.

Cl. of the Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of the Arr. *John Woodburne*, hold up thy Hand; (*which he did.*) Look upon the Prisoner. How say you, is *John Woodburne* Guilty of the Felony whereof he stands indicted, or Not Guilty?

Foreman. Guilty.

Cl. of the Arr. What Goods or Chattels, Lands or Tenements?

Foreman. None to our Knowledge.

Cl. of the Arr. *Arundel Coke* aliàs *Cooke*, hold up thy Hand; (*which he did.*) How say you? Is *Arundel Coke* aliàs *Cooke*, Guilty of the Felony whereof he stands indicted, or Not Guilty?

Foreman. Guilty.

Cl. of the Arr. What Goods or Chattels, Lands or Tenements?

Foreman. None to our Knowledge?

Cl. of the Arr. Then hearken to your Verdict, as the Court hath recorded it. You say, that *John Woodburne* is Guilty of the Felony whereof he stands indicted: You say, that *Arundel Coke* aliàs *Cooke*, is Guilty of the Felony whereof he stands indicted; and that neither they, nor either of them, had any Goods or Chattels, Lands or Tenements at the Time of the Felony committed, or at any Time since, to your Knowledge. And so you say all.

Jury. Yes.

Mr. Coke. I desire to know of your Lordship, whether the Nose can be said to be slit within the Meaning of this Statute, when the Edge of it was not cut through?

L. C. Just. It is true, the Edge of the Nose was not slit, but the Cut was athwart the Nose; which Cut separated the Flesh of the Nose, and cut it quite through into the Nostril: This I take to be a Slitting of the Nose; and the Surgeon swore the Nose was slit.

On Wednesday the 14th of March, John Woodburne, Arundel Coke aliàs Cooke, and one Edward Shorter, who was convicted of Burglary, were brought to the Bar, in order to receive their Sentence; and the Court proceeded thus.

Clerk of the Arr. *John Woodburne*, hold up thy Hand; *which he did.*

Thou hast been indicted of Felony, on the Statute; for purposely, maliciously, and by lying in wait, slitting the Nose of *Edward Crispe*, Gent. with Intention in so doing, to maim or disfigure him. Thou hast been thereupon arraigned, thou hast pleaded thereunto Not Guilty, and for thy Trial, thou hast put thyself upon God and thy Country; which Country hath found thee Guilty; what hast thou to say for thyself, why the Court should not proceed to give Judgment of Death upon thee, and award Execution according to the Law?

To which *Woodburne* said nothing.

Cl. of Arr. *Arundel Coke* aliàs *Cooke*, hold up thy Hand; (*which he did.*)

Thou hast been indicted of Felony, on the Statute; for being feloniously present, aiding and abetting *John Woodburne*, in purposely, maliciously, and by lying in wait, slitting the Nose of *Edward Crispe*, Gent. with Intention in so doing, to maim or disfigure him. Thou hast been thereupon arraigned, thou hast pleaded thereunto Not Guilty, and for thy Trial thou hast put thyself upon God and thy Country; which Country hath found thee Guilty; what hast thou to say for thyself, why the Court should not proceed to give Judgment of Death upon thee, and award Execution according to the Law?

Mr. Coke. Tho' your Lordship did not think it proper Yesterday to assign me Counsel, yet I hope your Lordship will now give me leave to speak for myself; especially since I am the first unhappy Instance of an Indictment on this Statute; no Indictment, as far as it appears by the Law-Books, was ever yet founded on this Statute, and therefore ought to be very well weighed.

L. C. Just. Call the King's Counsel, that they may hear what is said. (*Then the King's Counsel were sent for, and being come:*)

L. C. Just. *Mr. Coke*, you may now go on with what you have to offer.

Mr. Coke. My Lord, I was saying, that I am the first unhappy Instance of an Indictment on this Statute; no Indictment, as far as appears by the Law-Books, was ever yet founded on this Statute; and therefore it ought to be very well weigh'd, especially in the first Instance to which it appears to have been ever applied. It is a very penal Statute, and consequently by the known Rule of Law not to be carried beyond the express Letter

of it; consequently no Crime, of what Nature or Magnitude soever, can fall within the Purview of it, but such as is identically the same in every Circumstance with that described by the Words of the Statute itself.

The Crime describ'd by the Statute is the unlawful cutting out, or disabling the Tongue, putting out an Eye, slitting the Nose, cutting off a Nose or Lip, or disabling any Limb or Member, attended with these particular Circumstances:

First, On Purpose and of Malice fore-thought.

Secondly, By lying in wait.

Thirdly, With Intention in so doing to maim or disfigure in any of the Manners beforementioned in the Statute.

These Circumstances must all concur to constitute that particular Crime described by the Statute; and where any of them are wanting, of what Magnitude soever the Offence may be, it is not the Offence which the Statute has specified.

If the first Circumstance be wanting, no Man can say that any Offence, though attended with the two other, can fall within the Statute; this is sufficiently plain of itself.

As to the second; *A* and *B*, of Malice fore-thought, appoint and meet to fight a Duel; *A* in the Rencontre runs *B* into the Eye, and puts it out; no Body has ever imagined this to be within the Statute, because the Circumstance of lying in wait is here wanting.

As to the third; suppose *A* lies in wait to rob *B*, *B* resists, and in the Scuffle is wounded, as the Statute describes, but gets off. This is a Case which very frequently happens, yet no one ever thought it to be within the Statute, nor was any one ever indicted for this upon it: The only Reason of which must be, because the Intention was to rob, and not to maim and disfigure the Person.

In my Case, if it be taken upon the Evidence of Mr. *Crispe*, nothing more appears than the Assault itself: If my Confession be read, the lying in wait, and the Malice fore-thought will be proved; but then it will be likewise proved, that I had no other Intention but to kill, and had no other part, but by giving Orders to *Woodburne* for that Purpose; and my Confession must be taken together.

Nor is it an Objection to say, that the Crime which is proved by the Evidence is much worse than that which is described by the Statute; for if it is worse, then it cannot be the same. Even in Cases of Crimes by the common Law, if upon an Indictment for a Crime of an inferior Nature, the Evidence proves the Fact attended with Circumstances which brings it within the Description of a Crime of a superior Nature, the Person indicted must be acquitted. At Summer Assizes at *Dorchester*, Anno 1712, a Woman was indicted before Mr. Justice *Eyre*, for the Murder of another Woman; upon this Evidence it appeared, that the Person murdered was her Mistress, which made the Crime Petty-Treason. The Judge directed this Matter to be specially found, and upon Conference with all the Judges it was held, she ought to be acquitted upon this Indictment, as she accordingly was; and was afterwards indicted for Petty-Treason, and convicted and executed thereupon.

Where a new Offence has been created by

Statute, or an old one made more penal, the utmost Strictness has always been us'd to comply with the Letter of the Statute, whatever Inconveniences might result from such a Restraint.

As for Example:

By the Statute of the 39 *Eliz. cap. 14*. Clergy is taken away from any Person or Persons who shall be convicted of taking any Money, Goods or Chattels out of any Dwelling-house, &c. in the Day time, to the Value of five Shillings. One *Evans* and one *Finch* were indicted on this Statute, 1 *Croke* 473. *Evans* and *Finch's* Case: The Case was thus upon the Evidence, That *Evans* by a Ladder climbed to the upper Window of one *Audley's* House, and took out thereof forty Pounds; and that *Finch* stood upon the Ladder in view of *Evans*, and saw *Evans* in the Chamber, and was assisting and helping to the committing of the Robbery, and took part of the Money: Upon a special Verdict it was adjudged, that because *Finch* did not actually enter the Chamber, and take the Money, though what he did amounted to a taking by Construction of Law, and was such a taking as made him a Felon; yet the very Letter of all penal Statutes must be pursued, and therefore he, *id est*, *Finch*, had his Clergy, and *Evans* was hanged.

Numerous Cases might be put of this kind of Nicety in the Construction of penal Statutes.

To mention but one more: By the Statute of 1 *Edw. 6 cap. 12*. Clergy is taken away from such Persons as shall be convicted for the felonious stealing of Horses, Geldings or Mares.— So scrupulously did the Judges adhere to the Letter of this Law, that there was forced to be another Statute made, *viz.* 2 & 3 *Edw. VI. cap. 33*. to enact, That a Person convicted for feloniously stealing one Horse, should be ousted of his Clergy in the same manner as if he had stole two.

Nor is it in this Case enough to say, the Jury are Judges of all this: For as the Evidence now appears, and is admitted, it is Matter of Law, how far this Evidence thus admitted on all Hands is sufficient to support this Indictment. If it were in a civil Case, the Party might demur to the Evidence. But if he is not allowed that Liberty in criminal Cases, it is upon the common Notion, that the Judges are the Prisoner's Counsel; and are obliged to determine all the Matters in Law arising upon the Evidence, as much as if the Persons had demurred to that Evidence.

And, as in this Case, the Prisoner admits the Evidence given to be true, and insists upon it, that it doth not support the Indictment; and therefore has a Right to have the Opinion of the Judges thereupon, as much as if the Evidence were stated at length upon the Record (as it must be in the Case of a Demurrer to Evidence) and nothing ought to be left to the Jury, but under the Judges Directions as to Point of Law.

In all these Cases therefore, my Lord, it has been usual to allow the Fact to be specially found; which gives the Prisoner the Advantage he might have had by the Demurrer to the Evidence.

Serj. *Selby*. My Lord, I do agree with the Prisoner at the Bar, that this is a very penal Statute, and that these Facts must be made out to bring his Case within the Letter of the Act, *viz.* An Intention or Purpose, of Malice, fore-thought, to maim or disfigure in such a Manner as the Statute describes; a lying in wait for that

that Purpose; a maiming, or disfiguring accordingly; and an abetting and being privy to these Facts: These are all Facts which the Jury only could determine, either by positive, presumptive, or circumstantial Evidence for no Man's Thoughts or Intentions can be otherwise proved than by his Actions. My Lord Chief Justice hath left the whole Evidence of these Facts to the Jury, who by their Verdict have found all these Facts as laid in the Indictment, against which nobody can now open his Mouth: We apprehend therefore that no Matter of Law hath arisen, and that what hath been insisted on by the Prisoner, is beside his Case, and needs no Answer.

Serj. *Branthwait*. My Lord, the Jury have found him Guilty. I apprehend nothing can properly be alledged now by Mr. *Coke*, that is contrary to the Verdict: If there is any Fault in the Indictment, we are ready to answer any Objections he shall make against it. That he does not pretend to. What is now offered by him is against the Verdict, and contrary to what is found by the Jury. I beg your Lordship's Leave to give an Answer to the Objections he is pleased to make against the Verdict, however improperly and out of Time made, for the Satisfaction of himself, and of the Persons here present. I agree a penal Act shall not be construed by Equity, or carried further than the Words or Letter of the Act, as the Cases mentioned by him to prove; but affirm, that this present Case is within the Words and Meaning of the Act: For though the ultimate Intent of Mr. *Coke* might be to murder Mr. *Crispe* (as by him is alledged in Excuse of himself) all the Means made use of to effect that Intent were also on Purpose, and such Blows could not be given by an Instrument, without an Intent to maim and disfigure: They were given by one lying in wait on Purpose; and the Fact and Manner of doing the same sufficiently prove, and are a certain and necessary Indication of the Intent. The Defendants might have an Intent to cut off, or slit the Nose; put out an Eye, or dismember; and an Intent also to kill and destroy; one Intent did take effect, the other not. The Defendants ought not to answer for what was not done, but ought to answer for what was done which was the slitting of Mr. *Crispe's* Nose, on Purpose to maim and disfigure him, by one lying in wait; which is all that is required by the Act.

As to the Objection; that if *A* and *B* go together to fight a Duel, if *A* slit the Nose of *B*; this is not within the Act; the Reason is, because there is no lying in wait.

As to the Case of *A* lying in wait to rob *B*, I with great Submission do say, that if *A* lie in wait to rob *B*, and to effect that Purpose with the greater Ease, *A* on purpose dismembers *B*, or puts out his Eyes, or does any other Fact prohibited by the Act; though *A* be hindered from robbing *B*, he is within the Act of Parliament; for the Intent and Purpose to rob, will be no Excuse to one that shall commit the Facts prohibited by the Act.

As to the Case of *Evans* and *Finch*, *Cr. Car.* 473. on 39 *El.* which takes away the Clergy from him that enters and steals: *Finch* was not within the Statute, and had his Clergy; for the express Words of the Statute take away the Clergy from him that enters the House, which

Finch did not. As to the Indictment of a Servant for Murder, in killing her Mistress; it is plain, that it is a Crime of a higher Degree than Murder, it is an Offence of another Species, it is Petty-Treason and not Murder.

The same Answer may be given to the other Cases mentioned, where the Words of an Act of Parliament are express. No Case shall be construed within a penal Act, but what is within the Words: But as to the present Case, the Jury have found every Fact that the Act of Parliament requires, that an unlawful Assault was made on Mr. *Crispe* by the Prisoners; that his Nose was slit on Purpose to maim and disfigure him, by lying in wait. And all these Facts were proved by plain, clear, and I believe convincing Evidence, to every Person that heard the Trial. I am sure the Prisoners can't complain of any Hardship done them; the Prosecution was carried on for the Sake of Justice, for the Safety of his Majesty's Subjects. This being the first Instance of a Crime so heinous, cruel, barbarous and inhuman, that has been committed since the making the Act of Parliament, it is hoped by this Prosecution a second will never be committed; for which Reason, I pray your Lordship's Judgment for the King against the Prisoners.

Mr. *Raby*. My Lord, I did expect at this time I should have heard, from this unhappy Gentleman, something in Arrest of Judgment; something to shew that this Indictment and Record, now before your Lordship in Judgment, had been insufficient, and such as your Lordship could not have proceeded upon to give Judgment against the Prisoners: But I don't perceive any thing has been objected to this Indictment or Record; and therefore since nothing appears, or is objected they must be taken to be sufficient, and such as your Lordship ought by Law to give Judgment upon against the Prisoners now at the Bar.

But this Gentleman has been pleased to take Notice of the Act of Parliament on which this Prosecution is founded: He has also made some mention of the Facts which have been given in Evidence against him; and cited some Cases (as I apprehend) to shew, that penal Statutes, and criminal Acts of Parliament, ought not in Construction to be carried beyond the Letter and Words of the Act. This which he has offered (as I take it) is now meant to shew (or at least that he apprehends) that from the Evidence given, it has not fully appeared he is guilty of the Offence with which he stands charged, within the strict Words and Meaning of this Act of Parliament: And for this End he has been pleased to make some Observations from the Words of the Statute, what Things he apprehends to be necessary to bring him within the Compass of this Act, *viz.* That such Wound or Maiming, as is described by the Statute, ought to be,

1. On Purpose, and of Malice fore-thought.
2. By lying in wait.
3. With an Intention to disfigure.

All these have been already admitted to him; and he will see every one of these Circumstances not only taken Notice of by us in our Observations upon the Evidence, but also more fully by your Lordship, before the Jury gave their Verdict.

But with what Intent this Fact was done, whether of Malice fore-thought, by lying in wait,

and with Intent to disfigure, are Circumstances only to be collected from the Evidence and the Facts themselves; of which neither we nor the Court can determine, but can only be enquired of, and determined by the Jury; and therefore, though it would be a full Answer to what is now objected, to say, that the Jury have considered of the Evidence, have determined upon it, and found you guilty of the Indictment, with all those Circumstances which the Prisoner objects are necessary to bring the Offence within the Statute; though this, I say, might be Answer; yet for the Justice of this Proceeding, and to satisfy the Prisoner in his own Objections, and that they should not pass unanswered, your Lordship will permit me to take Notice of the Cases cited, and also to recollect the Evidence, so far as the Prisoner hath made it necessary to repeat it.

I confess, it is with Concern I mention it again; for I would not do any thing which might add to the Weight of those Afflictions which this unhappy Gentleman is under, had not he himself made it necessary to take farther Notice of it.

As to the Cases cited, only two of them which he mentions are cited to be adjudged; that at *Dorchester* by Mr. Justice *Eyre*, that a Woman was indicted for Murder, and upon Evidence it appeared to a different Offence, *viz.* Petit-Treason, for she had killed her Mistress; and that thereupon Mr. Justice *Eyre* caused her to be indicted for Petit-Treason, and she was convicted. Certainly, my Lord, that Judgment was right, and very just; for when it appeared upon Evidence that she was guilty of a distinct and different Offence than that of which she stood indicted, could any Thing be more just, than to cause her to be indicted for that Offence, of which, upon the Nature of the Evidence, she appeared to be guilty? The second Case cited of *Evans* and *Finch* (which is reported in *Cro. Car.*) is no more than this: *Evans* went up a Ladder, opened a Chamber Window in the *Temple*, went in and robbed the Chamber in the Day-time; *Finch* held the Ladder, and stood at the Foot of it when *Evans* entered: *Evans* was hang'd, *Finch* had his Clergy, and was only burnt in the Hand; and with great Reason: For the Statute, 39 *Eliz.* which takes away Clergy, takes the Clergy only from him that enters; and therefore to have taken the Clergy from *Finch* who did not enter, had been unjust and reasonable. And as to what is mentioned of the Statute 2 & 3 *Ed. VI. cap. 33.* made in Explanation of the Statute which took Clergy from him who stole Horses, and to take Clergy from him who stole only one Horse, there is such an Act of Parliament; but this Act and the Cases cited, only shew that Regard has always been had, not to extend penal Statutes beyond the Words of them. But before these Cases were mentioned (and indeed had they never been cited) this Rule of Construction had been allowed to the Prisoner; for all the Particulars now insisted on by the Prisoner were before taken Notice of by the Court, as Circumstances necessary to make out the Offence against the Prisoner: Nor has one of those Circumstances passed without Observation; but the Court did with great Justice before declare those Circumstances to be necessary Ingredients to prove this Offence. And as to the other Cases, they

are to the same Purpose, and not cited as Cases adjudged; and therefore I need not take further Notice of them. But certainly no Inferences can be drawn from the Cases cited, or any the least Colour to say, those Cases prove that the Prisoner is not guilty of the Offence he stands charged with, and of which he is convicted.

I am sorry he has given this Occasion to mention again the Fact which has been proved, from whence it appears that the Jury have given an impartial and just Verdict.

It cannot be forgot, that this was consulted and premeditated for three Years and more before it was put in execution; and therefore it was certainly purposed and of Malice fore-thought; also that it was by lying in wait. Certainly this unhappy Gentleman cannot have forgot the Signal he gave: And to what Purpose was that Signal, if none was in waiting to hear it? And that this was with an Intent to disfigure, must be submitted upon the Fact and the Evidence. A Man uses a Weapon fit to maim and to disfigure, he cuts another on the Face and does disfigure him, shall he afterwards be at Liberty to say, it was not his Intent so to do? How dangerous that would be, is obvious to every one; this Act would then be easily eluded, if it should be sufficient, if it should avail an Offender, who has maim'd and disfigur'd another, to say, Prove that I intended it: It would be easy then to be out of the Reach of this Act of Parliament; indeed if that prevailed, none would be within it, it would be an easy Repeal of this Law. 'Tis objected, his Intent was to kill: He that intends the End, certainly intends the Means, especially those Means which he uses; and the Means used were cutting Mr. *Crispe* on the Face, and disfiguring him; and the Weapon is such, that by cutting him on the Face with that Weapon, could less be intended or expected? And if the Intent does not appear from this Fact, sure it never can from any: The Intent of a Man's Mind cannot appear but from the Act which proceeds from his Mind.

It is said, this is the first Indictment on this Statute: I believe there hath not been many; for this is an Offence so barbarous, that I must agree it is such as seldom happens, and that by the general Laws of our Country, there was not a Punishment provided equal to this Offence: For our Laws, (as the Laws of most Nations also do) provide against Offences which most frequently happen: But this is an Attempt so barbarous, that it was scarce imagined any Man could be so base and wicked as to attempt any thing like it, until it happened in the Case of Sir *John Coventry*; and then such an Abhorrence was shewn by the Parliament, that this Law was made to punish it, and to prevent the like for the future: And as this is the like Offence, it ought in Justice to have the like Punishment.

I shall add no more, but pray your Lordship's Judgment.

Mr. *Lee*. My Lord, the Observations made at the Bar being after a Verdict, and therefore out of Time, I shall not trouble your Lordship with a Repetition of the Facts that have been proved, further than the Prisoner has made it necessary for me to mention some Particulars, in order to make the Answers to what he hath insisted on the more clear and plain.

I believe

I believe it has been truly said by the Prisoner, that the present Prosecution is the first Instance of any Proceedings on this Statute, and I hope it will be the last; because it is to be hoped there never will be found any other Person so wicked, as to give Occasion for a Prosecution on this Statute.

I believe likewise, that the true Design of making this Statute was to subject Persons to Death, who intended to maim only, where the maiming was in such manner as is mentioned in the Statute; but I can't think that it does from thence follow, that a Person who intends to murder, and only maims, is not within this Statute; for though it should be taken that there was an Intention to murder, yet from the Fact done, from the manner of doing it, and from the Weapon made use of, it seems apparent that the Prisoner intended to maim; and the Jury have now found that he did so intend.

As to the Cases which the Prisoner has cited, I beg leave to consider each of them, and offer such Answers to them as now occur.

The first Case he has been pleas'd to cite, is thus put:

A and *B*, of Malice fore-thought, appoint to meet and fight a Duel, *A* in the Rencounter runs *B* into the Eye, and puts it out: The Prisoner says, such a Case would not be within this Statute.

I agree it would not, because this Case has not the Circumstances which the Statute requires; for in the Case thus put there is no lying in wait, which is a Circumstance required by the Statute.

It is said, that if *A* lies in wait to rob *B*, *B* resists, and in the Scuffle is maim'd in the Manner describ'd by the Statute, that such maiming would not be punishable by this Statute; but I don't observe any Case is cited to prove this Assertion: And I am, with Submission to your Lordship, inclin'd to think, that if there are a lying in wait, with Malice fore-thought, with Intent to rob, and in prosecuting this Intent the Robbers should assault and maim in the Manner described by the Statute, that such maiming would be within this Statute.

It is said, that though the Intent to murder makes the Offence worse than if the Intent had been only to maim, yet such Intent proves it not to be the same Offence which is mentioned in the Statute: And if a Man be indicted of an Offence of an inferior Nature, and upon the Evidence it appears that he is guilty of an Offence of a superior Nature, the Person indicted must be acquitted; and to prove this, a Case is cited, which is said to have been before Mr. Justice *Eyre* at *Dorchester* Assizes. The Case, as put, is this: A Woman is indicted for the Murder of another Woman, on the Evidence it appeared, that the Person murdered was her Mistress, which made the Crime Petty-Treason: This was found specially, and upon Conference with the Judges, they were of Opinion, that the Woman ought to be acquitted upon this Indictment.

Admitting this Case to have been adjudged, I apprehend it does not affect the present Case.

The Law has distinguished Crimes under different Denominations; and as Offences are rank'd under different Species, so the Indictment must be suited to that sort of Crime whereof the Party

is guilty; and therefore proving a Person guilty of a Fact, known in the Law by the Name of Petty-Treason, does not prove him guilty of an Indictment for Murder; Murder being an Offence which the Law has distinguished from Petty-Treason, and to which it has assigned a different Punishment.

But in the present Case, that Offence which is charged in the Indictment, is proved in every Circumstance, and the Facts proved do constitute that Crime which is made Felony without Clergy by the Statute. The Statute requires lying in wait, it requires Malice fore-thought, it requires slitting the Nose, &c. with intent to maim, &c. The Indictment charges these Facts, the Witnesses have proved these Facts to the Satisfaction of a Jury, which have found the Defendant guilty of the Charge as laid.

The Prisoner says farther, that this is a very penal Statute, and that penal Statutes are always taken with the utmost Strictness; and to prove this, cites a Case adjudged on the Statute 39 *Eliz.* by which Statute Clergy is taken away from any Person or Persons, who shall be convicted of taking away Money, &c. in any Dwelling-house; &c. in the Day-time, to the Value of five Shillings: And to prove the same Matter, an Instance is likewise put of the Construction on the Statute, 1 *Eliz.* cap. 12. which takes away Clergy from such Persons as shall be convicted of feloniously stealing Horses, &c. The Case in the Statute 39 *Eliz.* is the Case of *Evans* and *Finch*, *Cro. Car.* 473. in which Case *Finch* had his Clergy, because he did not actually enter the Chamber and take the Money. The Construction on *Ed. VI.* was, that Clergy was not taken away from a Person who feloniously stole one Horse.

But I apprehend neither of these Cases come up to the Case now before your Lordship. As to the Case of *Evans* and *Finch*, which was a Case upon the Statute 39 *Eliz.* By that Statute a Person is ousted of Clergy who takes away Money to the Value of five Shillings in any Dwelling-house, &c. *Finch* did not enter into the House, for he only stood on the Ladder; and therefore he was not within the Words of that Statute, which spoke only of Persons who took away Goods in an House, &c.

As to the Construction upon the Statute 1 *Ed. VI.* it is plain that the felonious stealing one Horse could not be within an Act of Parliament which took away Clergy only from such Persons as feloniously stole Horses. The Reason therefore of these Cases was, that the Facts proved did not bring the Persons accused within the Words of the Statute.

But it is not so in the Case now before your Lordship; for the Prisoner is found guilty of a Fact, which is within the Words of the Statute upon which he is indicted; and every Circumstance required to make him guilty of the Felony mentioned in the Statute has been very fully proved.

My Lord, I am very sensible that the Objections taken at the Bar being after Verdict, did not require these particular Answers; but this being a Case wherein Life is concern'd, I hope the Impropriety will be excus'd.

L. G. Just. I do agree with the Prisoner, that this is a penal Law, and not to be extended by Equity: That he that is guilty within this Sta-

tute, must be guilty of all the Circumstances within it; and if any one of the Circumstances prescribed by the Statute be wanting, he is not guilty. And therefore in all those Cases put by you, if any one of the Circumstances prescribed by the Statute be wanting in any one of them, such Case is out of the Statute. But whether all the Circumstances required by the Statute did not concur in your Case; was a Matter of Fact, which the Jury, who are the proper Judges, have tried; and on such Trial they have found them all to concur. You seem to argue upon a Supposition of this Fact to be otherwise than the Jury have found it: The Jury have found you guilty of all the Circumstances within the Statute. There was no Matter of Law in this Case, but Matter of Fact; whether on Purpose; and of Malice fore-thought, and by lying in wait, the Nose of Mr. *Crispe* was not slit, with Intention, in so doing, to maim or disfigure; and whether you were not feloniously present, aiding and abetting. The Jury had the whole Evidence before them; they considered of the whole Matter, of the Preparation and lying in wait to do the Fact, of the Fact itself; of the Means and Instrument made use of to do it, of the Manner of doing it, and of all the other Circumstances and Particulars relating to the Fact: And on the whole, after they had withdrawn, and consider'd amongst themselves for some time, they have found you guilty within the Terms and Circumstances of the Statute; so that tho' all the Cases put by you shou'd be very good Law, yet they do not any wise affect yours, because you are actually found guilty of the Crime itself: Have you therefore any thing to say against the Indictment itself?

Mr. *Coke*. No, my Lord; I hope I have one Glimpse more from the King's most gracious Pardon, that was published in the *Gazette*.

L. C. *Just*. If you offer any Pardon by Act of Parliament, or under the Great Seal, I must take notice of it, and allow it to you; but if you mean only a Promise of a Pardon in the *Gazette*, or other public Advertisement, you must apply for that in another place; this doth not belong to me.

Mr. *Coke*. I hope that I shall have the Benefit of the Pardon that was promised, and that his Majesty will be graciously pleased to grant it me.

L. C. *Just*. If you have a Right to it, you need not doubt but you will have it: His Majesty is so just, that he will make good whatsoever he hath promised; but for this, your Application must be immediately to his Majesty.

Mr. *Coke*. I beg of your Lordship that you will give me Time, that I may not be hurried out of the World presently.

L. C. *Just*. I shall consider of it, and give you a convenient Time.

Cl. of Arr. Cryer, make an O Yes.

Cryer. Our Sovereign Lord the King doth straitly charge and command all manner of Persons to keep Silence, whilst Judgment is giving upon the Prisoners convicted, upon Pain of Imprisonment.

L. C. *Just*. You that are the Prisoners at the Bar, you have been indicted and convicted of very great and heinous Offences; I am very sorry that you have been the Occasion of bringing yourselves to unfortunate Ends, and that there is this melancholy Necessity on me to pronounce the Sentence of Death upon you: But on fair Trials the Jury have found you guilty, and by the Law you have forfeited your Lives.

Mr. *Coke*. My Lord, I am ashamed of myself; I did not expect to appear at this Time in this Place, where I have appear'd in another manner.

L. C. *Just*. I am sure, Mr. *Coke*, you ought seriously to reflect on your past Life: You cannot but own that you have been a great Sinner; you have had Malice in your Heart against this Gentleman above three Years.

Mr. *Coke*. Indeed, my Lord, I know nothing of it.

L. C. *Just*. *Moon* hath sworn; that three Years, or three Years and a half ago, you sent to him, and propos'd to him the knocking Mr. *Crispe* on the Head.

Mr. *Coke*. I do declare it; my Lord, as I shall answer it at the Great Day, I never spoke to *Moon* about any such Thing.

L. C. *Just*. Supposing what *Moon* hath said to be too much, yet the Crimes you own and cannot deny are exceeding heinous. You own that you invited your Brother to sup at your House, on purpose that you might have an Opportunity of murdering him. This is such a Crime as shocks human Nature: The bare mentioning of it is frightful and terrible. The deeper therefore your Crime is, the deeper your Repentance ought to be. You have need to humble yourselves before Almighty God. Besides the Judgment of the Law, there is also his Judgment-Seat, before which you must likewise appear: There all Things are naked and bare, without Colour or Disguise; every Man must there appear, and receive according to the Truth of his Actions, as they were good or bad. How far it may please God to extend his Mercy to you, I know not; he is infinite in Mercy as well as in every other Perfection: And this we are sure, that he never denies it to any who are prepared to receive it. Endeavour therefore to reconcile yourselves to him; improve with Diligence the little Time that may be allotted you: Send for proper Persons who may advise and assist you: For as to the Judgment of the Law which is to be now pronounced upon you all, it is this;

That you, and each of you, go from hence to the Place from whence you came, and from thence to the Place of Execution, where you shall be severally hanged by the Neck till you be severally and respectively dead; and the Lord have Mercy upon your Souls.

Then the Keeper carried away the Prisoners to the Goal to be reserved till their Execution. And on Saturday the 31st of *March*, 1722. they were executed at *Bury St. Edmond's*.

CXCIII. *The Trial of Christopher Layer, Esq; at the King's-Bench for High-Treason, Novemb. 21. 1722. Mich. 9 GEO. I.*

Die Mercurii 31^o Die Octobris, 1722.

ON Wednesday the 31st of October, Christopher Layer, Esq; was brought to the Bar of the Court of King's-Bench at Westminster, upon a Habeas Corpus directed to the Lieutenant of the Tower of London, in order to be arraigned on an Indictment for High-Treason in compassing and imagining the Death of the King, found by the Grand Jury for the County of Essex before special Commissioners of Oyer and Terminer.

Mr. Serj. Pengelly. My Lord, we pray the Return of the Habeas Corpus may be read.

Mr. Harcourt Clerk of the Crown reads the Return of the Habeas Corpus, by which it appear'd that the Prisoner was committed to the Tower for High-Treason.

Mr. Serj. Pengelly. We pray that the Return may be filed.

Sir John Pratt. L. C. Just. Let it be filed.

Mr. Serj. Pengelly. My Lord, there is an Indictment of High Treason found in the County of Essex against Mr. Christopher Layer, which hath been removed into this Court by Certiorari; the Certiorari, and Return thereof hath been filed, and the Prisoner is now brought into Court in order to be arraigned.

L. C. Just. Read the Indictment.

Cl. of the Cr. Christopher Layer, hold up your Hand.

You stand indicted by the Name of Christopher Layer, late of the Parish of St. Andrew's Holbourn, in the County of Middlesex, Esq; For that you being a Subject of our most serene Lord GEORGE, now King of Great Britain, France and Ireland; Defender of the Faith, &c. not having the Fear of God in your Heart, nor weighing the Duty of your Allegiance; but being moved and seduced by the Instigation of the Devil, as a false Traytor against our said Lord the King, your Supreme, True, Lawful, and Undoubted Lord; withdrawing that cordial Love, and true and due Obedience, Fidelity, and Allegiance, which every Subject of our said Lord the King towards Him should and of Right ought to bear, and designing, and with all your Might traiterously intending the Government of this Kingdom, under our said Lord the King duly and happily establish'd, to change, alter, and subvert; and our said Lord the King of and from the Title, Honour, Royal Estate, Empire and Government of this Kingdom to depose and deprive; and our said Lord the King to Death and final Destruction to bring and

draw; and the Person during the Life of the late King James the Second, pretended to be Prince of Wales; and after the Decease of the said late King, pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third, to the Crown, Royal State and Dignity of King of this Kingdom, and to the Empire, Government, and Possession of the same, to exalt and bring, the twenty-fifth Day of August, in the ninth Year of the Reign of our said Sovereign Lord the King that now is; and at divers other Days and Times, as well before as after, at Laytonstone in the said County of Essex, falsely, maliciously, devilishly, and traiterously did compass, imagine, and intend, our said Lord the King, your supreme, true, lawful, and undoubted Lord, of and from the Title, Honour, Royal Estate, Empire and Government of this Kingdom to depose and deprive; and our said Lord the King to Death and final Destruction to put and bring. And that you the said Christopher Layer, to accomplish and bring about your said Treason, and devilish and traiterous Intents and Purposes, did, with divers other false Traytors to the Jurors unknown, on the said twenty-fifth Day of August, in the said Ninth Year of the Reign of our said Lord the King, and at divers other Days and Times, as well before as after, at Laytonstone aforesaid, in the said County of Essex, by Force and Arms, &c. falsely, maliciously, devilishly, and traiterously meet, propose, consult, conspire, consent and agree, to move, raise, and levy Insurrection, Rebellion, and War, within this Kingdom against our said Lord the King, for the traiterous Purposes aforesaid. And that you the said Christopher Layer, for the more effectual compleating and perfecting the said Treason and traiterous Intentions and Purposes, on the said twenty-fifth Day of August, in the Ninth Year aforesaid, at Laytonstone aforesaid, in the said County of Essex, by Force and Arms, &c. maliciously and traiterously did publish a certain malicious, seditious, and traiterous Writing, containing and purporting (amongst other Things) an Exhortation, Incitement, and Promises of Rewards, the faithful Subjects of our said Lord the King, to persuade move and excite, to take up Arms, and to levy and make War within this Realm, against our said Sovereign Lord the King, for the traiterous Purposes and Intentions aforesaid. And that you the said Christopher Layer, for the more effectual compleating and perfecting the said Treason and traiterous Intentions and Purposes, with other false Traytors, to the Jurors unknown, on the said twenty-fifth Day of August, in the ninth Year aforesaid, and at divers other Days

Days and Times, as well before as after, at Laytonstone aforesaid, in the said County of Essex, by Force and Arms, &c. Falsely, Maliciously, Devilishly, and Traiterously did meet, propose, consult, conspire, consent, and agree, by an armed Force, and by Soldiers to be raised and got ready for the traitorous Purposes aforesaid; the said Person, during the Life of the said late King James the Second, pretended to be Prince of Wales, and since the Decease of the said late King, pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third, to the Crown, Royal Estate, and Dignity of King of this Kingdom, and to the Empire, Government, and Possession of the same to exalt and bring; and that you the said Christopher Layer, for the more effectual compleating and perfecting the said Treason, and traitorous Intentions and Purposes aforesaid, on the said twenty fifth Day of August, in the ninth Year aforesaid, and at diverse other Days and Times, as well before as after, at Laytonstone aforesaid, in the said County of Essex, by Force and Arms, &c. Maliciously and Traiterously did get ready, raise, and retain several Men, to the Jurors unknown, to take up Arms, and to levy and wage War within this Kingdom, against our said Sovereign Lord the King, for the traitorous Purposes aforesaid; and that you the said Christopher Layer, for the more effectual compleating and perfecting the said Treason, and traitorous Intentions and Purposes aforesaid, on the said twenty fifth Day of August, in the ninth Year aforesaid, and at divers other Days and Times, as well before as after, at Laytonstone aforesaid, in the said County of Essex, with other false Traitors, to the Jurors unknown, by Force and Arms, &c. Maliciously, Devilishly, and Traiterously did meet, propose, consult, conspire, consent and agree, the sacred Person of our now Sovereign Lord King GEORGE, for the traitorous Purposes aforesaid, most wickedly to take, seize, imprison, and detain in Custody, against the Duty of your Allegiance, against the Peace of our said Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided.

Prisoner. If your Lordship will please to indulge me;

My Lord, I am brought here in Chains, in Fetters and in Chains. My Lord, I have been used more like an *Algerine* Captive than a Free-born *Englishman*: I have been dragged through the Streets by the Hands of Goalers, and have been made a Shew and a Spectacle of.

I am now in a Court of Justice before your Lordship, and I hope the Time will come when I shall have a candid and fair Trial, and not be made a Sacrifice to the Rage and Fury of any Party, or the Necessity of the Times. My Lord, I had not said this, but I have been insulted since I came into the Hall: A Gentleman came and told me, Either you must die, or the Plot must die. My Lord, this is Usage insufferable in a Christian Nation; and I think I can lay my Hand upon my Heart and say, I have done nothing against my Conscience.

Mr. Serj. Pengelly. If Mr. Layer hath any Objections to the Indictment he may make them, but should not go on in this Manner.

Prisoner. My Lord, I hope I shall have these

Chains taken off, that I may have the free Use of that Reason and Understanding which God hath given me. They have given me the Stranguary to that Degree that is very painful, and I am told your Lordship is afflicted with that Distemper.

I hope these Chains shall be taken off in the first Place, and then I hope I shall have a fair and a tender Trial.

L. C. Just. There have been a great many Things said by which we cannot examine into. You have given a general Charge of some People using you ill, your Expressions are not just and right; you charge no particular Person; we can take no Notice of them.

As to the Chains you complain of; it must be left to those to whom the Custody of you is committed by Law, to take Care that you may not make your Escape; when you come to your Trial then your Chains may be taken off. Consider the Matter of this Day; if you have any Objections to the Indictment the Court will hear them; if not, you must plead.

Mr. Att. Gen. I am sure nothing is intended but that he *Sir Robert Raymond* should have a fair Trial; but to complain here of hard Usage, of Chains and Imprisonment, carries with it a Reflection of Cruelty, and we know what Effect these Things may have Abroad.

My Lord, I don't believe there is any Occasion for saying any thing more in answer to this, than that the Prisoner hath been kept, as all Persons in his Circumstances are, when they have been attempting to make an Escape; there was an Attempt of that Nature made by him, and I believe no Body will say, but on such an Occasion, there is Reason to take particular Care that he may not escape. My Lord, as to any other Matters of Hardship, I hope what he says is not so; I very believe it is not, but that he hath as much Freedom and Liberty as is proper and usual. And as to what is said in respect to the Man that insulted him in the Hall, I know nothing of it, nor heard of it before; but can't but observe that it is any easy Matter for People to contrive such a Thing in concert together, with some particular Views; and I don't know but if the Fact was so, it might be some body set on by himself that did it.

L. C. Just. Alas! If there hath been an Attempt to escape, there can be no Pretension to complain of Hardship: He that hath attempted an Escape once, if true, ought to be secured in such Manner, as to prevent his escaping a second time. The Gentleman Goaler, what doth he say?

Gentleman Goaler. My Lord, He never attempted to escape since he was in my Custody.

Mr. Att. Gen. No, it was before.

Mr. Soll. Gen. My Lord, This Complaint is made for no other *Sir Philip York* Purpose but to captivate the Minds of the By-standers, without any just Grounds in the World; for if the whole of the Complaint made and aggravated in this solemn Manner be considered, it amounts only to this, That a Prisoner who stands charged with so great an Offence as High-Treason (who I admit, notwithstanding the Weight of that Charge, ought to have all the Justice and all the Opportunity of defending himself which the Law allows) I say

it amounts to no more than this, that a Prisoner in these Circumstances is brought up hither under a Guard, and in Fetters, as Persons in that Condition usually are. It is very well known that when this Gentleman was in the Custody of a Messenger, he not only made an Attempt to escape, but actually escaped, got out of a Window two Pair of Stairs high, and from thence over the Water into *Southwark*; and since that is so, can there be any Colour to say that what was done afterwards was unwarrantable? I cannot help saying on this Occasion, that it does not become the Candor a Person in the Prisoner's Circumstances ought to shew, to aggravate and make such a Misrepresentation of the Usage he has received. As to what has happened in the Hall we know nothing of it, nor can possibly tell how true it is. If any such thing was said, it is not impossible to have been by some body that was set there on Purpose by the Friends of this Gentleman. I say thus much, my Lord, not because I think it material to the Business of this Day, but because I would not have it gone away with that there has been any Hardship put upon the Prisoner contrary to Law. No, his Majesty, who makes the Laws of the Land the Rule and Measure of all his Actions, though he will have Justice done to himself and his Government against any Person that shall conspire to overthrow it, yet he will suffer no Hardships to be done even to such Persons, contrary to Law; and nothing has been done in this Case but what was legal and absolutely necessary.

Mr. *Hungerford*. My Lord, I beg to be indulged a few Words; That he is in Chains now is demonstrable; and he hath told me, when in the *Tower* with him, that they are so grievous to him that he cannot sleep but in one Posture, *viz.* upon his Back, and that he hath not attempted to escape out of the *Tower* is given in Evidence by the Gentleman Goaler, who hath, and will, I verily believe, execute his Authority with all Humanity, for he now helps to hold up his Chains, otherwise the Prisoner could not stand. My Lord, it is said it is nothing but what is usual in Cases of this Nature. My Lord, I believe I might challenge them to give an Instance where any Prisoner was shackled with Irons in the *Tower* before Mr. *Layser*; his Majesty's Prisoners of the *Tower* are such Strangers to this Usage, that they had not the very Materials there, they were sent for from *Newgate*, and I hope they will be carried back again thither. Your Lordship hath hinted it as an Indulgence intended to him when he comes to his Trial, that his Irons shall be taken off: But I humbly insist upon it that by Law he ought not to be called upon, even to plead, till his Fetters are off: My Lord *Coke* * is clearly of that Opinion in his Pleas of the Crown; and it is admitted on all Hands, that when he comes to be tried his Shackles must be off, and upon a Debate it was so determined † *Trial* 154. in *Cranburne's* † Case. The only Reason assigned for putting off Irons at all upon a Prisoner is to keep him in safe Custody (for the Laws of *England* allow of no

Tortures) and the Reason why they are taken off in the Course of Proceeding against him in a Court of Justice, it seems to be that his Mind should not be disturbed by any Uneasiness his Body or Limbs should be under; and as to the Distinction that his Chains should be on when he Pleads, because but for a Moment, or a short Time, and off when he is Tried, because that will be of longer Duration; it is possible that what we have now to say may be as long as some Trials. I should (with Submission) think that something of the Dignity of the Court might be considered in this Matter, for a Court of Justice, the highest in the Kingdom for criminal Matters, where the King himself is supposed to be personally present, to have a Man plead for his Life before them in Chains, seems to be very unsuitable. He is now before the same awful and just Tribunal which he will be before when he is tried, and why not therefore without Chains as well now as then; and as to the safe Custody intended by the Irons, is the Man like to run away here? Is he not here too well guarded to escape?

Mr. *Ketelby*, If your Lordship please to favour me a few Words. My Lord, What hath been his Usage in bringing him up hither I cannot tell; what the Usage of the *Tower* is with respect to the putting Chains upon Prisoners, I am ignorant of; but this I must beg Leave to say, that he is entitled to have his Chains off before he pleads* in point of Law: The Authorities for it are my Lord *Coke* in his third *Instit.* Fol. 34. who says, that *when Prisoners come in Judgment to answer, they shall be out of Irons, and all manner of Bonds, that their Pain may not take away their Reason, nor constrain them to answer, but at their Free-Will**; and in Fol. 35. he cites * *Brit. c. 5. fol. 14.* the Words out of the *Mirroure*, Chap. V. Sect. 1. *It is an Abuse that Prisoners be charged with Irons, or put to any Pain before they be Attainted.* At the Trial of *Cranburne*, when he was brought up here before my Lord Chief Justice *Holt*, he insisted that his Chains should be taken off before he pleaded, and it was ordered. This was likewise mentioned in the Trials of *Dorrel*, *Gorden*, and *Kerr*; when they came up in their Irons to plead, it was moved at first that those Irons ought to be taken off. The Court declared, that *if the Prisoners insisted on it, it ought to be done*: But they did not insist on it, they rather chose to wave that Privilege than undergo the Trouble of having them knock'd off in Court. There is a Resolution in this Case. In the 10th Fol. of *Kelyng*, it is expressly declared on a Consultation of all the Judges in *England*, *That a Prisoner ought to have his Irons taken off before he pleads.*

L. C. 7. The Case of *Cranburne*, you will find that Authority is when the Party was called upon to plead, and was tried at the same Time.

No doubt when he comes upon his Trial, the Authority is that he is not to be *in Vinculis* during his Trial, but should be so far free, that he should have the Use of his Reason, and all Ad-

* *Cum autem capti in judicio produci debeant, non producantur armati, sed ut judicium recepturi, nec ligati, ne videantur respondere coacti*, Fleet. Lib. I. cap. 1.

The Prisoner at the time of his *Arraignment* ought not to be in *Irons*. *Hales*, P. C. p. 212.

Tit. *Arraignment*. See H. P. C. in folio, second part. cap. 28.

See *Hawkins's Pleas of the Crown*. Part 2. p. 308.

vantages to clear his Innocence. Here he is only called upon to plead by Advice of his Counsel; he is not to be tried now, when he comes to be tried, if he makes that Complaint, the Court will take Care he shall be in a Condition proper to make his Defence; but when he is only called upon to plead, and his Counsel by him to advise him what to plead, why are his Chains to be taken off this Minute, and to be put on again the next? It hath been said (I cannot understand the Meaning of it) he is too well guarded, I don't think a Man charged with High-Treason of this Nature, can be said justly to be too well guarded, especially if it be true what hath been suggested, that he hath endeavour'd to make his Escape; that will justify more than what the Law allows in other Cases.

Mr. *Hungerford*. My Lord, I beg leave to explain myself, what I mean by saying too well guarded, I mean sufficiently guarded.

L. C. *Just*. Have you any thing more to offer? This is nothing but to captivate the People, and to make Impressions upon them that are not just, or else what signifies his Chains being taken off this Minute, and afterwards put on again the next? This is nothing but to bring the People to have an unjust Sense of the Crime with which he is charged.

Mr. *Hungerford*. My Lord, we might humbly apprehend and hope that the better to prepare himself for his Trial, he might continue without his Chains 'till after that Time.

L. C. *Just*. I am of another Opinion, and if we should order his Chains to be taken off, and he escape, I don't know but we are guilty of his Escape. As your Client hath said, he shall have a fair and a just Trial; but to make Objections in Matters of this Nature, is to cast a Reflection on the Court, for not doing that which is not in their Power to do.

Mr. *Hungerford*. I am, my Lord, of Counsel with the Prisoner, I have been so appointed by your Lordship, and I assure your Lordship that I, and I dare answer for the other Gentleman that is concerned in the same Service with me, shall make use of that Power and Privilege you are pleased to give us, as we ought.

My Lord, I have read over the Record and the Indictment, we have a Copy of both, according to the Direction of the Act of Parliament: I know we have at present a Right to object to four sorts of Things, *viz.* miswriting, misspelling, false or improper *Latin*: We are confined to make whatever Objections occur to us on these Heads at this Time, and have not the Liberty to make it afterwards; but there are likewise some Objections of another Nature, which we may have Liberty to make at another Time.

I have here in my Hand the whole Record delivered to the Prisoner, in which, not only the Indictment is set forth, but the Commission of *Oyer and Terminer*. After the Commission hath enumerated the Names of the Commissioners, it goes on, and says, what are the Offences that they are authorized to enquire of, as High-Treason, Misprisions of Treason, and other Offences of a lesser Degree; then it goes on and says what the Persons shall be, concerning whom this Enquiry shall be made, *Et per quos vel per quem, cui vel quibus, quando, qualiter, & quomodo, & de aliis Articulis & Circumstantiis, præmissa &*

eorum quodlibet seu eorum aliquod vel aliqua, qualitercunq; concernen^r, plenius veritat^r. My Lord, I have look'd into this Form, and considered the Words with all the Accuracy I can, and have endeavour'd to render them into *English*, but cannot; I must say I look upon those two Words *plenius veritat^r*, as placed in this Record, to be Nonsense, and not capable of being rendered into *English*, for they import no meaning at all. It is a Blemish in the Commission itself, and if so, the Enquiry, taken by Vertue of that Commission must fall to nothing, and consequently this Indictment must be naught. I have been so exact I have looked into the Forms of these Indictments, taken by Vertue of Commissions of *Oyer and Terminer*. My Lord Chief Justice *Coke* hath, for the sake of Posterity, I suppose, given us the Form of the Commission of *Oyer and Terminer* in his Time; in that Form of his these Words are entirely left out; they seem to me to be Words of no Signification, therefore we hope there shall be no further Proceedings till this is set right, and that the Indictment shall be quash'd.

Mr. *Ketelbey*. My Lord, there are other Objections, whether is it your Lordship's Pleasure that we should go on this first, or that we should mention the others, and so go upon them all together?

L. C. *Just*. Make all your Objections together.

Mr. *Hungerford*. Then, my Lord, in the Close of this Commission it is said the Jury were charged to enquire, but doth not say for what; but that Objection may be made another Time, and therefore I will not trouble your Lordship with it now. My Lord, the first Thing that occurs to me in the Indictment itself, and which certainly, if we prevail in, the whole Proceedings are wrong; this Gentleman's Name is not writ nor spelt right, *Jurator pro Dno Rege, &c. super Sacramentum, &c. quod Christophorus Layer, Christophorus* is there writ with an E, whereas it should be *Christophorus* with an O; and if the Dictionaries and Lexicons are any Authority we are right.

These are the Objections which have occurred to me, the Gentleman joined with me in this Service, hath some Remarks to make.

Mr. *Ketelbey*. My Lord, As it is your Lordship's Pleasure to appoint us to be Counsel for this Gentleman, I shall not make any Apology for our appearing on his Behalf, lest I receive the same Reproof from the Court, which a Gentleman in my Station once received upon a like Occasion.

My Lord, we are at this Time proper to lay these four Points under your Lordship's Consideration, which if we had staid till after Plea pleaded by the Prisoner, would have been too late; that Matter hath been often settled and determined by your Lordship, and I shall say no more to that, I believe they don't object to it; now therefore is the only Time to make these Objections.

My Lord, The first that hath been mentioned by Mr. *Hungerford* is in the Caption of the Indictment as to these Words *plenius Veritatem*; in our Copy, it is *plenius Veritat^r* with a Dash, that it may be taken in any Case, but I submit it to your Lordship whether it can be made Sense, or is proper *Latin* in any of the Cases either of the singular or plural Number, that there can be made

made any Grammar of it, or that there is any regular or proceeding *Verb* that can govern it in any Case whatsoever; they might have put in any Words entirely inconsistent with respect to the Part preceding or subsequent; leave out these Words and the other Part of the Sentence is plain and intelligible, but, put in the Words and it is otherwise.

And especially since we have the Authority of my Lord *Coke* where these Words are not in; how they came to be put in, or of what Use they are; your Lordship will observe on reading the Caption of the Indictment, *Ad Inquirend', &c. plenius Veritat'*.

Taking Exceptions to the Caption of the Indictment hath formerly been objected to, but I believe that Right cannot be disputed at this Time.

As to the second Exception, that in relation to *Cristopherus*, we submit it to your Lordship if that be not expressly within the Defects mentioned in the Act of Parliament Miswriting, Mispelling, false and improper *Latin*; nay, whether it is not subject to censure under each of these four Heads.

My Lord, it was impossible to bring all my Authorities, upon this Point, along with me; but I have here in Court several of the best Dictionaries and Lexicons which shew the true Word to be *Christophorus*; and I believe the Gentlemen of the other Side can't produce one Instance in any authentic Book either *Greek* or *Latin*, but it is always spelt with an O and not with an E, it is *Christophorus* from *πρωτος*, the *Præteritum Medium* of the *Greek Verb* *φειω*; and the Rules of Etymology and Formation of *Greek Verbals* evince that it must be so and cannot be otherwise; and by all the *Latin* Dictionaries, the *Latin Word* for *Christopher* is *Christophorus*.

L. C. Just. How do we know what his Name is? You must plead it in Abatement; we don't know his Name; he might be christened *Christophorus* for ought we know.

Mr. Ketelbey. My Lord, for false Spelling—

L. C. Just. How doth that appear to us? You are wrong in making your Objection at this Time, we can't take notice what his Name is; in the Record of the Indictment he is called *Christophorus*. Can we enquire what his true Name is, whether in *English* it is *Christopher* or *Christophorus*? We can't tell what his Name is, perchance his Name may be *Christophorus*, and the Name by which he might be christen'd; I desire I may not be understood as if I would prevent you from offering any thing that is material for your Client, but if I can satisfy you that you are improper in Form, it may save the Time of the Court; but if you can offer any thing material, we are ready to hear it.

Mr. Ketelbey. My Lord, I hope your Lordship will pardon me, here is the Life of a Man concern'd, and as I would not willingly offer any thing to your Lordship that in the like Cases hath been over-ruled, so neither would I omit any thing that may be material for the Prisoner, whose Defence the Court has intrusted us with; therefore I will go on to the other Objections that we think to be improper *Latin*; *compassavit*, *imaginatus fuit*, & *intendebat*. These are the Words, I don't know whether this *Latin* will go down in *Westminster-Hall*, but I am satisfied it would not in *Westminster-School*.

Here is the *Et Intendebat*, *Et* a Conjunction Copulative between Verbs in several Tenses; here is *Compassavit* the Preterperfect Tense, *Imaginatus fuit* the Preterperfect Tense, and *Intendebat* the Preterimperfect Tense: Why should not the last Verb have been put into the Preterimperfect Tense, according to the Rules of Classical *Latin*, as well as the two former? Therefore we submit it how far it will go as to viciating the Indictment in Point of false *Latin*.

My Lord, there is one Word more, (*Seisend'*) the Overt-Act, as laid in the Indictment, is, that the Prisoner *Conspiravit at sacram Personam Domini Regis capiend', seisend', & imprisonand'*; by the Words that are coupled with it, I suppose *Seisend'* is intended to mean, the taking or laying violent Hands upon his Majesty's Person; but sure there was never such a Word in any Indictment before, nor to be found in any Author whatsoever; 'tis neither Classical *Latin*, Law *Latin*, nor to be met with among *Littleton's* Barbarisms, never naturalized nor inoculated into antient or modern Use; 'tis a mere fictitious Word Coin'd for this very Purpose without any Precedent, any one Instance to warrant it.

My Lord *Coke*, in his 1st *Instit. Fol. 17.* says, That the Word *Seisitus* cometh of the *French Word* *Seisin*, and that in the Common Law 'tis properly applied to Freehold, in Contradistinction to *Possessionatus*, which relates to Chattels: For *Seisitus* and *Possessionatus* are mentioned as Terms of Art, Technical Words in the Law, that by long Use have acquired to themselves one peculiar and determined Signification; for that Reason I don't object against the Word *Compassavit* in this Indictment, it having been always used in Indictments of High-Treason to express compassing the Death of the King, ever since the Statute of *Edward the Third*; so *Murdrare*, *Felonia*, and several others, are known Terms of Art in the Law. But, where did they meet with the Word *Seisend'*? And if they would fancy it to be a Gerund of some unknown Active Verb, how came they to give it this Sense, to make it signify the same as *Capiendum*?

My Lord, I must beg leave to say, that I apprehend the very Gift of this Indictment, (at least so much of it as relates to this Overt-Act) entirely depends upon this Word *Seisend'*; and if it does appear to your Lordship to be insignificant, barbarous, false or improper *Latin*, I hope we are proper under the Authority of the late Act of Parliament, humbly to insist upon this Objection, and that it is sufficient to overthrow the whole Indictment.

My Lord *Coke*, in *Calvin's Case*, says, that Indictments for High-Treason ought to be drawn with the greatest Accuracy and Nicety; but if *Mr. Attorney* will please to shew me, that this Word was ever once used to this Purpose, I will wave my Objection, and admit it to be as elegant a Word as any in the whole Indictment.

L. C. Just. I think before the King's Counsel make any Answer to that, we had best have that Part of the Indictment read, that we may the better judge of it.

Cl. of the Cr. reads, *Quod tu Christophorus Layer, &c. ad Capiend' Seisend' & Imprisonand', &c.*

L. C. Just. *Ad Capiend' & Imprisonand'*. Won't these Words do, suppose the other Word *ad Seisend'* insignificant?

Mr. Serj. *Pengelly*. My Lord these Objections have been made with so much Ceremony, and usher'd in with such Pomp, as if something else was meant, than the quashing this Indictment.

We apprehend some of them are improper, and others which may be proper at this Time, are of no Force.

The Objections to the Commission, we apprehend are improper; it is not in the Power of the Court to quash the Commission, and therefore to make mention of Mis-spelling, and of false and improper *Latin* therein, signifies nothing. As to the Indictment itself, the Court hath a Power, and if they think proper, if there be sufficient Cause may quash it; but the Commission issues under the Great Seal, and that Part of it returned here, is not under the Power of this Court to destroy; but upon reading it, we think this Objection will quite vanish; these Words are used in all Commissions of the like Nature, and are inserted in the very Form of the Commission, and the Caption of the Indictment published in the Treatise, allowed by all the Judges of *England*, call'd, *A Collection of Statutes relating to High-Treason, compos'd for the Assistance of the Justices in Scotland*; and because of the supposed Difficulty of understanding these Words, I will, for the Sake of the Gentlemen of the other Side, read them in the Order they are to be construed, thus, *Ad Inquirend' plenius Veritatem per sacrum probor' & legal' Hom', &c. de quibuscunq; Proditionibus Misprissonib', &c. per quoscunq; & qualitercunq; Hui' Fact', &c. ac de aliis Articulis, &c. & ad easdem Prodition' & al' Premiss' audiend' & terminand'*; here they are to enquire more fully the Truth, of and concerning all Treasons, Misprisions of Treason by any Person whomsoever committed, &c. And if the Words (*plenius Veritat'*) had immediately followed the Word (*Inquirend'*) every Body at first reading must be satisfied that no Objection could be made thereto; and the Objection now is only made on Account of the placing these Words at the End of the Sentence. But it makes no Difference in the Construction or Sense; how otherwise can it be construed or understood? But to enquire more fully the Truth of those Offences, there enumerated, and what Persons are guilty, &c. And therefore I take it, that the Form of the Commission is proper, and will be justified, not only by the Sense of it, but by the usual and common Course of Proceedings.—As to the next Objection, we apprehend that hath been already over-ruled; the Word (*Christopherus*) with an *E*, and not with an *O*: And if there be any Difference in the Name, that it must be pleaded in Abatement, because if they would take Advantage of it, they must plead that his Name is otherwise than is expressed in the Indictment. This Man's Name *Christopherus* may be with an *E* as well as an *O* for ought appears: But we apprehend, that the Name *Christopher* is seldom writ in *Latin* with an *O*, but usually with an *E*; if they think there is any thing material in the Objection, let them plead it in Abatement, and we are ready to answer them.

My Lord, as to the next Objection, that the three Verbs which charge the High-Treason, *viz. Compassavit, Imaginatus fuit, & Intendebat*, that they are not in the same Tenses; we submit that in the strictest *Latin*, there is no Necessity the last Verb should be of the same Tense with

those that go before the Copulative (*Et*): Sure, tho' *Compassavit* and *Imaginatus fuit* be in the Preterperfect Tense, yet *Intendebat* may be well added in the Preterimperfect Tense, and that will make no Difference, they being all three alledged and found in the Time past, before the Indictment exhibited.

My Lord, the next Objection which they seem to rely upon, is at the Conclusion of the Indictment, and that is to the Word (*Seisend', &c.*) They say, the Precedents have been look'd into, and there is no such Word to be found in any Indictment of High-Treason; I beg leave to say in Answer, that since the Assassination-Plot against King *William*, there hath been no such villanous Attempt of this Nature; therefore no Wonder if it cannot be found in other Indictments where there has been no Occasion for the Word. This is an Overt-Act of conspiring and agreeing to take, seize, and imprison, the very Person of the King; and it must be laid according to the Fact itself; but if this be not a proper Word, tho' I think the Word is proper and significant, yet because this is not made use of in alledging the Treason itself, but the Overt-Act or Evidence of the Treason, it will not vitiate that Part of the Indictment: For if any one of these Words alledged is proved upon the Trial, the Prisoner ought to be found Guilty, whether he compassed to take the Person of the King, or to seize his Majesty, or to imprison and detain him; any one of these Attempts is sufficient, if proved, and the Prisoner ought to be convicted. There was an Objection of this Nature taken upon one of the Trials for High-Treason, before my Lord Chief Justice *Holt*, but he was pleased to say, that in alledging the Overt-Acts, where several Overt-Acts are alledged, or several Words are used to express the same Overt-Act, if they were mistaken in one of the Words, yet if there were other Words sufficient in the Indictment to express the Overt-Act; or although one entire Overt-Act was insufficiently alledged, yet if there was another Overt-Act well laid, the Court would not quash the Indictment, because this would be to deprive the Crown of the Right of giving Evidence to prove any other Part of the same Overt-Act, or any other Overt-Act alledged in the Indictment, so that we hope this is not a proper Objection, because the Court cannot quash the whole Indictment if any other Overt-Act is sufficiently expressed, but the Indictment must stand.—But the Word is proper, because the Words *Seisire ad Seisend'* are Terms known in the Law, and it is frequently used in Actions of Trespass, *Quod cepit, seisivit, & abduxit, or asportavit*. My Lord, we think the Word *ad seisend'* is a proper Expression in this Case, to signify the Attempt or Design to seize and apprehend the Person of his Majesty; and we hope there is nothing in these Objections.

Mr. *Att. Gen.* My Lord, we are not against the Gentlemen of the other Side's insisting upon every thing that may be for their Client's Service. But sure these Objections have nothing in them; there is no Colour of Reason to support them. My Lord, as to the Exception taken to the Commission, let us consider, if there was any Weight in it, how it can possibly be taken at this Time.—By Vertue of the Act of Parliament passed in the 7th Year of the Reign of his late Majesty King *William*, it is provided,

That

That no Indictment for any of the Offences aforementioned in that Act, which are Treasons, &c. nor any Process or Return thereupon, shall be quashed on the Motion of the Prisoner or his Counsel for Mis-writing, Mispelling, or false or improper *Latin* (under which last Words, the Counsel for the Prisoner would entitle themselves to take this Objection) unless such Exception shall be taken and made in the respective Court, where such Trial shall be, by the Prisoner or his Counsel assign'd, before any Evidence given in open Court upon such Indictment.—But the Commission is a Thing distinct, and neither Indictment, Process, or Return thereupon. And by Consequence no Objection can be made to the Commission at this Time by Vertue of that Act: But however, because they may not trouble us with these Objections at another Time, we beg leave to answer them now.

My Lord, these Words (*plenius Veritatem*) are the very Point of the Enquiry of the Commissioners of *Oyer and Terminer*, for they are to enquire, by the Oaths of lawful Men of the Country, fully of the Truth of all Treasons, Misprisions of Treasons, &c. committed in that County, and that is the Tenour of the Commission. In the Book printed by the Approbation of all the Judges of *England*, soon after the Union of the two Kingdoms, all the Rules and Methods of Trial in Cases of High-Treason are laid down; there is the Commission of *Oyer and Terminer* printed at large; and it is exactly in the same Words with this; and your Lordship may please to observe, that immediately after those Words *plenius Veritatem* there is a Comma, and none before; the whole Sentence before is entire, and therefore in Construction these Words, *plenius Veritatem*, refer to the Words *ad inquirendum*, at the Beginning of the Sentence; and the Sense is plain, that the Commissioners are to enquire by the Oaths of good and lawful Men of the Country, and by other Ways and Means, &c. *plenius Veritatem, de quibuscunque Proditionibus, Misprisionibus, &c.* and then the Commission goes on, and there comes after the Comma, *Et v'd easdem Proditiones & alia Præmissa hac vice audiend' & terminand' secund' leges, &c.* In our legal Proceedings in *Latin*, we are not so nice as to confine ourselves to the *Latin* of the Classicks; but this is very proper *Latin*, and the disjoining of the Words *plenius Veritatem*, from the Words *ad inquirendum*, by which they are govern'd by the Interposition of so many Words, is no Objection; for nothing is more common in the best Authors, than placing the most material Words at the Close of a very long Sentence, which in Point of Construction must refer to others at the Beginning. And therefore I hope we shall hear no more of this Objection.

As to the *Christopherus* being with an E instead of an O, that is not a proper Objection at this Time. No Man will pretend to say, he may not be christen'd by that Name, as *Henry* is the usual Name, *Harry* is the common Nick-name for *Henry*, yet a Person may be christen'd *Harry*, and so have many Persons been.

But, my Lord, we say this is a Word used in all the Law Proceedings for *Christopher*, and spelt in this very manner with an E.

As to the other Objection; as to the Alteration of the Tense in the Words *compassavit, imaginatus fuit & intendebat*: The Objection is made as if

we were tied down to those exact Forms of Grammar; if the Sense is plain, if the Facts are explained by proper *Latin* Words, it is enough for us, whether they are carried on sometimes in one Tense, and sometimes in another, provided they sufficiently charged the Fact to be done.

The last Objection is the Word *seisend'*, that it is not a Word known in the Law; if that would hold, it would not quash the Indictment, because there are several other Words to the same Effect, which sufficiently express this villainous Overt-Act, without this Word *seisend'*; for it is laid, that the Prisoner did propose, consult, and agree, *ad sacram Personam dicti Domini Georgii nunc Regis, &c. capiend', seisend', imprisonand', & in Custod' detinend'*. But we insist, that this is a very proper Word. In the Court of Exchequer the Words used in Cases of Seizures is *seisvit*. Writs issue commanding the Sheriff *seisire* such Lands, &c. into the King's Hands, and the Sheriff returns *seisire feci*; so that if this Word was look'd upon as an unknown and unintelligible Word, what must become of many Judgments and Proceedings in that Court? It is a Law Word that is here applied to the Person of our Sovereign, and as it is in the Proceedings before-mentioned applied to seizing Lands, &c. Why may it not be applied to the Seizing of a Person? And then if *seisire* be proper, the Gerund from that must be *seisendum*. And therefore we apprehend, my Lord, that it is a plain Answer, and that there is no Colour of Reason for this Objection.

Mr. *Soll. Gen.* My Lord, as I apprehend these Exceptions have no real Foundation, nor scarce any Colour in themselves, so I don't know whether it would not be giving too much Credit to them, for so many of the King's Counsel as attend your Lordship on this Occasion, to spend the Time of the Court in giving Answers to them. The true Answers, and all the Answers which can be given, have been already offer'd and very fully enforced; and therefore I shall not trouble your Lordship with any thing further.

Mr. *Hungerford*. My Lord, I beg a few Words by way of Reply. As to the first Objection, we hope it is not answer'd: We object against the Words *plenius veritat'* as Words of no Sense or Meaning, as ranged or placed in this Indictment. Mr. *Attorney* hath endeavoured to make them Sense by transposing them, and inserting *plenius veritat'* ten Lines before what the Indictment hath. We must take the Words as they are in the Indictment: And if they are not Grammar or intelligible there, the Objection still holds. I know not what Liberty the King's Counsel hath to transpose the Words. I know School-Boys sometimes pick up Words without Regard to Grammar, to make what they call Nonsense Verses: But I never knew an Attempt before by transposing of Words, to make Nonsense Grammar, Prose, or Poetry. There is one Thing that hath been mentioned, that the Judges have settled the Forms of Proceedings in Cases of High-Treason by Direction of the House of Lords, and this *plenius veritat'* is got into the Form inserted in that Treatise: That Book, my Lord, notwithstanding the solemn Allowance of it by the Judges, is not, with Submission, a conclusive Authority: It was denied to be so in the Case of *Matthews*; which Case I can the better speak to, because I was of Counsel in it. The

Objection taken in the Case of *Matthews* was to the Pannel of the Jury, for that the Addition and Places of Abode of the Jurymen were not inserted in the Pannel, according to the Directions of that Book, the better to guide the Prisoner in his Challenges. My Lord Chief Justice *King*, who presided at that Trial, assisted by all the then Judges of *England*, (except your Lordship who was absent) over-ruled that Exception; and I think the rest of my Lords the Judges, now present, concurred in that Resolution. Wherefore, if we have no Authority to combat with, but the Authority of that Book, which hath been solemnly denied to be a good Authority, we hope this Objection shall stand.

My Lord, as to the Word *Christophorus*, without doubt the Etymology of the Word is as Mr. *Ketelbey* hath opened; and there is this further to justify that way of Spelling which we contend for, even the two first Syllables of the Word in the Indictment are *Christo*, as the *Greek* with an O, and not *Christu*; and in Conformity with the *Greek* Spelling in the two first Syllables of the Word, we hope the next Syllable must be spelt so too: But since it is contended, that the Substance of this Objection must be put into a Plea in Abatement, we shall wait the Direction of the Court as to that Matter. As to the Words *compassavit, imaginatus fuit & intendebat*, there is something in that Objection too, they all relate to a Time past, but they are in different Tenses or Time; there is the Preterperfect and Preterimperfect Tense, and there is the Conjunction Copulative between them, as if both Tenses implied the same Times, which it is certain they do not, and therefore they Charge nought; for a Thing cannot be done lately and formerly, and both at the same Time.

As to the other Words *ad capiend^o, seiscind^o & imprisonand^o*, we are upon the Forms of an Indictment, and must be govern'd by the usual Forms: I believe there is no Instance on Record, where these Words are made use of in any Accusation of this Kind; for which Reasons we humbly hope this Indictment shall be quash'd.

Mr. *Ketelbey*. My Lord, I beg leave to offer a Word or two by way of Reply: Mr. Serjeant *Pengelly* is pleased to say, that Sense may be made of these Words, and that *plenius veritatem* as it is, is good *Latin*, by lifting these Words from the Bottom of the Sentence to the Top, and making them follow *ad inquirendum*. I believe four Parts in five of the Caption interfere between the *inquirendum* and the *plenius veritatem*, a whole Catalogue of Offences, several independent Sentences, different Times, Persons, Places, Things all stationed between, and yet these Words are to be united: I would be glad to know by what Rule of Grammar this can be done.

As to the Word *Christopherus*, I shall not further insist upon that as a proper Objection under this Head, because your Lordship seems to be of an Opinion that we ought to have pleaded it in Abatement.

As to the Word *seiscind^o*, it hath been said it is a Word well known in the Exchequer, but they don't shew one Instance where-ever it was used: Indeed they mention a Precept to the Sheriff *seisire facias*, and the Return *seisire feci*, but what is that to *seiscindum*; the one is justified by Usage, the *seisitus* as *seisiri*; besides *seisiri* is there used in the very same Sense which the Law hath im-

posed upon it; is to be put into Possession, the Lands are so delivered by the Sheriff into the Hands of the King, that he becomes seized thereof, *ut de feodo & in jure Coronæ*, till an *Amoveas manus* be obtained: But if ever that Word was put into any Indictment to signify to seize and imprison the King, 'tis entirely unknown to me.

Indeed here is one Piece of Doctrine offered, that if it holds good puts an End to all our Objections, and even to the Act of Parliament on which they are founded; but I must own it is entirely new to me: We are told there are other Words in the Indictment, and other Overt-Acts, and if one Act is sufficiently expressed by any one Word, though there be Words that are improper and false *Latin*, yet it shall not vitiate the Indictment; what avails then this Act that empowers us to make Objections to Mis-writing, Mis-spelling, false and improper *Latin*? 'Tis impossible to suppose, that whoever hath the drawing of an Indictment should make Faults and blunder on from first to last: No, in an Indictment for High-Treason the greatest Care is, or ought to be taken in the Drawing of it; and where the Life of a Person, and all that is valuable is at Stake, the Law will not subject any one to such dreadful Penalties and Forfeiture for an Offence expressed only by Words of an unknown or dubious Signification; and therefore, we hope that this goes to the whole, and that the Indictment shall be quash'd, or else it would be nugatory for us to be allowed to take Exceptions to one Part of the Indictment if the other were good.

I believe Mr. *Attorney* won't shew any Instance, (I submit it to his greater Experience) where he ever knew one Overt-Act in an Indictment set aside, and the rest of the Indictment held good: Exceptions have ever since the making this Act been taken and argued by Counsel, and determined; but if this be a sufficient Answer, surely they spent the Time of the Court to very little Purpose, in debating whether there were any Faults in the Indictment, when it was so easy to shew it was not faulty throughout. Mr. Serjeant *Pengelly* has been pleased to mention the Opinion of my Lord Chief Justice *Holt*, upon one of the Trials before him, that although one entire Overt-Act was insufficiently alledged, yet if there was any other well laid, the Court would not quash the Indictment; I wish he had told us in what Trial, or where it is to be found, for I don't remember it in any of the printed Trials: As to what was mentioned, with regard to the Authority of that Book, for the Words *plenius veritatem*, Mr. *Hungerford* rightly observed, that the Authority of that Book was utterly denied at the Trial of *Matthews*; your Lordship was not there, my Lord Chief Justice *King* presided then upon the Bench, that Book particularly directed, that not only the Names of the Jurors should be inserted in the Pannel, but also their Additions, and the Places where they lived; instead of that, the Copy of the Pannel delivered consisted only of a long List of bare Names, no Additions, nor where they lived; whereupon we made our Objection, and insisted on the Authority of that Book. Notwithstanding which, the Objection was then over-ruled, and consequently we hope we shall not be pinn'd down to the Authority of this Book any more in this Case, than the other; for these Reasons we hope your Lordship will be

of

of Opinion that the King's Counsel have not given a full Answer to our Objections, and that the Indictment shall be quashed.

Mr. *Hungerford*. My Lord, I beg leave to hand up this Precedent of my Lord *Coke's*, where these Words are entirely left out.

L. C. Just. What is the use you would make of setting up an extrajudicial Opinion of my Lord *Coke's*, as you call it, against the Opinion of all the Judges? Because it is not in my Lord *Coke's*, Form, therefore it is not necessary or right; but at the same time you would have us governed by my Lord *Coke's* Opinion, you would have us reject the Opinion of all the Judges. My Lord *Coke* may be wrong; the Opinion of all the Judges in an extrajudicial Case may be wrong; but it would be very strange to give a greater Weight to the extrajudicial Opinion of my Lord *Coke*, because he hath left the Words out, than to the Opinion of all the Judges that have put the Words in; neither is conclusive, but certainly the Opinion of all the Judges of later Times, must have more Weight, than the extrajudicial Opinion of a single Judge at any former Time.

As to the Matter of this Objection, you say that in the Recital of the Commission of *Oyer and Terminer*, in the Caption of the Indictment, it is said the Commissioners had Authority to inquire *de quibuscumq; Proditionibus, &c. plenius veritatem; plenius veritatem* comes in afterwards: We have been told of *Classical* and *Ciceronian Latin*, and if there be any Regard to be had to that, is any thing more common in every Part of *Cicero*, that to put Words last, that in Construction must come first? I don't know any Rule that is laid down when the Words coming last, are in Construction to be taken first, but only this, that the Construction is to be according to the natural Sense and Import of the Words; and if so, then in the Authority of these Commissioners, where it is said they were to inquire *de quibuscumq; Proditionibus, &c. plenius veritatem*, in Construction the last Words must be taken first. You say as they stand it is Nonsense and signifies nothing, and the Words are nugatory; 'tis not material where they stand, they must be taken in that manner of Construction as would make them significant, that is, by taking the last Words, *plenius veritatem*, to go first in Construction; then it is very proper and just and all will be well.

As to the Matter of the Misnomer that you have given up, and very justly, for you are proper to plead that in Abatement.

The next Objection is, you say here is improper *Latin*, *Compassavit*, in the *Preterperfect Tense*, *Imaginatus fuit* in the same *Tense*, and *Intendebat* in the *Preterimperfect Tense*; take these Words by themselves, suppose it had been *Compassavit* only, *Imaginatus fuit* only, or *Intendebat* only, would not either of these Words, whether in the *Preterperfect* or *Preterimperfect Tense*, have been sufficient to have charged Mr. *Layer* with having some time before compass'd and imagin'd the Death of the King? Every one of these Words charge him with the Intent of Compassing and Imagining, and that relates to a Time that is past, whether *Preterperfect Tense*, or *Preterimperfect*, that is not material: Then as to one of the Overt-Acts, as here be a great many to which no Objection is made, the High-Treason is compassing and imagining the Death of the King; the Overt-Acts are several, either is sufficient to maintain

the Treason of compassing and imagining the Death of the King. One of the Overt-Acts is, that he did design, consult, and agree *ad Capiend', Seisend', & Imprisonand'*, the Person of the King. Suppose it had been *ad Capiend', & Imprisonand'*, then you say it had been well enough but the putting in this Word *Seisend'*, will vitiate the whole, because it is an improper and vicious Word. I don't know that, nor dare not say in a Court of Law that it is an improper and vicious Word: You are told of a Court of Law where the Word is used, and hath the same Signification as in the Indictment; as to seize Lands into the Hands of the King, to seize Lands, or to seize the King's Person, the Word is the same, and if *Seisire* is good, and enough to signify to seize Lands, *Seisire* is enough to signify to seize the King's Person; therefore I think it is a proper Word, but whether it is or not, there is sufficient in the Indictment to maintain the Charge against Mr. *Layer*; for he is charged with a Consultation and Agreement to take the King, with a Consultation and Agreement to imprison and detain the King in Prison: These are sufficient without the Word *Seisend'*, but the Word *Seisend'* hath been a Law Word, and used in our Proceedings at Law, never objected to; but if we say it would not signify a Seizing, we must set aside half the Proceedings in the Court of *Exchequer*. These are all the Objections you have made, and in my Apprehension they can be of no Use or Service to your Client; they signify nothing.

Mr. *Just. Powys*. I am of the same Opinion, Not the least Doubt remains with me.

Mr. *Just. Eyre*. I think the Caption of the Indictment is in common Form, and the Exceptions to the Indictment itself are fully answer'd.

Mr. *Just. Fortescue Aland*. I am of the same Opinion, and think the Objections to be of no Weight.

L. C. Just. The Objections being all overruled: Demand of him what he hath to plead.

Cl. of the Cr. Christopher Layer, hold up your Hand. How say you, *Christopher Layer*, are you Guilty of the High-Treason whereof you stand indicted, or Not Guilty?

Prisoner. I desire my Plea of Misnomer may be received. And I plead Not Guilty as to the Fact.

Cl. of the Cr. Reads the Plea.

Et Christophorus Layer ad Barram hic duct. in propria persona sua venit, & habito auditu Indictament. prædict. dicit quod ipse est persona in Indictament. prædict. mentionat. & intens. per nomen Christophori Layer, nuper de paroch. Sti. Andree Holborne in Com. Mid. Ar. & versus quem Indictament. prædict. prolat. existit pro alt. Proditione prædict. & dicit quod ipse ad Indictament. illud respondere compelli non debet, quia dic. quod ipse diu ante tempus caption. Indictament. prædict. necnon ante tempus offensi in Indictament. ill. specificat. & fieri supposit. Baptizatus fuit per nomen Christophori, & per id nomen Christophori semper a tempore Baptization. suo hucusque vocat. nuncupat. & cognit. fuit, & hoc parat. est verificare; unde ex quo ipse non nominatur in Indictament. prædict. per nomen Christophori, petit iudicium de Indictament. illo, & si ipse ad Indictament. prædict. ulterius respondere compelli debeat, &c. & quod prodition. in Indictament.

*ment. prædict. mentionat. ipse prædict. Christophorus Layer dicit quod ipse in nullo est inde culpabilis, & inde de bono & malo ponit se super Patriam, &c.**

J. Hungerford.
Abel Ketelbey.

L. C. Just. Your Plea is received. He hath pleaded in Abatement first, and then pleads over to the Treason. What say you to it?

Mr. Serj. *Pengelly*. It can't be expected that we should have a Replication ready to their Plea in Abatement: We were not aware of this; therefore we ought to have Time to draw up a Replication.

L. C. Just. What say you to it?

Mr. *Hungerford* and Mr. *Ketelbey*. My Lord, we have no Objection to it.

L. C. Just. Well, the Plea is recorded. Consider now the Question on this Plea is, whether he was baptized by the Name of *Christophorus* or *Christopherus*.

Mr. Serj. *Pengelly*. My Lord, to morrow and next Day being Holidays (else we should have been ready by to morrow) we therefore pray, that he may be brought up again on *Saturday* by Rule of this Court.

Mr. *Hungerford*. I have some doubt whether it can be by Rule, or by *Habeas Corpus*.

L. C. Just. When once a *Habeas Corpus* hath been granted, and he is brought before us, we can order him to be brought again by Rule. He must be taken back again, and brought up here on *Saturday* next.

Die Sabbati 3^o die Novembris 1722.

The Prisoner was this Day brought to the King's-Bench-Bar by the Lieutenant of the Tower, in Obedience to the Rule of Court made the 31st of October.

Mr. *Att. Gen.* My Lord, I have demurred to the Prisoner's Plea in Abatement, and pray the Demurrer may be read.

Cl. of the Cr. reads the Demurrer.

Et Robertus Raymond Mil. Attorn. Dom. Regis Generalis qui pro eodem Dom. Rege in hac parte sequitur habito audit. placiti præd. in cessation. Indictament. præd. superius placitat. pro eodem Dom. Rege dicit quod idem placit. materiaque in eodem content. minus sufficiens. in lege exist. ad ipsum Christophorum a respondend. ad Indictament. ill. excusand. ad quod quidem placit. idem Attorn. General. necesse non habet nec per legem terræ tenetur aliquo modo respondere. Et hoc idem Attorn. General. pro eodem Dom. Rege parat. est verificare prout Cur⁹ &c. Unde pro insufficient. placit. ill. idem. Attorn. Dom. Regis General. pro eodem Dom. Rege petit judic. & quod Indictament. prædict. bon. & sufficiens adjudicetur, &c.

Rob. Raymond.

Mr. *Att. Gen.* We pray they may join in Demurrer immediately.

Mr. *Hungerford*. My Lord, it is altogether a Surprise to us, and as the Clerk hath read it, it is

impossible for us to take the Substance of this Demurrer. We therefore hope we shall be allowed a few Days to consider of this Matter of joining in Demurrer. We shall not ask many. The Precedents are so, the Prisoner was always indulged with some time in a Case of this Nature. Before the Act of Parliament for regulating of Trials, where Matters of Law were started, or any special Pleading did arise, the Prisoner was indulged with a great Number of Counsel. *Fitzbarris* had five, a greater Number than I ever knew engaged on one Side in Deliberations of this kind, unless it were that Number of learned Counsel which met to advise upon and adjust this Demurrer. But I think in the ordinary Course of the Court we are proper to desire two or three Days. Two or three Days is but a little time, especially when the Life of a Man is concerned. Mr. Attorney took from *Wednesday* to *Saturday* to consider of our Plea, we hope at least the same time should be allowed to us to consider of this Demurrer. I have in my Hand the Arraignment of and Proceedings against *Fitzbarris*, he was indulged several Days.

Mr. *Ketelbey*. My Lord, I have brought the Book along with me relating to *Fitzbarris*: As to the Matter of having time to join in Demurrer, whether we are not entitled to it by the Rules of the Court, I must submit to your Lordship. It is a Case of great Consequence; and, as I take it, the constant Practice is, that a four Days Rule is always given to join in Demurrer. This is always done, as I am informed, on the Crown-side as well as the Plea-side. The Tenour of the Rule is either to join in Demurrer within four Days, or to wave the Plea; but Mr. Attorney requires us to do it immediately. In *Fitzbarris's* Case the Attorney General demurred in Court, and the Counsel on the other Side refused to join in Demurrer immediately, and they had from *Wednesday* to *Saturday*. We hope therefore there shall be a four Days Rule for us to join in Demurrer as in all other Cases. If we are not regular in insisting upon four Days, we hope at least your Lordship will indulge us with some time; or if we do immediately join in Demurrer, that we shall have some time to prepare ourselves to argue to it.

L. C. Just. How say you, Mr. *Harcourt*? How is the Course of the Court?

Mr. *Harcourt*. My Lord, in criminal Prosecutions for Misdemeanours, two four Day Rules to plead are given, and a peremptory Rule moved for; and then if there be a Demurrer, one four Days Rule to join in Demurrer is given, and a peremptory Rule moved for: But in capital Cases there is no Rule given, either to plead or join in Demurrer; all Proceedings in such Cases being at Bar, the Prisoner is oblig'd on all Occasions to answer immediately, nor can there be any Instance shewn to the contrary.

L. C. Just. The Course of the Court is against you.

Mr. *Hungerford*. As to the Course of the Court, I know no better Description of it, than that it is the uninterrupted Usage of the Court warranted by Reason, or at least not contradicted by it. The Officer tells you that in criminal Cases

* The right Way seems to be, that *ph* should be followed with an *o*, and *f* with an *e*, the first being derived from the *Greek*, and the other from the *Latin*. See *Lorwick's* Indictment, Trial 155. where it is *Christophorus Knightley*. See also *Co. Entr.* 51. a. 55. b. 215. c. 309. c. d. 310. a. b. 319. a. 321. b.

which are not capital there are Rules for four Days, and four Days to plead; and likewise a four Days Rule to join in Demurrer; and surely, if in a criminal Case, which is not capital, a Man is indulged four Days; surely in a criminal Case as this is, which is capital, and doth touch a Man's Life, his Posterity, and his Estate, by Parity of Reason, the Indulgence ought to be more than four Days. I beg leave to observe one thing in the Case of *Fitzbarris* now in my Hand. My Lord Chief Justice there asks the Prisoner, will you plead over? If you will, you may have any Time in Reason. Now, my Lord, we have pleaded over, we have pleaded Not Guilty as to the Offence; so that for that Reason we might have till *Hillary Term* next, because we have forwarded them in their Journey already by pleading Not Guilty as to the High-Treason. And we hope therefore the Gentlemen of the other Side won't contend with us for two or three Days in a Case of this Nature.

Mr. *Ketelbey*. My Lord, I only beg leave to mention this single Word, that we don't insist upon this for Delay, or to put off the Trial; we have pleaded over to the Treason, and in case we should join in Demurrer, whatever Time is taken up in arguing it, cannot obstruct the Proceedings in order to the Trial: Nay the Trial may be had before the Matter of the Demurrer be determined.

L. C. *Just*. In case you should join in Demurrer, what can you do else?

Mr. *Ketelbey*. I believe we shall. If we had not thought our Plea would have stood a Demurrer, we had not made use of it.

Mr. Serj. *Pengelly*. My Lord, what he prays is against the Rules of the Court; in all capital Cases there are no Rules given to plead or join in Demurrer, but the Proceedings are all *Instant*, the Prisoner being present in Person, and therefore, my Lord, there is nothing in what they ask. When they put in a Plea in Abatement here at the Bar, which cannot be expected or thought of, it is reasonable that there should be some time to consider of that, to see the Nature of it, and consider what to answer to it. We have demurred to their Plea; no doubt they had considered of their Plea whether it was a good Plea in Law or not; if it be not good, can they amend their Plea in Abatement? It was never allowed: If they can make no Alteration in that, what can they do? They can do nothing else but join in Demurrer; it is all they can do; and when they have joined in Demurrer, we shall see if they have any Reason for further Time. But as to what they say, that as to the Sufficiency of the Plea, it may be argued another time; and as they have pleaded over to the Treason, there needs be no Delay as to the Trial; I would be glad to see whether by this they do not deprive the Crown of the Election to proceed in such Manner as shall be thought most advantageous for the carrying on the Prosecution: But is it adviseable to leave a Plea in Abatement to the whole undetermined; and to try the Issue first? I believe they can shew no such Instance; and therefore in all capital Cases, as well as in criminal, the Plea in Abatement goes to the whole, to destroy the whole Indictment, and indeed ought to be determined before the Court goes on with the Trial. My Lord, we are surprized at what they mean by this, when they can do no-

thing else but join in Demurrer, and therefore we hope they shall join immediately.

Mr. *Att. Gen*. My Lord, what we insist upon is not a new thing; the constant Practice in Cases of this Nature has been, that if a Demurrer is put into the Prisoner's Plea, he must join in Demurrer *instant*. I believe the Gentlemen of the other Side can't shew one Instance to the contrary. The Prisoner can do nothing but join in Demurrer. As to what has been said about our having time from *Wednesday* to *Saturday*, the Reason was because *Thursday* and *Friday* were no *Westminster-Hall* Days, for which Reason we could not have the Prisoner brought up before this Day. The putting in a Demurrer to this Plea can be no Surprize to the Counsel for the Prisoner; for Yesterday we sent Copies of our Demurrer to them. Mr. *Pember*, the Prisoner's Clerk in Court, had a Copy of it by two of the Clock in the Afternoon; and the Prisoner himself had one about four o'Clock. As to the Case of *Fitzbarris* which has been cited, it was a Plea looked upon to contain Things of very great Difficulty; the Time asked for there was not to join in Demurrer, but the time applied for was for settling the Plea; but as soon as Mr. *Fitzbarris* had pleaded, and the Attorney-General had demurred to it, the Court ordered the Prisoner to join in Demurrer *instant*. As to what has been said, that we may proceed to Trial on the Plea of Not Guilty before the Demurrer to the Plea in Abatement is determined, that is by no Means adviseable; the Consequence of that may be very mischievous; for if the Court should be of Opinion that the Plea in Abatement is good; after we have disclosed the whole Evidence against the Prisoner upon the Trial, though we obtained a Verdict for his Majesty, the whole must be set aside; and therefore we hope your Lordship will not break into the common Method of Proceedings; but make the same Rule for the Prisoner as always has been made in Cases of the like Nature; which is, that he shall join in Demurrer immediately.

Mr. *Sol. Gen*. My Lord; I agree with the Counsel for the Prisoner that we are in a Case of Life, and that is the Reason why their Client should have all the Indulgence the Law will allow him. But I beg leave to observe, that we are not now on a Question that directly concerns the Merits of the Case, nor whether a Prisoner who is to answer for his Life at this Bar, should have time to send for his Witnesses, or prepare for his Defence. That indeed might be of a different Consideration. But we are now barely upon a frivolous dilatory Plea, as frivolous a Plea as ever was offered in any Case whatsoever; and the Question is, whether they, who have prepared and put in this dilatory Plea, shall have time given them to consider whether they will join in Demurrer upon it or not. As to the Case of *Fitzbarris*; whatever they have inferred from it, I think it rather turns against them. Was that a Plea of *Misnomer*? A Letter pretended to be mistaken in a Name, which I beg leave to say, when considered, will appear to have been always so written in legal Proceedings? No, it was a Plea of the Pendency of an Impeachment for the same Offence, sent up by the *House of Commons* to the *House of Lords*, and by Consequence, in that Case, the Prerogative of the Crown, the Jurisdiction of the Lords, and

and the Privileges of the Commons were highly concerned. This was a Question of as great Weight, and perhaps of as great Difficulty, as could come before the Court, and therefore the Prisoner had time given him to plead that Matter; but when the Attorney General demurred to it, the Prisoner joined in Demurrer instantly: And as Mr. *Harcourt* acquaints your Lordship, the Practice is, that there is no such Rule for proceeding upon Demurrers in capital Prosecutions as in other Cases; and this appears by their never being set down in the Paper to be argued, as Demurrers always are in other Causes. So it was in the Case of *Fitzbarris*. That was argued by four or five Council of a Side, without being set down in the Paper. In the Case of the Prisoner, which is your present Consideration, more hath been done for him than was done for *Fitzbarris*. Here is not only a Demurrer given in by Mr. *Attorney* at the Bar, but the Prisoner's Attorney had a Copy of the Demurrer at Noon the Day before, and consequently they could not want Notice that we intended to demur, nor be under any Surprize from it. What then would they take time for? Can they do any thing but join in Demurrer? Can they amend in capital Cases? Or could they amend a Plea in Abatement in any Case? They know very well that they cannot. Can they withdraw their Plea? I believe they cannot do that neither without the Consent of Mr. Attorney General. If this be so, would they take time to consider whether they shall join in Demurrer, when they have no Choice, when it is impossible for them to do any thing else? But, my Lord, the Method of proceeding we are now insisting upon, hath been always taken in capital Cases. I agree when the Question has concerned the Merits of the Prisoner's Case, or when he has been to prepare and consider of some Matter which has been, strictly speaking, his Defence, time hath been allowed, but not in other Instances. Where the Exception taken hath been to the Jurisdiction of the Court, and time has been desired to make it good, it hath been denied; as in the Case of my Lord *Preston*, who was tried before my Lord Chief Justice *Holt*, and other Judges at the *Old-Baily*. My Lord *Preston* insisted, that he was a Peer created by Letters Patent of King *James* the Second, and consequently that the Court at the *Old-Baily* had no Jurisdiction to try him, and he prayed time to produce his Letters Patent in order to prepare and make good his Plea; but the Court refused to give him time for that Purpose. And I believe it will be found, that in all Instances where Pleas have appeared on the first View of them to be merely dilatory, and offered for no other Reason but to delay that Justice which ought to be done to the Crown, the Judges have refused to assist the Prisoner with any time beyond the ordinary Rules of the Court.

Mr. *Reeve*. I shall not take up your Lordship's time much in this Case. My Lord, we think in Civil Actions the Court on Motion would set this Plea aside, but in a Case of Life it is received, and Mr. *Attorney* has thought fit to demur to it. Is any Advantage lost, for the Prisoner to join in Demurrer instantly? I apprehend what they move for is to have time to join in Demurrer. Are they not as ready to do that now, as if they had a Week or ten Days

time given them? Is there any thing else can be done? And is there any Occasion for time to do that which must be done? And cannot they as well join in Demurrer now, as if they had more time to do it? Certainly they may, my Lord, since by the Rules of the Court (as Mr. *Harcourt* informs your Lordship) there is no Rule given, but they are to join instantly. There is no Reason to allow them Time, since they can lose no Benefit or Advantage by joining instantly. So then, as we apprehend, we are in the Course of the Court, and there is no Reason why the Course of the Court should be altered in this Case, we therefore hope that they shall join in Demurrer immediately.

Mr. *West*. My Lord, I think there is nothing in the Exception of his Counsel not being ready to argue his Plea: No doubt they considered of it before they brought it in; and when they had produced their Plea, Mr. *Attorney* demurred to it. I can't see why they should insist so much for time, when they can do nothing else but join in Demurrer; therefore we hope that they shall instantly join in Demurrer.

Mr. *Hungerford*. My Lord, I beg leave to set a Matter of Fact right, that is as to the Case of *Fitzbarris*, which was mentioned as an Authority against us by Mr. *Attorney*, but in truth is not so; for though *Fitzbarris*'s Counsel did join in Demurrer immediately (or *instanter*, as 'tis called) yet that was not by the Coercion of the Court, but they voluntarily offered to join in Demurrer, upon an Opinion (as I presume) of their own great Abilities and Self-sufficiency in the Matter. But we have not that Opinion of our *extempore* Performances, but desire time to consider of this Matter. As to my Lord *Preston*'s Case, quoted by Mr. *Solicitor*, it is true the Court did not give him leave to send for his Letters Patent, because, as my Lord himself had opened them, and the Truth was, his Letters Patent were dated at St. *Germain's*, and granted by K. *James* there, after his Abdication; and it would have been the highest Indignity both to the Court and the Government, to have such Letters Patent pleaded, or insisted on; and I believe no Gentlemen at the Bar then, or now, would have signed such a Plea, which if allowed would have implied that the Government was not well settled in their Majesties King *William* and Queen *Mary*, and that King *James* (though at St. *Germain's*) had a Right to create Peers, and consequently was really King. But if my Lord *Preston* had had Letters Patent regularly granted by King *James* or King *William*, in his Chambers, can any one say they would not have given him leave to send for them? Most certainly they would; but it appeared they were dated at St. *Germain's*, and granted to him there; that, with humble Submission, was the Reason why they would not indulge him with Time, and that Precedent therefore, I hope, is of no Weight in this Case. It is said we are tied down by our Plea; we knew our own Strength when we pleaded it, and therefore ought to be ready to argue it: But if my Memory doth not fail me (and therefore I speak it with some Doubt) I believe there are Instances where even in a criminal Case a Plea hath been amended. I believe it was so done in the Case of my Lord *Banbury*, which was a Plea to the Jurisdiction of the Court.

My

My Lord, we shall desire but a very little Time, which I hope will be granted us.

Mr. *Ketelbey*. My Lord, as to *Fitzbarris's* Case, the Plea was amended there: The first time it was brought in by Mr. *Fitzbarris* himself to the Bar, the Plea was brought in and read in Court; after the Plea was read the Court assign'd him Counsel, and gave him from *Saturday* to *Wednesday* to put the Plea in a regular and legal Method, and it was altered and brought in again on *Wednesday*. As to what the *Attorney* says, that the Court compelled him to join in Demurrer instantly, the Words of the Book which I have in my Hand are; "We that are assign'd Counsel for the Gentleman at the Bar, we don't design to delay the Proceedings, but to declare that we will join in Demurrer with them immediately." These are the Words of the Book; so that it was the voluntary Act of the Counsel, and they were not at all compelled to it by the Court. As to what Mr. *Harcourt* observes to be the Course of the Court, and that we can't shew one Instance to the contrary; I don't know whether they can shew one Instance for it, except in the Case of *Fitzbarris*; if they can shew in any capital Case one Instance, we shall submit.

It is called a frivolous Plea, the Variation of one Letter, and never writ otherwise: Whether it is frivolous or not will appear when it comes before your Lordship in Judgment: As to its never being wrote otherwise than with an *E*, I don't believe they can find it in any Book either great or small spelt so, unless they have met with it in *Instructor Clericalis*: All the Books of Authority are otherwise; I believe that one carries with it but little Weight. As to my Lord *Preston's* Case, which Mr. *Sollicitor* is pleas'd to cite against us, that the Court would not allow him time to make out his Plea, Mr. *Hungerford* hath given an ample Answer to that, and a true one as to the Circumstances; but if the Case of that Lord had been such as the Gentlemen of the other side are pleas'd to state it, What doth it prove, but the contrary to what the Court did in *Fitzbarris's* Case, and therefore the most that can be made of it is one Authority against another? and where Authorities are equal, we hope the Indulgence of the Court will interpose in favour of Life, and grant us such reasonable time as the Nature of the Thing requires, and not compel us instantly to join in Demurrer.

Mr. *Att. Gen.* My Lord, I beg leave to state one Fact right, and that is as to *Fitzbarris's* Case: They say the Plea was put in, and afterwards amended; that is a Mistake; the Fact was that his Wife brought a Plea into Court, and offer'd it to the Court, and press'd it might be received; but Mr. *Fitzbarris* was advis'd to consider what he did, and thereupon he took it back, and afterwards brought a Plea in, which was receiv'd, and after that it was never alter'd.

L. C. Just. I dare say it is the first time that ever in a capital Case, when a Plea in Abatement was pleaded, and the *Attorney-General* thought fit to demurr to it, that the Party desir'd time to join in Demurrer. You are not entitled to any time by the Course of the Court, you can't shew any Instance to prove it: The Question then is, Whether you have given any Reason for us to indulge you with time, that never was granted in a Case of this Nature.

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You have pleaded in Abatement; you were enabled so to do by having a Copy of the Indictment; you brought your Plea ready engros'd, and put it in. Mr. *Attorney* not being aware of any such Plea, it could not be expected he should be ready with a Demurrer in his Hand to this Plea, and therefore he desired time to consider of it. The next Day it could not be, nor the next after that, they being Holy-Days; but then the very first time that he had an Opportunity to come, he comes and demurrs to your Plea: But you desire time, and why should you not have time, when they had time, to consider whether you shall join in Demurrer.

Do you want time to consider whether you shall join in Demurrer, after you have had time to plead and to draw up your Plea, and have brought it in to Court? Why should you have time? Can you do any thing else but join in Demurrer? You can do nothing else: And unless you can shew any Reason why the Court should indulge you, if you don't think fit to join, we must give Judgment against your Plea. You tell us of the Case of *Fitzbarris*; that is as widely different from this Case as any thing can be. It was a Case of great Difficulty, that required great Consideration, when a Party comes and informs this Court, and insists he is not within the Jurisdiction of the Court. When a Matter is urged to us as a Question of Law, if we were not bound as we are by Act of Parliament, we would certainly assign Counsel to the Prisoner to plead a Matter of that Nature; and when the Court in *Fitzbarris's* Case had assigned him Counsel, were those Counsel to argue immediately? It was nothing but Justice to give them time after they were assigned, to argue a Plea of that Nature; a Plea in which the Prerogative of the Crown, the Jurisdiction of the House of Lords, and the Rights of the Commons were concerned. The Court would not run hastily into the determining of that Matter, without hearing it debated by Counsel, and therefore they gave the Counsel time, upon which they might be able to give a just Judgment. Is there any thing in this Case like it? You have pleaded in Abatement. Mr. *Attorney* hath demurred to your Plea, and you desire we would give you time to do that which you must do, or do nothing at all. Is there any Pretence? Could you in this Case come with any Colour or Pretence of Justice, and desire of us to amend your Plea? Is there any thing else you can do? This is nothing but a pure dilatory Plea, and he puts in this Plea. The Question is, whether it should be an *O* instead of an *E*. You are not entitled to any thing of this Nature; it is nothing but an affected Delay; and it cannot be thought to be for any other Reason; therefore you must join in Demurrer immediately: If not, we must give Judgment against your Plea.

Mr. *Just. Powys*. My Lord Chief Justice hath given so full and clear an Account of the Matter, that I am satisfied, and do think you must instantly join in Demurrer.

Mr. *Just. Eyre*. I am of the same Opinion. In capital Cases the Party is obliged to plead *instantur*; for the Proceedings are carried on at the Bar without giving Rules: This is the constant Course; and the Course and Practice must be the same, in regard to the time for joining in Demurrer: But the Court is still at liberty to allow

further time, if it be necessary to the Justice of the Cause; and if it could be of any Use to the Prisoner in the next Step he is to make, I should not be against it: But as the Case now stands, that he has nothing to deliberate upon, that he can lay no new Matter before the Court, but is obliged to abide by his Plea, and can neither withdraw nor amend it without Consent, but must necessarily join in Demurrer, and has no other Choice; I think it would be a manifest Delay of Justice to allow further time; and am therefore of Opinion, that he ought to join in Demurrer immediately.

Mr. *Just. Fortescue Aland.* I am of the same Opinion. The Prisoner can have no Benefit by our giving him time to join in Demurrer, except it be to put off the Trial: The Court makes a Difference in all Cases, both Civil and Criminal, between dilatory Pleas and other Pleas. An affected Delay is never to be suffered, more especially in a capital Case; and here it is plain, that when the Counsel for the Prisoner brought in this Plea, that they had consider'd it before, and thought it of Service to the Prisoner, and nothing more remains now than to join in Demurrer. The *Attorney-General*, by his Demurrer, says it is not a good Plea; and the Prisoner has nothing further to say, but that it is a good Plea; and if he does not think fit to say that, we must give Judgment against him. I remember in the Case of the King and *Gordon*, when the Prisoner came to the Bar, having lapsed the time of taking Exceptions, in order to quash the Indictment, he moved the Court for time to plead in Abatement; but the Court refused it, alledging they would give no Opportunity for a dilatory Plea: and I think there is the same Reason, if not stronger, in this Case, where the Prisoner has nothing to do but to join in Demurrer; that is to say, to submit to the Judgment of the Court, whether this be a good Plea or not; and that may be done immediately, as well as if the Prisoner had never so much time for it.

Prisoner. My Lord, I know not how consistent this Rule of Court may be, that in a capital Case of the highest Nature whatsoever that I should not be allowed time to join in Demurrer, when in criminal Cases of an inferior Nature there is a Four-days Rule given. The Counsel for the King were indulged from *Wednesday* to *Saturday*: I hope I shall have the same Indulgence on my Part, to consider whether I shall join in Demurrer or not.

I am so far from desiring to give any Delay, tho' I am satisfied how maliciously this Prosecution is carried on, and am pretty well acquainted with every Step taken in the Management in *Essex*; and I am willing, rather than to continue to be thus hunted up and down the World, to retract my Plea, and plead generally Not Guilty.

L. C. Just. If Mr. *Attorney* consents to it.

Prisoner. I am obliged to my Counsel for the Care they have taken of me, and have here in my Hand a Joinder in Demurrer engrossed and signed by them, and ready to deliver in; but I won't offer it, because I won't give any Delay to the Justice of the Court.

Mr. *Hungerford.* He stands upon his Plea of Not guilty to the Indictment.

L. C. Just. You have pleaded Not guilty; you have likewise pleaded a *Misnomer*, which hath

been demurred to: Your Plea therefore now must be as pleaded in chief, and as put in at the time when it was first pleaded; you don't desire you may plead the same Matter again this Day?

Mr. *Hungerford* and Mr. *Ketelbey.* We do not.

Mr. *Att. Gen.* If I understand the Prisoner right, he pretends to be desirous that his Trial may come on, and therefore he is willing to withdraw his Plea in Abatement, and abide by his Plea of Not guilty: 'Tis what we desire likewise; and I wish we could go on in this Case as we ought, in a decent Manner, without having groundless Reflections continually made. Something hath been said of the Maliciousness of this Prosecution, and indirect Management, by some Body, 'tis not said whom, in the County of *Essex*. My Lord, I defy any Man to shew any single Step taken in carrying on this Cause, but what is perfectly right and justifiable.

I wish, out of Charity, that the Prisoner would consider the Circumstances he is in; if he did, he would not say this Prosecution is carried on by Malice; for if I know any thing of Evidence, I have no Reason to doubt but at the proper time there will enough appear against him to convict him.

Mr. *Hungerford.* I dare say the Prisoner did not entertain a Thought of reflecting upon any of the Profession concern'd in carrying on this Prosecution. But pray, my Lord, give me leave humbly to represent, that the Man's Case is hard; he tells you he is in Chains, and I see he is in great Pain even now; and I earnestly wish that he were eased in that Matter. I do not pronounce these Words out of any Affectation of Popularity, or to captivate the Auditory, as was insinuated in the Beginning of this Proceeding, but in mere Compassion I have to the Prisoner, and to all Mankind, which Temper I have shewn thro' all the Stages of my Life.

L. C. Just. You have been told by the Court already our Opinion, that it is not in our Power. We were told, and I perceive it is not denied, that he did once escape after he was taken; and if so, for the better securing him he was put in Chains: Do you ask us to take those Chains off? Can we do it? Or should we do it? If he should escape out of the *Tower*, shall not we be guilty of that Escape? The Circumstances of the Case ought and must govern. He says he is Innocent, and I hope he is; and if he be, he takes the properest Measures to knock his Chains off, let him make his Innocence appear; and it will appear whether he is Innocent or not, when we come to try the Cause.

Prisoner. If I thought it was contrary to Law to take off these Chains I should not mention it. I desire to observe, that these Chains were not put on till after a fourth or fifth Examination.

As to the Escape out of the Messenger's Hands, he never shew'd me his Warrant, and I did not know any Authority he had to keep me. As to escaping out of the *Tower*, it is not in my Power, neither is it my Inclination. I desire therefore to be eased of these Chains.

And another thing I desire is, that I might have an Opportunity to see my Relations, my Wife, that she might come to me.

Mr. *Ketelbey.* That was granted in *Fitzharris's* Case.

L. C. Just. As to the taking off the Chains you have had the Opinion of the Court, we cannot, we ought not to do it, it is a Breach of our Duty; as to the other Matter, he desires to see his Relations, what do you say to it?

Mr. Att. Gen. My Lord, as to *Fitzbarris's* Case, there was a great Deal of Caution used as to the Persons permitted to see the Prisoner; before they went in they were to be searched, and they were to be with him only in the Presence of the Keeper.

Mr. Ketelbey. It is mentioned there, that the Wife had misbehaved herself, and that a particular Caution ought to be taken with respect to her; but the Access of a Wife to her Husband under such unfortunate Circumstances was never denied, I believe, in any Case whatsoever.

L. C. Just. Upon a proper Application to the Court, the Court hath sometimes ordered that Persons named in their Rule may have Access to the Prisoner in the Presence of the Jaylor, and not otherwise, and that they should be searched before they come in. If you think fit to desire it on those Terms, the Court will consider of it.

Prisoner. My Lord, I must desire upon those Terms as the Court thinks fit, and that my Sister may have Liberty to come with my Wife.

L. C. Just. Your Wife and Sister: It may be reasonable for them to have Access to you, but they are not to be with you but in the Presence of the Jaylor*.

Mr. Serj. Pengelly. My Lord, I beg leave to observe whether it is usual for the Court to make such Rule: On the Trial of Sir *John Friend*, there it was only intimated by my *Lord Chief Justice Holt*, but the Court did not order it by making any Rule; they know they may apply properly, and there may be Directions given to the Lieutenant of the *Tower*: As to the Council that is allowed in the Act of Parliament; and as the Court hath a Power to assign Counsel, it is proper for the Court to give Directions for them to be admitted at all Seasons, and at all times.

L. C. Just. Why the Wife and the Sister?

Prisoner. Yes, my Lord, my Wife and Sister. I don't put in a Number of Relations.

L. C. Just. I do think, Brother *Pengelly*, that the Court are trusted in a Matter of this Nature; and may regularly give Directions with what proper Cautions they think fit. Why, he says, he is denied the Comfort of his Wife; he desires that his Wife and Sister may be admitted to come to him. You say it hath been sometimes intimated, but not ordered; if it was intimated by us, and not complied with, I believe I should make no Difficulty to order it, provided it be with a reasonable Caution, and no Inconvenience in it.

Whether is it the Wife or Sister you desire? I think one is enough, and she must submit to be searched †.

Mr. Serj. Pengelly. Before your Lordship makes any Rule in this Case for the Prisoner, I beg that he may be obliged to amend his Plea of Not guilty, and that he may plead by the Name of *Christopherus*, by which he is indicted. You have been brought to the Bar, and have put in a Plea by the Name of *Christophorus*; if you are in Earnest that you desire to wave your Plea in Abatement and have it withdrawn, you must change the Name wrote in the Commencement of the

Plea; and make it as it is in the Indictment, that there may be no Embarrassment in the Proceedings at the End.

L. C. Just. You consent to have it amended?

Mr. Hungerford. The Prisoner at the Bar hath consented to withdraw his Plea in Abatement; and though the Plea were such that he might have prevailed upon it, yet after his pleading *Not Guilty* in general, there is not in the Course of this Proceeding any Period of time wherein he can avail himself with the Matter of this Plea in Abatement; and therefore we submit it to the Court, and to the King's Counsel themselves, to put this Matter into such a Form, that the Prisoner may come to a fair Trial upon the Issue of *Guilty* or *Not Guilty*.

Mr. Ketelbey. I believe the Prisoner is willing to come into the Method offered; and though this Plea hath been called a frivolous Plea, yet the Precaution taken by the Gentlemen of the other Side seems to give a Sanction to it, and makes it not so frivolous as hath been represented.

L. C. Just. What do you mean, *Mr. Ketelbey*? Here is nothing asked of you: You do desire to wave and withdraw your Plea; we desire to know, if you do, whether you will plead by the Name as it is in the Indictment.

Mr. Ketelbey. My Lord, we do.

Mr. Att. Gen. We desire the Plea of Not guilty may be amended, upon the Consent of the Prisoner.

Mr. Hungerford. We offer now, let the Piece of Parchment be entirely abolished, take it entirely out of the way, and we plead Not guilty.

L. C. Just. Your Plea must be now *Et prædictus Christopherus ductus hic ad barram. &c.*

Mr. Ketelbey. We submit it.

Prisoner. I desire to withdraw and retract the other Plea, and do plead Not guilty.

L. C. Just. No, it must be mended; you will hear how it is when it is struck out and amended, and then you will tell us whether it is mended according to your Intent or no.

Cl. of the Cr. *Et prædictus Christopherus Laver allocutus existens per Cur' hic de ali' proditiõ' prædicta per Indictament' prædict' ei superius imposit' qualiter se velit inde acquietari, Idem Christopherus Laver dicit quod ipse in nullo est inde culpabilis Et inde de bono Et malo ponit se super Patriam.*

L. C. Just. Is this according to your Intention?

Prisoner. Yes.

Mr. Serj. Pengelly. My Lord, I believe it is usual in these Cases for the Court to appoint a Time for the Trial; the last Return but one in this Term is the 19th of *November*, so if you please it may be the *quarto die post*, which I think is *Wednesday*, if that be suitable and convenient to the Court.

L. C. Just. What say you to it?

Prisoner. I desire your Lordship would give me a longer Day to prepare for my Trial. I have a great Number of Witnesses, twenty or more, most of them People of the first Quality. I hope I shall have the common processes of the Court to bring them here; and, my Lord, another thing I desire is, that I may have a *Habeas Corpus ad testificand'*, to bring my Lord *North* and *Grey* and my Lord *Orrey* at my Trial. That,

*See *Hambden's* Trial, No. 136. and *Rookwood's* Trial, No. 153.
barris, No. 102.

† See the Proceedings against *Fitz-*

my Lord, you would please to give me as long a Day as you can to prepare for my Trial; if your Lordship please it may be *Monday* the 26th, and then your Lordship will have a Day of Rest between.

L. C. Just. That will be out of the Return.

Mr. *Hungerford*. They must appear, and then may be adjourned.

L. C. Just. It cannot be adjourned over beyond the Return.

Mr. *Ketelbey*. My Lord, the Prisoner hath shewn that he hath in no Respect affected Delay.

L. C. Just. It cannot be.—God forbid that we should deny the Prisoner to have a reasonable time to prepare for his Defence; it is three Weeks from hence; you have been aware of it long before; you have known the Indictment was found; you have had a Copy of it; you have known your Charge; and is not all this Time enough? Consider, the Term draws toward an End, and it interferes with the common Business of the Term if we carry it to a further Day: we do agree the *Venire* to be returned *Octab. Martini*, and the Trial then must be the *quartodie post*, which will be *Wednesday* the 21st. And it is proper for us to give you an intimation now, not to expect any further time, or the Jury to be adjourned; do but consider what a Multitude must be brought up, eighty at least: The Prisoner hath a Privilege to challenge thirty five peremptorily, and after, for Cause, as many as he pleases; so that a great Number must be brought up; and for them to be forced to attend here the 21st, and still the Trial to be put off, it will be a great Inconvenience and a great Charge, therefore that must be the Day, we shall not consider to put it off till any farther Time.

Prisoner. I beg leave for one Word more; I have a Witness that is to come from *Edinburgh*, and I can hardly have him here by the 21. If I could but be indulged a few Days longer——

L. C. Just. We cannot do it without making an Error in the Proceedings.

Prisoner. Is there no other Return for a *Venire* to be returnable?

L. C. Just. No, there is none but that, and the last Return of the Term; and it is impossible to try him that Day, without doing a manifest Wrong and Injustice to the People of *England*.

Prisoner. My Lord, where a Man's Life is at Stake, if I should not be indulged over till the last Day of the Term, for want of a Witness I may be in danger of my Life: I hope therefore your Lordship will please to indulge me.

L. C. Just. You have had a great deal of Time already, Time sufficient to bring your Witness from *Edinburgh*, or any other Place, and we cannot do it. To put you off to the last Day of the Term, is to do a manifest Wrong to the People of *England*.

Prisoner. The Reason why I mention it over and over again, is because I would not give your Lordship the Trouble to be turned over to another Day, on troubling your Lordship with Affidavits.

L. C. Just. In what you lay before us as Matter proper for Consideration, we shall do what is just. It is not proper for you to tell us what we have to do, and to make Bargains with us. That is the Day of Trial; it must be on *Wednesday* the 21st: Your Counsel will tell you it is im-

possible to comply with your Request, without doing the manifestest Injustice in the World. Or else, whether to try you upon the 21st, or in two, or three, or four Days after, I don't think the Consequence worth disputing, but we can't do it without doing Wrong and Injustice to the People of *England*.

Prisoner. I hope I shall be indulged two or three Days.

L. C. Just. We can so no more. The Time you have had for Preparation for your Trial we think abundantly sufficient to prepare your self, therefore we are of Opinion that the Trial go on at that Day; and we order it accordingly.

Mr. *Ketelbey*. Your Lordship will please to order a Rule for his Wife and Sister to come to him.

L. C. Just. No, not for his Wife and Sister.

Prisoner. My Lord for a single Woman to come thro' the Courts and the Guards, to be examin'd by her self, it's not so proper, my Lord.

L. C. Just. You shall have a Rule from the Court for your Wife to come; as for your Sister, we must leave that to the Direction from another Place. We must not be too forward in granting Women to come, we remember an Escape occasion'd by a Woman coming thither.

Mr. *Att. Gen.* There must be a Rule to bring him up at the Day of his Trial.

Mr. *Ketelbey*. My Lord, as to having his *Habeas Corpus ad Testificand'* for my Lord *North* and *Grey*, and my Lord *Orrery*.

L. C. Just. You must give Notice, and then move what you please.

Mr. *Hungerford*. By what was said, I did understand, I must confess, that though the Rule was made for the Wife only, yet that it might be in the Power of the Gentleman Jaylor to permit her Sister to come with her.

L. C. Just. We give no Direction concerning it. He will have a Rule from the Court that will be his Direction, unless he receives any additional Direction from another Place, but the Court names his Wife only.

Mr. *Ketelbey*. There was another thing mentioned, that he may have Copies of his Papers that were seized.

L. C. Just. Give Notice for what you think fit, and move it.

Die Mercurii 21 die Novembris 1722.

THIS Day *Christopher Layer*, Esq; was brought to the Bar, in Custody of the Lieutenant of the *Tower*, in pursuance of the Rule of Court made for that Purpose, in order to his Trial.

Cl. of the Cr. You *Christopher Layer*, now Prisoner at the Bar, these Men which you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your Life and Death: If you will challenge them, or any of them, your time is to challenge them as they come to the Book to be sworn, and before they be sworn.

Heneage Norton, Esq;

Mr. *Hungerford*. My Lord, we desire that his Irons may be taken off.

L. C. Just. The Irons must be taken off; we will not stir till the Irons are taken off.

Prisoner. I hope, my Lord, that the Irons shall be now taken off.

L. C. Just.

L. C. Just. They shall be taken off.

Mr. Hungerford. The poor Man hath been fo opprefs'd by these Chains, that he was not able to prepare his Brief. I had it not till late last Night; and it is ten Sheets of Paper.

Mr. Att. Gen. Whose Fault is that? You have had Time enough.

Mr. Hungerford. It is the Fault of the Irons, *Mr. Attorney*, the Brief was not brought to me till Eleven of the Clock last Night.

L. C. Just. It was an Omission; they should have been taken off before he came to the Bar.

Mr. Att. Gen. There was Direction given for their being taken off before; how they came not to be taken off, I can't tell.

L. C. Just. Are the Irons taken off?

Gent. Faylor. Yes.

L. C. Just. Go on.

Cl. of the Cr. Heneage Norton, Esq;

L. C. Just. You must call over all the Jury.

Mr. Hungerford. I thought they would be all called over once, before any one is endeavoured to be sworn.

Cl. of the Cr. They have been called over already.

Mr. Hungerford. When? Not since the Court fate, I am sure. I would know whether the Intention is, that all the Pannel be called over before any one of them is sworn, or that the Pannel is to be called over but once, and the Jury-men sworn as they then appear. What I have observed is, the Clerk calls over the whole Pannel first, to see how many appear; and then calls it over again, and swears them as they answer to their Names if not challenged.

L. C. Just. What you observe is what hath been done at the *Old-Bailey*; there they call them over first; and then they call them over again, and as they appear they are sworn presently. But by the Courte of the Court here they are called over before the Court is sitting, and they mark those that appear. That is not sufficient; but they are called over again in Court, and then their Appearance and Non-appearance being marked, they do call those over again that did appear; and as one appears, if there is no Objection to him, he must be sworn.

Mr. Hungerford. I have observed them to be called over when no body is by, in civil Cases; but in such a Case as this, a Case of High-Treason, where peremptory Challenges is allowed, it is some Guide to the Prisoner in making his Challenges, to know before-hand who do and who do not appear.

Mr. Ketelbey. My Lord, with Submission, in all criminal Cases there is no other Method than calling over the Pannel according as it is transmitted into Court. 'Tis probable several of the Jurors who did not appear at their being called over before the sitting of the Court will now appear; and therefore what we pray is that the whole Pannel may be now called over in the Order as it stands, not only those who answered to the first Call, but those also who then made Default.

Mr. Att. Gen. I can't imagine what they mean.

L. C. Just. This Debate arises from not understanding one another: You have the Direction of the Court; the Pannel is to be called over, if any Man doth not appear, his Default is, marked and recorded. When any one doth appear, and he is not challenged, he is to be sworn.

Mr. Ketelbey. I came thro' the Hall just now, and there is such a Crowd that it is almost impossible for any one to hear when they are called.

Prisoner. My Lord, I hope they shall be once called over before they come to be sworn; for as to their being called before, that was before I came; it will spend but a little time to read over forty or fifty Names.

L. C. Just. Call them over. I would not deny any thing that is desired in Reason by or on the Prisoner's Behalf; consider what you are doing; the Prisoner hath had a Copy of the Pannel, he hath examined it, and considered who are proper for him to challenge peremptorily, and he hath considered who they are that he may challenge with Cause.

I can't imagine; it was never done in this World: We have asked our Officer: They ought to call over all the Pannel; but if they do not appear, their Default is marked; if they do appear, the Prisoner knows whether he likes them or not.

Therefore when they come to the Bar, if not challenged they must be sworn.

Consider what this Demand is; we shall be an Hour calling them over the first time, that it may appear to the Prisoner whether they appear or not; then afterwards you are to call them over again, and to have them brought up again when they come to be sworn. But if it ever hath been done, it is fit it should be done now; but our Officer tells us it never was done, and why should you insist upon it now? you have had all the Indulgence the Law allows you.

Prisoner. I have not had a Copy of the Pannel above two Days before. Here hath been in this Cause all the vile Practices——

L. C. Just. You must keep within due and proper Bounds. You are come now to be tried for an Offence you are charged withal; but you are not to arraign and challenge every body else; you have no Right to do it. If in proper time it appears you have been ill used, the Court will do you Justice, and punish those that have been guilty of any Misbehaviour.

Mr. Serj. Pengelly. My Lord, if they have any Objection to the Jury, they are to challenge them peremptorily, when the Jury come to be sworn. Then is their time; they are not to entertain the Court with Speeches before.

L. C. Just. No it is not proper.

Consider how unreasonable it is for the Prisoner to arraign somebody's Misbehaviour without naming him. But in this Method he is insinuating Objections, which we can't examine whether they are true or false, on purpose to captivate People; and it may be, mislead them in the Trial of the Cause.

Mr. Ketelbey. As I came in, I observed that all the Avenues to the Court are barricadoed up, and only a narrow Place left on the Stone Steps, and a Guard kept there to keep out whom they don't think fit to let in.

Mr. Att. Gen. I know nothing of it; and I dare say nobody will give any Countenance to hindering either Jury-men or Witnesses coming into Court, when their Attendance is required here.

Mr. Ketelbey. I had much ado to get in myself.

L. C. Just. There shall be due Care taken, that any of the Jury that appear, we will order Way to be made for them.

Mr. Hungerford.

Mr. *Hungerford*. My Lord, I will take up but very little of your Time in this Matter; I find I was not understood before; that which I contend for is, that the Pannel be read thro' once in the Prisoner's Presence; to see what Jury-men appear, before any Jury-man is sworn. The Prisoner hath a Right to challenge thirty five peremptorily, or without assigning any Cause at all. Now, my Lord, this is a Favour, an Indulgence granted to him by Law, and he is therefore entitled to it in Justice. It is of great Use to the Prisoner, in order to enjoy the true Benefit of this Indulgence that the Law gives him, that he knows who doth and who doth not appear, for this Reason perhaps, if he did know that such an one appears he will take him, and if he knows that such an one appears he will challenge him. And if he know that such an one, who perhaps stands low in the Pannel, and of whom he has a good Opinion for being an honest Man, will appear, he will challenge as many as he can of the preceding Persons, in order to have him, that honest Man, of his Jury. And as to the Time the reading of the Pannel will take us, (though by the way it might have been over by this time) I am sure your Lordship and the Court will not regard what Proportion of Time you spare us, to let the Prisoner enjoy the Benefit of the Law in this Case, and to have a full Enjoyment of the Indulgence of the Act of Parliament in its full Latitude, that he may know and judge (as far as the Law hath enabled him) who is to pass upon him as to his Life and Death. I beg therefore, my Lord, that the whole Pannel may be called over once before the Prisoner is put to challenge.

Prisoner. My Lord, What we humbly move for is what is every Day done at the *Old Bailey*, that they may be once called over.

All I desire is what is done there, and by the same Reason ought to be done here in the same Case where a Man's Life is concerned. I humbly move it that they may be called over.

L. C. Just. We shall grudge no Time to do the King and you Justice. It is dangerous to make a Precedent, an Innovation: But if you desire it, I don't find the King's Counsel object to it.

Call over the Pannel.

You don't expect all should be brought into Court, but only to know if they do appear?

Mr. *Hungerford* and Mr. *Ketelbey*. No, no.

L. C. Just. The Prisoner hath a Solicitor; let some Body go down upon the Steps, the Solicitor be present, and then he will hear who do and who do not appear.

Mr. *Hungerford*. We humbly thank your Lordship; this is a real Indulgence, and we humbly thank your Lordship for it.

Cl. of the Cr. Calls over the whole Pannel.

You the Prisoner at the Bar, these Men which, &c.

Mr. *Ketelbey*. If your Lordship pleases to stay till the Solicitor comes in, because he went out to observe who did appear, and who did not appear.

Cl. of the Cr. Heneage Norton. Have you ten Pounds a Year Freehold and Copyhold in the County of *Essex*?

Norton. I have no Freehold, only Copyhold.

[Then he was set aside.]

John Wilks. [Ask'd the same Question, as were all the others who appeared, before they were either challenged or sworn.]

Prisoner. I challenge him.

Mark Frost.

Prisoner. I challenge him.

Thomas Clarke.

Prisoner. I don't challenge him.

Crier. Thomas Clarke.

Sworn.

Henry Longbotham.

Prisoner. I say, I think his Name is wrong spelt.

Mr. *Soll. Gen.* We are not now upon Exceptions for Mis-pelling. If his Name is written as he is usually called, it is right.

Prisoner. He says his Name is with an *o*, and it is written here with an *a*.

L. C. Just. Doth the Copy delivered to you agree with the Pannel? if it doth, as long as it hath the same Sound it will do.

Prisoner. With humble Submission in the Case of *Francia* there it was allowed.

Mr. *Hungerford*. My Lord, it is not the same Sound *Longbotham* and *Longbothom*, and in *Francia's* Case the Difference of a Letter was allowed to be a good Exception.

L. C. Just. You are by Law to have a Copy of the Pannel delivered to you; if that Pannel varies from the other, it is a just Exception; but if you object against a Jury-man because his Name is not right spelt, and that hath the same Pronunciation, and he may be called sometimes one and sometimes another it is well enough.

Mr. *Ketelbey*. My Lord, as to this Objection, whether the *Longbotham* is right, or the *Longbothom*, whether it is with an *A* or an *O*.—

Cl. of the Cr. You mistake, it is *Longbotham*, and not *Longbothom*.

Prisoner. The last should be an *O* instead of an *A*, *Longbothom*.

L. C. Just. Therefore we will ask the Gentleman how his Name is usually pronounced, whether it is not pronounced sometimes *Longbothom* as well as *Longbotham*.

Mr. *Longbothom*. Yes, my Lord, it is.

Prisoner. He says he spells his Name with an *O*, and here it is with an *A*.

Longbothom. I always spell my Name with an *O*, but my Letters are generally directed to me with an *A*.

Mr. *Hungerford*. He hath a Copy of the Pannel delivered him by vertue of the Act of Parliament; if the Copy be not a true Copy, it is not right according to the Direction of the Act.

L. C. Just. Right.

Mr. *Hungerford*. Now the Pannel which the Prisoner hath is spelt with an *A*, and the Pannel of which this is a pretended Copy, is, I take it, spelt with an *O*.

Cl. of the Cr. No, they are both spelt alike.

L. C. Just. You know it, Gentlemen, as well as can be. Don't let us spend Time where there is nothing in it; we will hear what is proper for our Consideration.

Suppose a Man is called and writ sometimes *Longbothom*, and sometimes *Longbotham*; and suppose he was called by either of these Names, may he not therefore be called by one as well as the other? Is that an Objection to say he writ with an *O*, but People write to him with an *A*? there is nothing at all in it.

Prisoner. Then I challenge him.

Cl. of the C. Isaac Buxton.

Prisoner. I challenge him.

Cl. of the Cr. Richard Scot.

Prisoner.

Prisoner. I challenge him.

Cl. of the Cr. John Wormlayton,

Prisoner. I challenge him.

Cl. of the Cr. John Andrews.

Prisoner. I don't challenge him.

Mr. Att. Gen. I challenge him for the King.

Cl. of the Cr. Thomas Waterhouse.

Stephen Huff.

John Thorowgood.

Christopher Baily.

Challenged by the Prisoner.

Isaac Potter. Sworn.

Cl. of the Cr. William Lord.

Prisoner. I challenge him.

Cl. of the Cr. Hezekiah Haynes, Sworn.

Thomas Heckford, jun.

Prisoner. I challenge him.

Cl. of the Cr. Richard Waglett.

Prisoner. I don't challenge him.

Mr. Att. Gen. I challenge him for the King.

Mr. Ketelbey. *Mr. Attorney* is pleased to challenge him for the King; we humbly insist on it, that *Mr. Attorney* is to shew his Cause of Challenge immediately. I own it has been otherwise in one or two late Instances; but I submit it, if that Practice should prevail, whether the Act of Parliament made on that Occasion would not be in Effect thereby abrogated. The Act is the 33 *Edward I.* and the Words of it are: "If they that sue for the King will challenge any Juror, they shall assign of their Challenge a Cause certain, and the Truth of the same shall be inquired of according to the Custom of the Court." Now, my Lord, I beg leave to observe upon this Pannel there are a hundred and odd Persons, if *Mr. Attorney* is not obliged to shew his Cause of Challenge, when he challenges for the King, till all the Pannel is gone through, this Act of Parliament will be of no Validity whatsoever. If there had been but a few returned (twenty four, or such a Number) then there might have been some Colour for going through the Pannel before there was any Cause assigned for the Challenge; but since this modern Practice has obtained to make so numerous a Pannel, if they are not obliged to shew Cause till the Pannel is gone through, that Law is intirely a dead Letter, and of no Significancy.

L. C. Just. You know your Objection is of no Validity; you cite an Act of Parliament, and you know the constant Practice is against you.

Mr. Just. Eyre. Though the Counsel for the King must assign their Cause of Challenge, yet they are not obliged to do it till the Pannel is gone thro', and the Jury-men returned, who are not challenged, are all sworn: This is a Rule laid down in *Hale's Pleas of the Crown*, and has been always the constant Practice in Cases of this kind.

Mr. Hungerford. What your Lordship directed in the last Case is certainly precedented; but I would propose it as a Convenience that the *Attorney* should, as he is every ways entitled, have the Precedence, and might challenge first, and then we will determine after him.

L. C. Just. No, we must not do that.

Cl. of the C. John Lowry. Sworn.

Cl. of the Cr. John How. Set aside for want of Freehold.

Cl. of the Cr. Thomas Pratt. Sworn.

Cl. of the Cr. Richard Rogers.

Prisoner. I do.'t challenge him.

Mr. Att. Gen. I challenge him for the King.

Cl. of the Cr. Edward Pierston.

Thomas Bland.

William Spilltimber.

Alexander Weller.

Thomas Rand.

John English.

Joseph Urwin.

George Frye.

Challenged by the Prisoner.

Cl. of the Cr. Weston Stileman.

Prisoner. I don't challenge him.

Mr. Att. Gen. I challenge him for the King.

Cl. of the Cr. John Crush.

Prisoner. I don't challenge him.

Mr. Att. Gen. I challenge him for the King.

Cl. of the Cr. Thomas Howlett.

Prisoner. I challenge him.

Mr. Serj. Pengelly. I don't know this Method of proceeding: If the Prisoner makes any Challenge, it must be before he comes to the Book to be sworn; but when he comes to lay his Hand upon the Book, he is too late to challenge then.

Prisoner. Whenever I make a full Stop and don't say I challenge, you do.

Mr. Att. Gen. My Lord, the Prisoner is to declare whether he challenges or not; afterwards the King's Counsel are to declare whether they challenge for the King, and the Jury-man is not to put his Hand on the Book till then.

L. C. Just. He ought not to put his Hand on the Book till he is allowed a Jury-man; that if the King or the Prisoner challenge him, they may do it before he lay his Hand on the Book.

Cl. of the Cr. Joseph Capon.

Prisoner. I don't challenge him.

Mr. Att. Gen. I challenge him for the King.

Mr. Hungerford. More have been challenged for the King, than hath been known in any public Trial in my Remembrance.

Mr. Att. Gen. I am surprized at this Observation, when the King has an undoubted Right of challenging whom he pleases, without shewing Cause till the Pannel is gone through.

L. C. Just. It is always done.

Cl. of the Cr. John Clarke.

Prisoner. I challenge him.

Cl. of the Cr. William Chandler. Set aside for want of Freehold.

Cl. of the Cr. William Burrowes.

Prisoner. I challenge him.

Cl. of the Cr. Francis Aylett, Sen. Sworn.

Cl. of the Cr. George Bailey.

John Weekes.

Thomas Ruggle.

Challenged by the Prisoner.

The Prisoner spoke to the Jury-man.

Mr. Sol. Gen. My Lord, it hath been intimated to the Prisoner once already, that he ought to propose his Questions to the Court.

L. C. Just. You are to ask no Questions your self; if you will tell us the Question, we will propose it.

Prisoner. Only to know how he spells his Name.

Cl. of the Cr. William May.

Abraham Lake.

Challenged by the Prisoner.

Mr. Hungerford. My Lord, it will be of some little Use to know for certainty how many he hath challenged; they differ here in the Computation.

Cl. of the Cr.

Cl. of the Cr. He hath challenged twenty eight peremptorily.

Cl. of the Cr. Nathaniel Wesley.

Prisoner. I don't challenge him.

Mr. Att. Gen. I challenge him for the King.

Cl. of the Cr. Benjamin Rutland.

Prisoner. My Lord, I desire he may be asked whether he doth not farm something under the King or on the Forest.

L. C. Just. If it was of any Service to you it should be done; but if it is so, it is no Objection.

Mr. Ketelbey. The Objection was once made in the Case of *Sir William Perkins*. It was recommended to the King's Counsel.

L. C. Just. I deny it. It was not recommended to the King's Counsel, but the King's Counsel did not insist upon it.

Mr. Just. Fortescue Aland. The Court in that Case gave their Opinion, that to be a Servant to the King was no good Cause of Challenge, and my Lord Chief Justice Holt and Treby were present, and *Mr. Attorney General* did not insist on the Jury-man so challenged, but waved the Matter without any Recommendation of the Court.

Mr. Ketelbey. I know no other ways, than if *Mr. Attorney* will do it, as it was done in that Case.

Mr. Att. Gen. I know nothing of the Fact.

L. C. Just. What do you do, do you challenge him or no?

Prisoner. I challenge him.

Cl. of the Cr. Alexander Marshall.

Thomas Selby.

Challenged by the Prisoner.

Cl. of the Cr. John Milligande.

Mr. Hungerford. My Lord, he is searching for a Paper; he challenges him for Cause.

Prisoner. My Lord, what I have to offer is, that this *Mr. Milligande* hath been heard to say, before he came here, that I ought to be hanged; and I apprehend that is good Cause for challenging him, if I make it out.

David Martin called:

Cryer. You shall true Answer make, &c.

Mr. Hungerford. Do you know *Mr. Milligande*?

Martin. Yes.

Mr. Hungerford. What have you heard him declare concerning the Prisoner at the Bar?

Martin. I heard him in Conversation say, that he hoped he should be hanged, for he believed he was Guilty.

Mr. Hungerford. This Objection sure is right. [Mr. Milligande was not sworn.]

Cl. of the Cr. Robert Walker.

Prisoner. I challenge him.

Cl. of the Cr. William Nicholson. Sworn.

Prisoner. My Lord, I have very near all my Challenges, I think they may go on as they are called, if *Mr. Attorney* will challenge no more.

Mr. Att. Gen. You may go on your own way, I shall make no Bargains with you.

Mr. Ketelbey. We don't offer any Bargain, but only an Expedient to save the Time of the Court.

Cl. of the Cr. Nicholas Freeman.

Prisoner. I challenge him.

Cl. of the Cr. Christopher Hill. Sworn.

Cl. of the Cr. Stephen Wood.

Prisoner. I think I have done all my Challenges.

Cl. of the Cr. You have two more:

Prisoner. Let them take them then as they come.

Mr. Att. Gen. I challenge him for the King.

Cl. of the Cr. Richard Bridge.

Prisoner. I challenge him.

John Baines, set aside by Consent, by Reason of Infirmity.

Cl. of the Cr. Robert Barnard. Sworn.

Cl. of the Cr. Leonard Bennett.

Prisoner. I don't challenge him.

Mr. Att. Gen. I challenge him for the King.

Cl. of the Cr. William Sandford.

Prisoner. My Lord, I have the same Objection to this Gentleman as to the other, he hath declared his Opinion before-hand, and that he must make a Sacrifice of me.

L. C. Just. Call your Witnesses.

Mr. Martin sworn.

Mr. Ketelbey. *Mr. Martin*, do you know *William Sandford* of *Rumford*?

Martin. Yes.

Mr. Ketelbey. Have you had any Discourse with him about the Prisoner at the Bar?

Martin. He said, before he was summoned on the Jury, that if he was one of the Jury, he would be for hanging of him. Set aside.

Cl. of the Cr. Thomas Waters.

Prisoner. Sir, I apprehend I have challenged thirty five.

Cl. of the Cr. You have one more.

Prisoner. I will challenge no more, let them go on.

Cl. of the Cr. Thomas Waters. Sworn.

Richard Gray,

Sworn.

William Wheatly.

Mr. Hungerford. I hope that what I am going to offer is proper. There is some little doubt how far he is gone in his Challenges, it is said he hath one more, if the Court would indulge us so far as to let the Persons challenged be called over.

Cl. of the Cr. It is impossible that we should mistake.

Mr. Hungerford. You say he hath one more.

C. of the Cr. Yes.

William Wheatly.

Sworn.

Then the twelve Jurors who were sworn were counted, and their Names were as follow, viz.

Thomas Clarke, Gent.

Isaac Potter, Gent.

Hezekiah Haynes, Gent.

John Lowry, Gent.

Thomas Prat, Gent.

Francis Aylett, Gent.

William Nicholson, Esq;

Christopher Hill, Gent.

Robert Barnard, Gent.

Thomas Waters, Gent.

Richard Gray, Gent.

William Wheatly, Gent.

Cl. of the Cr. Cryer, make Proclamation.

Cryer. O yes, If any one can inform, &c.

Cl. of the Cr. Christopher Layer, Hold up your Hand. Gentlemen of the Jury, look upon the Prisoner, and hearken to his Cause.

He stands indicted by the Name of *Christopher Layer*, late of the Parish of *St. Andrew's Holborn*, in the County of *Middlesex*, Esq; For that he, &c. — Upon this Indictment he hath been lately arraigned, and thereunto hath pleaded Not Guilty, and for his Trial hath put himself upon God and the Country, which Country you are. Your Charge is to enquire whether he be guilty of this High Treason, in Manner and Form as he stands indicted, or Not Guilty. If you find him

him Guilty, you shall enquire what Goods or Chattels, Lands or Tenements he had, at the Time of the said High Treason committed, or at any Time since: If you find him not Guilty, you shall enquire whether he fled for it. If you find that he did fly for it, you shall enquire of his Goods and Chattels, as if you had found him Guilty. If you find him not Guilty, and that he did not fly for it, say so, and no more, and hear your Evidence.

Mr. *Wearg.* May it please your Lordship, and you Gentlemen of the Jury, this is an Indictment against the Prisoner for High Treason. The Indictment sets forth, That he being a Subject of his present Majesty King *George*, but not having the Fear of God in his Heart, nor considering the Duty of his Allegiance, as a false Traitor against his supreme, true, lawful, and undoubted Lord, contriving and to the utmost of his Power intending to change, alter and subvert the Government of this Kingdom, lawfully and happily established under his present Majesty, and to depose and deprive his said Majesty of his Title, Honour, Royal Estate and Government of this Kingdom; and to advance to the Crown and Government of this Realm, the Person in the Life of the late King *James II.* pretended to be Prince of *Wales*, and after the Decease of the said King *James* pretending to be and taking upon himself the Stile and Title of King of *England*, by the Name of *James III.* did upon the twenty fifth Day of *August*, in the ninth Year of his present Majesty's Reign, and at several other Days and Times, at *Layton-Stone*, in the County of *Essex*, falsely, maliciously, and traiterously, compass, imagine, and intend to depose our said Sovereign Lord King *George*, from his Title, regal State and Government, and the said King to kill and bring to utter Destruction.

The Indictment further sets forth, That he the said *Christopher Layer*, to perfect and bring to Effect his Treason and traiterous Purposes, on the said twenty fifth Day of *August*, and at several other Days and Times, at *Layton-Stone* aforesaid, together with divers other false Traitors, to the Jury unknown, did falsely, maliciously, and traiterously meet, consult, conspire and agree, to move and stir up an Insurrection and Rebellion in this Kingdom, against our said Sovereign Lord the King.

The Indictment further sets forth, That he the said *Christopher Layer*, to perfect and compleat his Treason and traiterous Purposes, on the said twenty fifth of *August*, at *Layton-Stone* aforesaid, with Force and Arms, did falsely, maliciously, and traiterously publish a certain malicious, seditious, and traiterous Writing, containing in it self, and purporting to be, an Exhortation and Promise of Rewards to the Subjects of his said Majesty, to persuade and excite them to take up Arms and levy War against our said Sovereign King *George*.

The Indictment further sets forth, That the said *Christopher Layer*, together with other false Traitors to the Jury unknown, to compleat and bring to Effect his traiterous Purposes, on the said twenty fifth Day of *August*, at *Layton-Stone* aforesaid, with Force and Arms, did falsely, maliciously, and traiterously meet, consult, conspire and agree, to exalt to the Crown and Royal Dignity of this Realm the Person in the Life of the late King *James II.* pretended to be Prince

of *Wales*, by means of an armed Force and Troops of Soldiers, for that Purpose to be raised and levied.

The Indictment further sets forth, That the said *Christopher Layer*, to perfect his said Treason, on the said twenty fifth Day of *August*; at *Layton-Stone* aforesaid, maliciously and traiterously did raise, levy, and retain several Men, to the Jury unknown, to take up Arms and levy War within this Kingdom, against our said Sovereign Lord the King.

That the said *Christopher Layer*, to perfect his treasonable Purposes on the said twenty fifth Day of *August*, at *Layton-Stone* aforesaid, together with divers other false Traitors, to the Jury unknown, did falsely, maliciously, and traiterously meet, conspire and agree, to take, seize, imprison and detain in Custody the Sacred Person of our said Sovereign Lord the King, against the Duty of his Allegiance, against the Peace of the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided. To this Indictment the Prisoner hath pleaded, Not Guilty.

Mr. *Serj. Pengelly.* May it please your Lordship, and Gentlemen of the Jury; the Prisoner at the Bar, Mr. *Layer*, comes now to be tried before you, for a wicked and detestable Conspiracy against the Person of his Majesty, and against his Government; and this in favour of an attainted and abjured Pretender; a Pretender whom the Prisoner himself has abjured in Words, and ought to have renounced in his Heart,

The Indictment contains a Charge of High-Treason against the Prisoner at the Bar, for compassing and intending the deposing the King, and also his Death and Destruction.

The particular Facts laid to prove this traiterous Imagination and Intent, and which the Prisoner put in Execution, in order to bring to Effect his treasonable Purposes, are five.

The first is; That the Prisoner, with other Traitors, did consult, conspire, and agree to raise a general Insurrection and Rebellion in this Nation against his Majesty.

The next; That he did publish a seditious and treasonable Declaration, containing Incitements, and Promises of Reward, whereby to excite and stir up his Majesty's Subjects to take up Arms, and to levy War against his Majesty within this Realm.

And farther; That he, with other Traitors, conspired, consulted and agreed, by an armed Force, to exalt, and bring the Pretender to his Majesty's Crown, to the Throne of these Kingdoms, and put him into the Possession of the Government thereof.

That hath provided, levied, and retained several Persons, to take up Arms, and to levy War against his Majesty within this Kingdom, for the executing these traiterous Purposes.

The last Overt-Act alledged, and to finish this Conspiracy, is, That he, with the other Traitors, consulted, conspired, and agreed to seize upon, and to imprison the sacred Person of his Majesty.

Gentlemen, it is unnecessary, when these Facts are opened to you, to acquaint you, that an Attempt of this Nature, if it had succeeded, would have been the Subversion of the present happy Establishment, and the Protestant Succession, so often confirmed by the Consent of the whole Nation,

tion, and the only Security of your religious and civil Rights and Liberties; they would all have been exposed to the Arbitrary Power of a Popish Faction, under the Tyranny of the Pretender.

Gentlemen, having said this to shew the Nature of the Offence; we (who are Counsel for his Majesty) shall proceed to lay before you the particular Evidence against the Prisoner at the Bar: Gentlemen, we have been so fortunate as to discover, and shall produce before you, the very Plan itself, upon which these Conspirators proceeded, and which was to be put in Execution.

We shall produce the Plan under the Prisoner's own Hand-writing, and shew his acting correspondent to that Plan, and in the Execution thereof; this Plan is a compleat Scheme of a treasonable Insurrection, if that may be called compleat which tends to utter Destruction; for if the several Parts therein contained had been executed, it would have been a total Overturning of the Government and Constitution.

But you may observe a Regularity going thro' the whole Scheme.

The Place of Action, and the Scene where this Conspiracy was first to be put in Execution, was in the City of *London*, and tho' in the Plan it self the Day is not mentioned, yet we shall shew to you, by the Prisoner's own Declaration and Discovery, the Time when it was to be executed; it was at the breaking up of the Camp of his Majesty's Forces in *Hyde-Park*.

Gentlemen, the Plan contains a Disposition of several Officers, who were appointed to their particular Stations, and were to be supplied with Men designed to be procured for the Execution of this Plan; and, as the Conspirators hoped to debauch part of the Army, these Officers were to be disposed at several Places, to receive the private Men, who, to the Number of about two Hundred (towards the Evening of the Day agreed upon for Execution) were to go singly out of the Camp, without their Arms, that they might more easily pass without Observation, and were to be collected together at a Place of Rendezvous appointed them.

Gentlemen, from the Management of the Conspiracy, and the Method they had taken to carry it on, and the Hopes they had entertained, the Conspirators concluded, they should have that Number of two hundred Men ready in one Body, to be commanded by proper Officers, to make the first Attempt, and the first Stand.

At the Place of Rendezvous they were to be supplied with Muskets ready loaded, and to receive their Arms, which were to be distributed to them a little before the Hour of Nine; at which Hour exactly, they were to march directly to the *Tower of London*, (as the Plan proposes, and as the Prisoner agreed and declared) where they might expect to be admitted, by the Help and Assistance of their Friend, the Officer upon the Guard; and as soon as they had entered, they were to shut up the *Tower* Gates, and seize the Arms.

Their General was to make his Stand in Person at the *Royal Exchange*; at the same time, it is directed by the Plan, and was consulted upon, and agreed by the Prisoner himself, they were to attempt to arrest the Persons of several great Men; and although the Plan doth not name the Persons, yet the Prisoner hath explain'd it fully, and from

his own Mouth we shall prove, who the particular Persons are, thus intended to be seized.

A Declaration was to be dispersed to excite People to come in to the Rebels; the Gates of the City of *London* were to be shut up, and Cannon brought down against them: They were then to set a Guard over the *Bank*; but in the first Place, they were to take out Money sufficient to pay their Men, such as they hoped would appear in their Interest: Their several other Parties were to secure the Artillery in the *Camp*, the Guns in the *Privy-Garden*, the Cannon and Ammunition near the *Horse-Guards* in *St. James's Park*.

These were the first Operations: But to finish this villanous and execrable Design, at the Time the *Tower* was seized, and the City in Arms, they were to send a Detachment to seize the Person of his Majesty; and this they expressed in their Plan to be, for the securing his Person from the Mob. But our King was to be delivered to their General at the *Tower*, and to be put under his Custody. Thus the Life of his Majesty was to be in their Power.

After this, there are several other Dispositions of Officers, and other Persons, in order to excite and carry on the Rebellion: Some were to appear in *Totbil-Fields*, some in *Southwark*, who were to give Arms to the *Minters*; some at *Greenwich*, to engage the Watermen, and seize the Magazine and Powder there, and others at other Places.

Gentlemen, you will find in this Plan a Preparation to make an entire Conquest of the Cities of *London* and *Westminster*; upon which the Conspirators hoped the rest of the Kingdom would declare for the Pretender: And there is one particular Provision in the Plan, that as they proceeded here, and found Success, the General should immediately dispatch Messengers into the several Counties of *England*, to give Intelligence of their Progress, and to persuade those, who they looked upon to be in their Interest, to declare for the Pretender, and to rise in their respective Counties with their Adherents.

This is the Plan upon which the Conspiracy is carried on; and as we shall produce this Plan, which the Prisoner hath supplied himself with, and written with his own Hand, we beg leave to insist upon that, as strong Evidence against the Prisoner, upon the Overt-Acts alledged in the Indictment, of his consulting and conspiring to raise a Rebellion and Insurrection in the Nation, and to seize the King's Person.

Gentlemen, upon this Plan, which the Prisoner at the Bar had thus furnished himself with, you will find, on the Examination of our Witnesses, that he constantly acted; he declared for, and promoted the Execution of the principal Parts of it.

Gentlemen, the Witnesses we shall call who were engaged with the Prisoner at the Bar, in this Design, are *Stephen Lynch* and *Matthew Plunkett*; (which last had been a Serjeant in the Army) with whom the Prisoner consulted, and whom he engaged in this desperate Attempt; and we shall call some other Witnesses to confirm several Circumstances in their Evidence.

Mr. *Lynch* is a Person the Prisoner might have reasonable Hopes of engaging in this Service: He had been formerly acquainted with one Dr. *Murphy*, who (I am instructed) was in the Rebellion that

that broke out in the Beginning of his Majesty's Reign: Mr. *Lynch* having been abroad, and absent for some time, returned into *England* in *April* last: Upon his Return, Dr. *Murphey*, his old Acquaintance, meets with him, bids him welcome to *England*, and tells him that an Affair was going on by which he might make his Fortune, and advises him not to go out of *England*: That there was an Intention to rise in Favour of the Pretender, whom he called his King, and he would take care to recommend Mr. *Lynch* to a Person who had a great Part in that Affair.

Mr. *Lynch* having suffered before, and run a great Hazard, was unwilling immediately to enter into any Engagement, but proposed, that if he could have sufficient Encouragement, and what he expected as a Reward, he should be willing to stay. Some time after Dr. *Murphey* introduces *Lynch* to the Prisoner at the Bar: The first time they met, I think it was the Beginning of *June* last, they went to the Prisoner's Lodgings, which were then at the upper End of *Chancery-Lane*; and he being about to remove his Goods, desired them to go to a Tavern hard by, the *Griffin* Tavern in *Holbourne*. To this Place the Prisoner at the Bar came, where Dr. *Murphey* presented *Lynch* to Mr. *Layer*, as the Gentleman Dr. *Murphey* had before recommended to him; Mr. *Layer* received Mr. *Lynch* at that time with great Civility, and tells him, that the Recommendation he had received of *Lynch* from Dr. *Murphey*, made him not to doubt of his Integrity and Ability. Then they entered upon a Consultation as to the carrying on of this Design; Mr. *Layer* introduced it with representing an Uneasiness in the Nation in general, and how fair an Opportunity there was to bring about a Revolution: But Mr. *Layer* tells him, that one of the first and principal Steps was to seize upon a General, or other great Man, (which you will observe is one part of the Scheme) and upon Dr. *Murphey*'s Recommendation of him as a fit Man for that Service, *Layer* proposes to *Lynch* to undertake it. At this time *Lynch* acquainted *Layer* with the Difficulties he had been in, and that an Affair of this Nature would take up some time before it could be put in Execution, and he could not well engage in it without some farther Encouragement, and a Reward in Money, in order that he might live easy and well while he staid here. Upon that, the Prisoner at the Bar promised him Supplies of Money for his Subsistence and Expences, what should be necessary, besides future Rewards; and in pursuance of that Promise, *Layer* hath several times supplied *Lynch* with Money, to engage him more effectually in this Design, and to support him in it. By these Assurances *Lynch* was prevailed upon, and then agreed to enter into this Conspiracy, and to take upon him the Part therein that should be signified to him.

Gentlemen, the Prisoner did not then make a full Discovery of the Person that was to be seized; but they were to meet again, as they did, about the latter end of *June*, at the same Tavern: There the Prisoner disclosed to the Witness the particular Person who was designed to be first seized. He acquaints the Witness, that the Person he (the Prisoner) intended at their former Meeting, and whom he designed the Witness should seize, is the General of the Army, the Earl *Cadogan*; and *Lynch* was to find out such other Persons as he could rely upon, for the assisting in, and effecting

that Enterprize; whereunto *Lynch* agreed. *Layer* then acquainted him what Steps were already made in the Conspiracy, and that they were to be headed and commanded by a General, who had Wit and Courage and Resolution, and who were supported by a great many Friends, who had full Power and Authority from the Pretender (whom he called King) to act, and who was Intrusted with a Commission as his General, and whose Orders *Lynch* was to obey.

The Prisoner and *Lynch* had several other Meetings, some at the *Griffin* Tavern, and others at the Prisoner's own House in *Old Southampton Buildings*, where the Prisoner always encouraged *Lynch* to persist in the Undertaking, by assuring him that all Things went on well, and that the Design was so well laid, that it could not probably miscarry: That they should be assisted by a great many Officers, as soon as any Motion was made, and that the common Soldiers would declare upon the first Opportunity: and being asked by *Lynch*, whether they had no Foreign Assistance to depend on; the Prisoner answered, when we begin the Business, we shall not want Relief, if requisite. At one of these Meetings the Prisoner revealed to the Witness, that, upon the Rising, the *Tower* would be delivered up to them, by means of an Officer, who was to be upon the Guard there on the Day of Execution; and that the People in the *Mint* in *Southwark* would come into them; who, and all others that should repair to their Party, should have Arms delivered to them; and that the whole Design should be put in Execution at the Breaking up of the Camp, which would be the most proper Time for the speaking with the Soldiers in the Army.

But at a Meeting they had, some time in *August*, at the *Queen's Head* Tavern in *Great Queen-Street* near *Lincoln's Inn Fields*, *Lynch* complaining of the Delay in putting their Design in Execution, and representing the Danger of it, and withal pressing to know his intended General and Commander, the Prisoner gave him great Encouragement, from the good Prospect of their Affairs, and the Vigilance of the Noble-Man at the Helm, who would lose no Opportunity, when a convenient Time should offer; and promised the Witness, that he should be presented to this noble Person in due time, from whom *Lynch* should receive his Orders, or Commission for executing his Part, and entering upon his Enterprize.

And accordingly, upon the twenty fourth Day of *August*, Mr. *Layer* invites *Lynch* to ride out of Town with him the next Day to take the Air, which *Lynch* comply'd with; and on the twenty fifth of *August* in the Morning, *Lynch* went to the Prisoner's House, who appointed *Lynch* to go before, and to stay without *Aldgate*.

At that Time the Prisoner asked the Witness, whether he mounted with Furniture or Pistols; who answering that he did not, but that he had a Double-Barrel Fowling-Piece, which the Prisoner's Servant might carry; the Prisoner directed him to get his Piece ready loaden, because he (*Layer*) should carry something with him, which he would not lose for all the World. *Lynch* and the Prisoner met without *Aldgate* at eleven before Noon, and the Prisoner's Servant carried the Gun, and they rode together toward's *Epping* in *Essex*, which was the Place they were going to.

Upon the way as they proceeded, Mr. *Layer* told the Witness, that they were going to the House of the Lord *North* and *Grey*, where he would present *Lynch* to his Lordship, as a particular Friend of his (the Prisoner's.) When they came to the *Green Man* at *Layton-Stone*, at the Entrance upon *Epping-Forest*, the Prisoner said, it might be best to eat something there, because they should be too late for the Lord *North* and *Grey*'s Dinner; and accordingly they stopt at this House to Dine.

Gentlemen, You will hear from the Witnesses that at this Place, the Prisoner and *Lynch* had another Consultation, wherein there was a Repitition and Confirmation of the whole Design and Conspiracy. At this *Green Man*, in your County, Gentlemen, you will find every principal Part of the Conspiracy, which was to be executed, consulted upon, and agreed unto by them both: The Time and Manner of the Insurrection, the Preparations making for it, the Assistance to be provided and expected from the Army, from many in the City of *London*, and from the Generality of the Nation, as was then suggested; the Seizing the Earl of *Cadogan* as the first Step, and the Surprizing the *Tower* in the Manner mentioned in the Plan, by the Help of the Officer upon the Guard; and then they proceeded to consider and approve the most daring and execrable Part of the Plan, which was then expressly repeated by the Prisoner, the making a strong Detachment to Sieze on his Majesty's Person.

The Prisoner then declared his great Satisfaction, in having engaged a Person of such Courage and Conduct as Mr. *Lynch*, in the Attempt of Seizing the Earl *Cadogan*; and likewise named the several other great Men, hinted at in the Scheme, whose Persons were to be seized, and of whom he had made up his Collection in pursuance of the Plan; and then expressed his Wishes so to bring Matters to bear, that Mr. *Lynch* might likewise have the sole Direction apprehending the Persons of some of his Majesty's Ministers, the Lords *Townshend* and *Carteret*, his Majesty's principal Secretaries of State, and Mr. *Walpole*, first Lord Commissioner of the Treasury.

These Persons, most immediately intrusted in his Majesty's Service, were in the first Place to be seized, in order to facilitate the Design, and to make it successful. By this means the Conspirators were to weaken his Majesty's Power of Defending himself, when they had deprived him of his General, who was to command and conduct his Army; of his two Secretaries, who were to maintain and carry on his Intelligence; and of the first Commissioner of his Treasury, who was to take Care for his Supply.

At this Place these things were debated and considered between them: Mr. *Lynch* then again complained of the long Delay, and wished that the Affair might be carried on with more Expedition: The Prisoner thought no time so proper as the Breaking up of the Camp, when they might be supplied with Soldiers; yet he was willing to hear any Proposal from Mr. *Lynch*, and desired Mr. *Lynch*, that if he could think of any speedier Method, or better Scheme, to let him know it: But the Witness was not capable to propose any way more proper, than what had been agreed upon the Foot of the Plan, as it had been explained by the Prisoner himself, and therefore Mr. *Lynch* acquiesced therein.

Gentlemen, at that time, and at the same Place, the Overt-Act laid in the Indictment, of publishing the treasonable Writing, was committed; which was a Declaration framed in the Hand-writing of the Prisoner, to be published immediately on the first Breaking out of the Conspiracy, to excite the King's Subjects to take up Arms, and to enter into a Rebellion against him; and that it might have an Influence on the Army, where their Hopes were placed, it took Notice, that the King's General was seized, and in their Custody.

In this Declaration particular Rewards are promised to the Horse and Foot in the Army; different Allowances are made, to every Horse-man and Serjeant three Guineas; two Guineas to every Corporal, and one Guinea to every common Soldier: All had Promises of Encouragement, Favour, and future Reward.

Gentlemen, after this was read, the Prisoner put this Declaration up into his Pocket again; and afterwards (as he acquainted the Witness) he himself made an Alteration therein; it containing at first a general Invitation to a Revolt, but was not directed in the Name of any particular Person, therefore the Prisoner thought fit afterwards to alter it, (as he informed *Lynch*) and to make it in the Name of the Pretender, as King.

Gentlemen, though their Hopes and Expectations were founded on corrupting and Debauching the Army; I mention it only, as it was their Expectation and Design, without any Imputation on the Honour or Fidelity of the Gentlemen of the Army: But Persons who undertake an Affair of this Nature, are always forward to expect that their Designs will be successful.

This, Gentlemen, which I have mentioned to you, which will be more fully and particularly given in Evidence to you, against the Prisoner at the Bar, was transacted and committed in the County of *Essex*.

My Lord, this will be Evidence of most of the Overt-Acts alledged in the Indictment in the County of *Essex*; but we shall confirm this Evidence by the Confession of the Prisoner, proved by two Witnesses, in whose Presence he acknowledged the several Facts, which will be charged upon him in the County of *Essex*, by the Testimony of Mr. *Lynch*; and shall make Proof of other Overt-Acts in the County of *Middlesex*; for it was impossible a Design so extensive should be confined to one or two particular Places within the same County: Their Consultations must be transferred from Place to Place, as Opportunity offered, and as they thought most conducive to the Purpose they were engaged in.

But the Facts I have mentioned, were transacted, Gentlemen, in your County. After the Prisoner and Mr. *Lynch* had settled these Affairs at the *Green Man*, they went to the House of my Lord *North* and *Grey* at *Epping*: They staid there all Night, and dined there the next Day; the Witness was introduced and presented to his Lordship by *Layer*, and was civilly received and entertained; and the Prisoner at the Bar, as he and *Lynch* returned home, asked the Witness how he liked his Lordship, and assured Mr. *Lynch* for his Encouragement, that he had greatly recommended him (the Witness) to his Lordship.

The Prisoner and *Lynch* met a second time at the Lord *North* and *Grey*'s House, where *Lynch* declared

declared he would withdraw himself, if things were not put in Execution; to which *Layer* replied, they would be sooner put in Execution than *Lynch* imagined.

Gentlemen, you may perceive, by this Evidence, the Prisoner's Explanation of the whole Scheme, and his Execution of it, so far as was in his Power; tho', blessed be God, these, or any farther Attempts of this kind, have not hitherto prevailed.

The Prisoner proceeds farther; and the next Witness who will be produc'd against him, is one who had been a Servant in the Army, *Matthew Plunkett*. *Plunkett* had been formerly acquainted with the Prisoner, and done him a piece of Service; he was made use of to rescue some Goods, when they were taken in Execution at the House where *Layer* lodged, which was the beginning of their Acquaintance: This, with some other Recommendations from Persons engaged in this Design, induced the Prisoner at the Bar to make Offers to him, as you will hear from the Witnesses.

In *June* 1722, another Person of the same Name, one *James Plunkett* was directed by Mr. *Layer* to go to this Serjeant *Plunkett*, and desire him to meet *Layer* at the *Italian Coffee-house* in *Russel-Court*. The Witness could not at that time, at least did not think it proper to go to the Place appointed; but a Day or two after, Mr. *Layer* meets him in *Lincoln's-Inn-Fields*, and takes him aside under a Gate-way near *Turn-Stile*: *Layer* then told *Plunkett*, he would inform him of a Matter that would be of great Advantage and Benefit to him; there *Layer* let him into this Conspiracy, and engaged the Witness in it, not only by assurance and promise of Reward, but by actual Reward and Money given him; and to induce and to encourage *Plunkett* the more, *Layer* acquainted him, that there were several Persons of great Estates, who were resolved to rescue themselves, and the Nation from the Calamities and Slavery, that they then endured; and that they intended to bring about a Revolution, and restore their King the Pretender; *Plunkett* objected, that the Pretender was a Papist; but the Prisoner reply'd, there was no difference between a Papist and a Lutheran King, and therefore, that ought to make no Impression upon *Plunkett*, to hinder him in joining to bring in a Papist.

The Prisoner enquired of *Plunkett*, whether he had not an Acquaintance in the Army with some Officers, and with the common Soldiers; and then engaged *Plunkett* to levy what Persons he could into their Service; and when the Witness told *Layer*, he knew twenty or thirty Serjeants in the Army, proper Persons to be applied to, the Prisoner gave *Plunkett* Directions to make Application to them, and to have them enroll'd; and at that Meeting the Prisoner gave the Witness Money for his Encouragement; and as they had several other Meetings after this, to provide and levy Men, the Direction and Employment given by *Layer* to the Witness, was, to take care to find out their Lodgings, and to make Lists of the Men, of their Names, and Places of Abode, that they might be ready upon Notice.

The Prisoner not only employed *Plunkett* to procure, and enroll as many as he could get; but gave him Money for one particular Person, one *Child*, who had served in the Army, and who was recommend to *Layer* by *Plunkett*, as a Per-

son that had been disoblig'd by having been turned out of the Service; *Layer* himself gave *Plunkett* half a Guinea, for to give to this Person, to engage him in this Conspiracy, which *Plunkett* accordingly paid *Child*: *Layer* likewise ordered Money at other times to be given to *Plunkett*, and at one time particularly acquainted him, that the Prisoner had left a Guinea with one *Jefferies* a Non-juring Parson, to give to him, who had given *Plunkett* but half a Guinea.

The Prisoner at the Bar, to encourage *Plunkett*, acquainted him with the Persons, whom *Layer* expected to join in this Conspiracy; and asked the Witness his Opinion of several, the Witness will tell you the Names of the Persons, and what Answers he gave; particularly that *Layer* asked him what he thought of the Lord *North* and *Grey*, for an Officer to be at their Head? The Witness answer'd, though he had never serv'd under him, he look'd upon his Lordship as a great Man.

They had Meetings at several times, when *Layer* informed him, that things were in a great Forwardness, tho' it was not yet a time to put their Design in Execution; but it went on so well, that it could not miscarry; that the Duke of *Ormond* was to come with a single Ship, with some Offices; and that the Design had been discover'd to the *French* Embassador, who had given Intelligence thereof to his Majesty, or else the Affair had been done before that time.

This *Plunkett* was employed, from time to time, to prepare Lists of, and to collect and enroll fit Persons to go on with this Design; and particularly a Number of Serjeants, about twenty five, being dismiss'd from the Army, the Prisoner engaged *Plunkett* to go immediately to those Persons, and take care to secure them:

Gentlemen, these traitorous Consults and Transactions were in *July* and *August*; and the Witness will acquaint you more fully with the several Particulars. There was one Encouragement which the Prisoner gave to this Witness, which he did not mention to the other; he told *Plunkett* there would be an Army of *Dutch* to come over in Aid of his Majesty, but the Witness should see a Number of half-pay Officers, especially those of the Name of *Fitzgerald*, on the Side of his King (the Pretender) that they could not doubt of Success.

Gentlemen, Under these Encouragements and Promises, and with these Rewards, both these Persons, the two Witnesses, were engaged by the Prisoner to enter into, and go on with this Conspiracy: The Prisoner met them apart from time to time; they concerted and carried on such Measures as they thought proper to execute this Design, upon the Foot of the Plan, which hath been mentioned, and will be produced to you.

After we have produced the Scheme, and likewise examined these two Witnesses, who will give you an Account of the Progress which the Prisoner made in this Treason; we shall give you other plain and evident Proof, which will demonstrate the treasonable Intent of the Prisoner at the Bar, and his hopes of Success.

We shall prove that the Prisoner had been at *Rome*, and by his own Confession, that he had seen the Pretender, and had Conferences with him.

We shall prove that the Prisoner had blank promissory Notes, or Receipts for Money, signed with

with the Pretenders own Hand, by the assumed Title of *James Rex*, found amongst *Loyer's* Papers; which were remitted to him from *Rome*, and which he has acknowledg'd were sent over to him, for raising of Money to carry on the Cause of the Pretender. This is a strong Evidence of the Trust and Credit reposed in him to execute this Conspiracy; that the Prisoner is a Person fully intrusted; the Receipts are in Blank, and the Prisoner had Power to raise Money on them, and to fill them up with such Sums, as he thought proper and necessary.

Gentlemen, on the Examination of our Witnesses it will appear that Mr. *Loyer* declared he had expended great Sums of Money in this Affair, and that he has made it an Excuse, why he had not Money to supply some Demands, because he had disburs'd so much.

This therefore was to be his full Power to raise Money towards bringing the Pretender to the Throne.

Besides these Receipts, he had furnished himself with Lists of the Officers of the Army, in order to know the Situation and Condition of the Army, and to consider what Advantage he could make by any of those in the Lists: He had provided himself with Lists of the Officers of the *Tower*, which we apprehend, was to render the Design of siezing the *Tower*, when their Friend the Officer was on the Guard, more probable and hopeful.

Besides this, we have Letters which will be produced, that passed between Sir *William Ellis*, an Adherent of the Pretender's at *Rome*, and Mr. *Loyer*, by the Name of *Fountain*, (a Name he went by) encouraging him to go on with this Design: We have the Cypher, and the Explanation of the Cant Words used in those Letters. In one Letter *Ellis* says, the best Method of carrying on the Manufactory, (which is the Insurrection) is to get good Workmen, (by which is meant Soldiers) and particularly to gain some of the ablest of Mrs. *Barbara Smith's*, (by Mrs. *Barbara Smith* is signified the Army) and this would be very agreeable to all concerned, particularly to Mr. *Atkins* (which by their Cypher or Key is a Name for the Pretender.)

And in another Letter there is particular Mention of Mr. *Loyer's* Intended General; you will find in the Letter an Explanation of him, thus; that he, who the Prisoner in his Letter called *Simons*, and described as a Tenant, tho' his Name was not then found in the Rentall, this Writer believed he should be called *Simmes*, and says he is of the *North*, a grey hair'd antient Man, for whom his Friend has a particular Esteem and Value, as a very good Tenant. This is the Description, and this is the Cant that passed between them; the Explanation you will apprehend, by the Cyphers that were found amongst the Prisoners Papers.

Mr. *Loyer* was not wanting in other Preparations for this Attempt; for he had provided Arms in his own House, more than he could have Occasion for, as a private Subject; he had several Musquets and other Fire-Arms; he had forty or fifty Cartridges loaded with Bullets, ready made up for so many Discharges, which might be delivered out to the People who should come in to them: If he had any use for such a Quantity he will shew upon what Occasion.

The Discovery of the Facts made by the Witnesses, occasioned the apprehending Mr. *Loyer*,

in whose House these Arms were likewise seized.

Mr. *Loyer* was so conscious of his own Guilt, that after he was apprehended, he made his Escape out of the Custody of the Messenger, in whose House he was placed; he offered a great Reward to Watermen to carry him off: This is a Demonstration of his Guilt, from the Conviction of his own Conscience.

Gentlemen, there are some other Matters and Papers which it will be proper to offer to your Consideration; and most of these particular Facts, which I have mentioned, or the most material of them have been confirmed by Mr. *Loyer's* own Confession which he made upon his Examination before the Lords of the Privy Council: And when we have laid before you this Evidence, as according to my Instructions we shall very fully, I don't doubt but that you will do your Duty as honest Men.

We don't apply to your Zeal, as you are Protestants and Englishmen; but upon the Weight of the Evidence, we shall appeal to your Justice, to your Oaths and to your Consciences; whether upon the whole Proof to be laid before you, you will not remain fully satisfied, that the Prisoner at the Bar is guilty of the High-Treason whereof he stands indicted, and then that you do find him so.

Mr. *Att. Gen.* May it please your Lordship and you Gentlemen of the Jury, I am Counsel on the same Side for his Majesty against the Prisoner at the Bar, who stands indicted for High-Treason, in compassing and imagining the Death of the King. The Preservation of the Life of the King is of that great Importance to the Safety and Prosperity of his Subjects, that even Imaginations and Intentions (which are but Acts of the Heart) to take it away, manifested by Overt-Acts are an Offence of the highest Nature which the Law takes notice of; but as Imaginations and Intentions of Men are secret, and can't be discovered but by their Actions, there must be Proof of some Fact done in order to carry such Intentions into Execution, to make the Offenders guilty of Treason: Therefore in this Indictment five several Overt-Acts are laid; the first is, that the Prisoner at the Bar proposed, consulted and agreed with divers Persons unknown to the Grand Jury, to raise an Insurrection and Rebellion within this Kingdom against his Majesty; the second, that he published a traiterous Writing, purporting an Exhortation, Encouragement and Promise of Rewards, to persuade his Majesty's faithful Subjects to take up Arms against him; the third, that he proposed, consulted and agreed to set the Pretender on the Throne by arm'd Force; the fourth, that he listed Men to levy War against the King; and the fifth, that he proposed, consulted and agreed to seize and imprison his Majesty's sacred Person.

Gentlemen of the Jury, you will readily agree with me that nothing can be more dreadful to a true *Briton* who hath any Regard to himself or his Posterity, or Love to his Country, than the fatal Consequences that must have inevitably attended such wicked Designs, had they been carried into Execution with Success: Suppose a Rebellion had been only raised, what could any Man have expected from a Rebellion in the Heart of the Kingdom, but Plunder and Rapine, and Murder, a total Suspension of all Civil Right, and as long as the Storm had continued, a just but

but terrible Apprehensions of something yet worse to come: This would certainly have been the Case, though the Attempt should have been disappointed at last. But had it been attended with Success, had his Majesty's sacred Person been seized and imprisoned, and had the Pretender been placed on the Throne, what a Scene of Misery had open'd! A mild Administration, govern'd by the Law of the Land under an excellent Prince, and as just and merciful as ever wore the Crown, must have given way to Arbitrary Power; all your Estates and Properties must have been at the Will of a provok'd and exasperated Usurper; Liberty must have given Way to Slavery, and the best of Religions to Popish Idolatry and Superstition; and this humanly speaking, without any Prospect or Hopes of Relief: Nor would these dreadful Calamities have been confin'd within the Bounds of the King's Dominions, for should the present happy Establishment in his Majesty and his Royal Family (the chief Bulwark and Support of the Protestant Interest) be destroyed, the Protestant Religion in general must be reduced to the lowest Ebb, if not totally extinguished.

This is the Nature of the Crime, and these some of the fatal Consequences that must have ensued, if the Designs charged upon the Prisoner by the Indictment had took Effect. But whether he is guilty of this great Offence, is what you Gentlemen of the Jury are now to try.

My Lord, 'tis my part to open the Nature of the Evidence that we shall produce to prove the several Overt-Acts laid in the Indictment; and in stating it to your Lordship and the Jury, I shall follow the Course of Time in which the Facts were done, that the Case may be more easily apprehended, and shall open nothing but what I believe will be clearly verified by Proof.

This Prisoner at the Bar, tho' brought up to the Profession of the Law, and a Practiser in it went beyond Sea in the Year 1720, and at the Close of that Year, according to our Stile, or the Beginning of the Year 1721, arrived at *Rome*, where the Pretender then was; while the Prisoner was there, he procured himself to be introduced to the Pretender, and had two private Conferences with him, in which (but by what Methods or Representation is best known to himself) 'tis plain he obtained the Pretender's good Opinion so far, that he thought him a fit Person in whom a Confidence for carrying on any Designs against his Majesty, and for setting himself on the Throne, might be safely repos'd: For this Purpose a Correspondence was then settled between the Prisoner and some Persons of Distinction about the Pretender, and a Cypher of Names of Persons and Things was agreed on, in order to carry this Correspondence on. The Prisoner returned to *England* about *July* 1721, after which he writ Letters to his Correspondent at *Rome*, and Answers to them came from thence, whereby it will appear, that the Prisoner had undertook a considerable Part in the Design then carrying on to bring the Pretender in; and altho' these Letters are in obscure and cant Terms, and fictitious Names, yet by the Help of the Cypher and from the Nature of the Letters themselves, it will easily appear to a common Understanding for what Purpose they were writ: This Cypher and Letters we shall prove to have been found among the Prisoner's Papers, which were seized soon after his Commitment, and your Lordship and the Jury will see, when they

come to be read, that notwithstanding the obscure Terms, and the mysterious Expressions inserted to dazzle the Eye of the Reader, when compar'd with the Cypher they will be so intelligible, that they will be a plain Evidence that a Design was carrying on of raising a general Rebellion in favour of the Pretender; for which Purpose a Scheme in Writing was prepared, which we shall lay before your Lordship and the Gentlemen of the Jury, that was likewise found among the Prisoner's Papers; we shall prove it to be writ with his own Hand.

Mr. *Serjeant Pengelly* opened the Nature of this Scheme very fully, I shall not trouble your Lordships with a Repetition of what he said; when it comes to be read it will appear to be calculated for a general Rising, it will prove a form'd Design to seize the Tower, to seize Persons in great Stations, to seize the Bank, and then at last to seize the Person of the King himself, and to seize his Royal Highness the Prince of *Wales*. This we apprehend will be a strong Evidence of the Overt-Acts laid in the Indictment, and will confirm the Testimonies of the Witnesses which we shall produce.

There are two Witnesses we shall call to prove the Overt-Acts laid in the Indictment, they have already been mentioned to your Lordship, Mr. *Stephen Lynch*, and *Serjeant Matthew Plunkett*. Mr. *Lynch* will prove the several Overt-Acts laid in the Indictment to have been committed by the Prisoner in the County of *Essex*, where this Indictment was found; as also Overt-Acts of the same Nature committed by him in the County of *Middlesex*. But as 'tis improper to fall directly upon the Proof of those Facts, without first proving some other Facts by way of Introduction, as how the Acquaintance between Mr. *Lynch* and the Prisoner at the Bar began, and how they came to be so intimate as to enter into a Design of this Nature, Mr. *Lynch* will give your Lordships and the Jury an Account; that there had been an Acquaintance between this Mr. *Lynch* and one Dr. *Murphey* eight or nine Years ago, that they had agreed to join in the Rebellion which was in the beginning of his Majesty's Reign; after that was over Mr. *Lynch* went beyond Sea, and continued there some time, and arrived in *England* in *April* last; that their Acquaintance continued, and their Principles were not altered; Mr. *Lynch* meeting Dr. *Murphey*, Dr. *Murphey* (who hath been mentioned to your Lordships on a late Occasion in this Court and is not now to be found, but had a great Acquaintance with the Prisoner at the Bar) told him he had something advantageous to communicate to him, and appointed a Meeting next Morning at a Coffee-House in *Cornhill*, where they accordingly met, and *Murphey* then advised him not to go out of *England*, because he had an Opportunity of making his Fortune, telling him there would be a general Rising in Favour of the Pretender (whom he called King) and that it was carry'd on by Gentlemen of Note and Credit; and if he would accept of the Service, he would recommend him to one greatly concerned in that Affair; Mr. *Lynch* after Consideration agreed to stay— After several other Meetings between this Dr. *Murphey* and Mr. *Lynch*, at which their Discourse general turned upon this intended Rising; about the Beginning of *June*. Dr. *Murphey* introduced Mr. *Lynch* to the Prisoner, as a Person fit to be entrusted in the intended Enterprize;

terprize; they went to the *Griffin Tavern* in *Holbourn*; Mr. *Layer* there expressed the good Opinion he had of Mr. *Lynch* upon the Character he had received of him from so good a Friend as this Dr. *Murphey*. They soon enter'd upon Business, and the Prisoner after having made a Representation of the Uneasiness of the Nation in general, and of the fair Opportunity there was to bring about a Revolution, propos'd to Mr. *Lynch* to seize some General, to which the Witnesses agreed. After this they had several other Meetings, at which their Discourse turn'd upon the same Subject of a general Rising in order to set the Pretender on the Throne, and at one of them the Prisoner declared he intended *Lynch* should seize the Earl of *Cadogan*, and that the Scheme was laid on a sound Foundation, having a great Man at the Head of Affairs, who wanted neither Wit, Courage nor Resolution, and he would be backed by his Friends. Several other Propositions were made by the Prisoner tending to the same End; to all which Mr. *Lynch* agreed, and they consulted how they might put those things in Execution. In *July* last, Mr. *Layer* went into the Country for fourteen or fifteen Days, and after his Return in the beginning of *August*, in Pursuance of what they had concerted, Mr. *Lynch* and he went to view the Earl of *Cadogan's* House, to see how practicable that Design of seizing him at his House was. Mr. *Lynch* thought it feasible, but he grew uneasy at Delays, and frequently told the Prisoner that his Circumstances would not permit him to continue here at his own Expence; therefore to encourage him to stay, and persevere in the Design, Mr. *Layer* gave him several Sums of Money.

My Lord, upon the twenty fourth of *August* last, the Prisoner and Mr. *Lynch* agreed to ride out the next day to take the Air: on the twenty fifth, according to Appointment, (which brings us now to the Overt-Acts in the County of *Essex*) they rid out together; the Prisoner thought it proper to ride with Arms, alledging that he had things about him he would not lose for any thing in the World. Upon the Road he told Mr. *Lynch* they would go to Lord *North* and *Grey's*, with whom the Prisoner had the Honour to be well acquainted, and he would present Mr. *Lynch* to my Lord as his particular Acquaintance. It happened to be too late to get to Lord *North* and *Grey's* by Dinner, whereupon they put in at the *Green-Man* near *Epping-Forest*, which, Gentlemen, is at *Layton-Stone* in your County. Dinner not being ready at their coming thither they enter'd into Conversation on the former Topics, and Mr. *Lynch* desiring to give him some insight into the Scheme that was formed, the whole subject matter of their former Consultations and Discourses were repeated about seizing Lord *Cadogan*, seizing the Ministers of State, of getting Part of the Army to declare for them and for seizing the King's Person; and these things were then agreed to by them. At this Place it was, that the Prisoner pulled out of his Pocket and shew'd to Mr. *Lynch* the traitorous Writing laid in the Indictment, which was a Declaration to encourage a general Rising, writ, as the Witness believes, in the Prisoner's own Hand; and that Part which contained the Promises of Rewards to be given to the Soldiers and other Persons to encourage them to come into their Designs; was read by the Witness, after which Mr.

Layer took his Paper away, and put it it up in his Pocket again. My Lord, when they had dined, they went on to Lord *North* and *Grey's* House (whom your Lordship will hear mentioned by the Evidence as the Person thought on to be General in this Undertaking) they staid here that Night, and dined there next Day, and afterwards they had a second Meeting at Lord *North* and *Grey's*. Your Lordship and the Jury will be pleased to observe that this Evidence will be a full and positive Proof by this Witness, that the Overt-Acts of publishing this traitorous Writing, encouraging Persons to take up Arms against his Majesty, of the Consultations and Agreement to levy War, to set the Pretender on the Throne, and to seize his Majesty's Person, were done at the *Green-Man*, in the County of *Essex*: And this will likewise be an Evidence, that all the Overt-Acts laid in the Indictment (except publishing the traitorous Writing) were done in the County of *Middlesex*.

My Lord, the next Witness we shall produce is *Matthew Plunkett*, formerly a Serjeant in some Regiment; he had been formerly acquainted with, and had been serviceable to the Prisoner, and was very well acquainted with one *James Plunkett*, which *James Plunkett* was a great Acquaintance of the Prisoner's. This *James Plunkett* desired the Witness *Matthew Plunkett* to meet the Prisoner in *July* last, at the *Italian Coffee-House* in *Russel-Court*, which the Witness could not comply with; but the Witness met the Prisoner the *Sunday* following in *Lincoln's - Inn Fields*, they were together near an Hour, the Prisoner gave him an Account of the intended general Rising, and ask'd the Witness if he knew any old Serjeants or Soldiers who could discipline a Mob, agreed with him to procure such, mentioned to him several Persons fit to be at the head of this Enterprize; and in order to make him diligent, he gave him at that time half a Crown: And Money was not only given him at that time, but a Promise was made to him of further Rewards. The Prisoner having Occasion to go in the Country, one *Jeffreys*, a Nonjuring Clergyman, was sent to *Matthew Plunkett* by *Layer* (and this Fact that I am going to open must not be barely considered as an Act between *Jeffreys* and *Plunkett*, but it will be brought directly home to the Act of *Layer* himself.) *Jeffreys* told *Plunkett* he came from the Prisoner, and that he was employ'd by him to go to such as the Witness was, who were old Serjeants, to get a Number of them together to discipline the Mob, in order to the general Rising: The next Day they met again, and had the like Discourse, and *Jeffreys* gave *Matthew Plunkett* half a Guinea; and what brings this home to the Prisoner, is, that he told *Plunkett* he had left a Guinea with the Nonjuring Parson to give him, and talked with him on the same Subject that *Jeffreys* had discoursed the Witness before. But in fact *Jeffreys* did not give *Plunkett* the Guinea, he gave him but half a Guinea.

My Lord, after Mr. *Layer* went out of Town *Plunkett* gave him an Account what Progress he had made in the Affair. *Plunkett* told him that he had got several old Soldiers that would bear a Part in this Business: The Prisoner said he must take care to keep a List of their Names, and the Places where they lived, that they might be in a Readiness when they should have Occasion for them. And on *Sunday* before the Prisoner was taken up, he told this *Plunkett* that a great many

I must likewise beg Leave to observe to your Lordship, that this Question was formerly asked in the Trial of *Gordon* and *Dorrell* to one *Adams* that had been in the same Conspiracy with those that were brought to Trial for High-Treason, and was then produced as a Witness against them; the Book was then brought into Court, and the Quotation read before your Lordship, and according to my Notes of that Trial, which I have here brought with me for my Justification, (I submit to your Lordship's Correction if I don't state it right) *Adams* was ask'd that Question, though it was long objected to by the King's Counsel. The Distinction my Lord Chief Justice *Hale* made was this.

Mr. *Just. Eyre*. Read the whole Paragraph.

Mr. *Ketelbey*. I will, my Lord. The Words are these: "It was resolved that some of those
" Persons equally culpable with the rest, may
" be made use of as Witnesses against their Fel-
" lows, and they are lawful Accusers or Witnesses
" within the Statute 1 *Ed. VI.* 12. 5 & 6 *Ed. VI.*
" c. 11. & 1 *Mar. I.* and accordingly at the Tri-
" al of these Men, some of them who were Par-
" ties in the Treason were made use of against
" the rest: For lawful Witnesses within those
" Statutes are such as the Law alloweth; and
" the Law alloweth every one to be a Witness,
" who is not convicted or made infamous for
" some Crime; and if it were not so all Trea-
" sons would be safe, and it would be impossi-
" ble for one who conspires with never so many
" Persons to make a Discovery to any Purpose.

I was aware of what was here laid down, and therefore did submit Mr. *Hungerford's* Reason to your Lordship's Consideration, and did not insist farther upon it; the subsequent Words are these,
" But the Lord Chief Baron *Hale* said, That if
" one of these culpable Persons be promised his
" Pardon on Condition to give Evidence against
" the rest, that disableth him to be a Witness
" against the others, because he is bribed by sav-
" ing his Life to be a Witness: So that he makes
" a Difference where the Promise of Pardon is
" to him for disclosing the Treason, and where
" it is for giving of Evidence. But some of the
" other Judges did not think the Promise of
" Pardon, if he gave Evidence, did disable him.
" But they all advised that no such Promise should
" be made, or any Threatnings used to them in
" case they did not give full Evidence.

So that, my Lord, we have not only the Authority of that Book with us, but a solemn Precedent in this Court in point established upon a long Debate, and grounded on that very Authority. And when I moved this Matter at the Trial of *Dorrell*, *Gordon* and *Ker*, I then cited another Instance where it had been allowed by the Court, and that was before Mr. Justice *Powell* at *Worcester* Assizes, upon the Trial of *Palmer* and *Symonds* for the Murder of Mrs. *Palmer*: There a third Person concerned in the Fact came in as a Witness against the other two, and after it had been argued by Counsel, and that learned Judge had read upon the Bench, and considered this Authority, the Witness was at last asked this Question upon a *Voyer dire*: And for the Truth of this Case as I reported it, I appealed to my Lord *Lechmere*, then Attorney-General, and who had been one of the Counsel at *Palmer's* Trial.

Mr. *Serj. Pengelly*. My Lord, we hope if there is any room for this Pretence which is insinuated, it only goes as to his Credit, and does not dis-

able him from being a Witness; the Authorities produced are no more: The Judges directed that no such Promise should be made but if such a Promise was made, they agreed it doth not disable him from being a Witness, as was mentioned by my Lord Chief Baron *Hale*; it is not like Money given, which is an actual Corruption; the Promise of Pardon is a thing voluntary in it self: Who is the Promise to be made by? Is it in the Power of any Person but his Majesty to perform it? If there is any Thing in the Supposition, it is not proper to ask in relation to it upon a *Voyer dire* to prevent the Witness from being sworn to give Evidence; but when he hath been sworn, if they think fit to ask the Question, they may.

Mr. *Att. Gen.* The asking the Witness this Question, as 'tis irregular, so if it was answered in the affirmative, wou'd be of no Service to the Prisoner; for with Submission, it will not disable Mr. *Lynch* from being a Witness. Every Man is bound in Justice to give Evidence if required, and a Promise to have a Pardon if he gives Evidence against the Prisoner, can be looked on only to induce him to do that which by Law he ought to do according to the Truth: It does not import that he was to give a wrong or a false Evidence; such a Question he cannot be obliged to answer. And the greatest Use the Prisoner could make of this, if such a Promise was made to the Witness (which is not admitted) wou'd be only against the Credit of the Witness, but not entirely take off his Testimony; his Credit, as well as the Credit of all Witnesses, must be left to the Consideration of the Jury. As to the Opinion of my Lord Chief Baron *Hale* cited out of *Kelynge*, the other Judges differ'd with him, and therefore we hope Mr. *Lynch* shall be sworn.

Mr. *Soll. Gen.* We who are Council for the King don't oppose the asking this Question, out of any apprehension that the Answer would come out against us, but for fear of overturning a Point that hath been long settled. As to the Book, which these Gentlemen cite to support their Objection, with Submission, it is rather an Authority to over-rule it. The Opinion they found themselves upon is, that of my Lord Chief Baron *Hale*, but the rest of the Judges were of Opinion against him; so that we apprehend the Authority is with us, and likewise the Reason of the thing. I take it that no Question is to be asked a Man upon a *Voyer dire*, but to a Fact that would take off his Testimony. Suppose then, for Argument sake, that there was a Promise of Pardon made to a Man upon Condition that he should give Evidence; I apprehend that would not disable him from being a Witness, any more than if the Condition had been that he should declare the Truth, which it was his Duty to have done, although no such Promise had been made: And surely the Promise of a Pardon upon a Condition to do that which was his Duty before, won't take off his Testimony. If they would ask the Witness whether he has accepted a Promise of a Pardon upon Condition to give false Testimony, that is a Question, to which, with great Submission, he is not bound to answer; because that would be to examine him to accuse himself of a thing which is unlawful. For these Reasons, as well as upon account of the Authority they produce, we apprehend there is no Force in the Objection.

Mr. *Serj. Chesbire*. My Lord, I know not whether it would not be laying too great a weight

Weight upon the Objection, for so many of the King's Counsel to answer it; for my part I think it would.

Mr. *Hungerford*. I urge it thus far: Whatsoever Person is produced in a Court of Justice for a Witness, he must appear to be utterly unconcerned in point of Interest in the Consequence of the Trial. If a Man produced as an Evidence to prove the Debt upon the Defendant, shall, upon being examined upon a *Voyer dire*, disclose that he is to have a part of the Money recovered, is not such a Person disabled from being a Witness at all? And is not a Promise of Pardon to the Witness, in Case he convicts the Criminal, a greater Byass than the Witness's having part of the Money recovered? In a Civil Cause the Question is not whether the Witness be tempted to swear a Truth or Falshood, but whether the Witness doth not appear to be so far concerned in Interest, that he ought not to be examined at all? And therefore I humbly insist that we ought to have an Account whether the Witness *Lynch* hath the Promise of a Pardon, or any Reward for that which he is to do here, *viz.* for the Evidence he is to give against the Prisoner. As to the Consequence of such an Enquiry, it is in different to me whether it will disable him from being a Witness absolutely, or go to his Credit only: For if it should come out that he hath such a Promise, we suppose no Jury or Man living will believe him, and that is much the same as if he were not produced; tho' it seems more agreeable to the Practice in Civil Cases, that he should not be admitted as a Witness at all.

Mr. *Ketelbey*. Mr. *Solicitor* mistakes the Words of the Book as I read them; he is pleased to understand them as if all the rest of the Judges differed in Opinion from my Lord Chief Baron *Hale*; but the Book does not say so, 'tis only that some of the other Judges were of Opinion that it did not disable him, but all agreed that it went to his Credit, and that was all I read in the Book; and I would not have offered it otherwise than as it was truly there, upon any Consideration whatsoever; but whether this Question be asked at first or last, so as we have an Answer to it, I am contented.

L. C. Just. You see the most you can make of it is, that it is an Objection to his Credit; and if it goes to his Credit, must he not be sworn and his Credit left to the Jury? He must be examin'd as a legal Witness; but if this Man, under Expectation and Promise of a Pardon, comes here to swear that which is not true, and you would ask him to that, he is not obliged to answer it. No body is to discredit himself, but always to be taken to be innocent till it appears otherwise. It is expressed that he has a Promise of Pardon: What to do? To give Evidence. Give Evidence! Why should he not? Is he not obliged to't? Suppose he gives Evidence according to the Truth, he would be entitled as much to his Pardon, as if he gave Evidence of that which is not true. The most you can say is, he has a Promise of Pardon if he gives Evidence; and can you conclude from thence that he can give no Evidence except a false Evidence? If they who ask the Question insinuate any thing like that, it ought not to have an Answer: But if he hath a Promise of Pardon if he gives a true Evidence, it is no Objection to his being a Witness, or to his Credit.

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Prisoner. My Lord, I humbly hope our Objections will thus far prevail, and that we shall come at the Fact.

L. C. Just. When he is sworn you shall ask him what Questions you please.

Mr. *Just. Eyre*. The Objection which gives Occasion to insist upon this Question, arises from the Influence which the Hopes of Pardon may possibly have upon the Witness; and if this be a Reason for setting aside a Witness as incapable, no Accomplice who discovers a Conspiracy can ever be allowed to prove it upon Oath; for I believe, no Man ever yet made a Discovery but with the Hopes of Pardon; and a Government is obliged in Honour to grant it, where the Confession appears to be ingenuous and sincere: And therefore if the Hope or Prospect of Pardon, which is all that can be infer'd from a Promise, should be an Objection to the Competency of a Witness, no Government would be safe; for treasonable Conspiracies might be form'd and carried on with Impunity, when the Persons concerned, from whom alone a full Discovery can be had, are utterly incapable of proving the Fact, though they give all possible Marks of their Sincerity and Truth. They have therefore been always allowed to be Witnesses; and I don't remember that ever any Objection was made to their Competency, 'till the Case of the King and *Gordon*, when the Council for the Prisoner would have asked the same Question which is now proposed, but the Court did not think it proper before the Witness was sworn; for no Person produced as a Witness can be examin'd to any Matter which only affects his Credit, and is no Objection to his Competency, till after he is sworn to give Evidence, and has been examin'd.

Mr. *Just. Powys*. Mr. *Hungerford* would do well to remember the several Acts of Parliament made to give Encouragement, by a Reward of forty Pounds, for the apprehending and convicting of every false Coiner, Highwayman, and House-breaker; and if a Criminal in those Offences shall come in, and discover and convict two of his Accomplices, he shall be entitled to a Pardon; and by the express Words of the 5th of Queen *Anne*, shall have the Reward of forty Pounds for each House-breaker, and shall also himself be entitled to a Pardon; so that the Parliament thought it proper to give even Money as well as a Pardon to such Discoverer. Yet ever since the making of those Acts, the Persons so promised and encouraged, have upon those Trials been admitted as good Witnesses even before a Pardon. And indeed there cannot be too great Encouragement given to Criminals to become honest, and to come in and impeach their Accomplices, it being often impossible fully to discover those secret Confederacies, but by some of the Accomplices and Actors therein.

The Law thinks these are fit Witnesses, and you will find it in the Book that Mr. *Ketelbey* hath mention'd that they were thought fit to make Discoveries of those secret Combinations; I don't say to come in and give false Evidence, but to make a fair Discovery.

Mr. *Hungerford*. My Lord, we submit; we shall ask the Question whether he hath any such Promise made; let the Truth come out, and we shall be satisfied.

Mr. *Just. Fortescue Aland*. I was Council in the Case of the King and *Gordon*; and I very well

remember the Council of the other Side insisted the Witnesses produced should be asked this Question on a *Voyer dire*, his Name was *Mayer*. The Reason the Court gave that it was improper to ask this Question on a *Voyer dire*, was, that if he had this Promise, such Promise was made either to speak the Truth, or to speak a Falshood; if it were to give a just and true Evidence, there was no Harm in it; and if it was a Promise of Pardon for speaking that which was not true, the Witness was not bound to answer that Question, and consequently it can be of no Use whatsoever, therefore the Witness must be sworn.

Mr. *Stephen Lynch* was sworn.

Mr. *Soll. Gen.* Do you know the Prisoner at the Bar?

Lynch. Yes.

Mr. *Soll. Gen.* How long have you known him?

Lynch. I first knew him about the Month of *June* last.

Mr. *Soll. Gen.* Pray give an Account to the Court and the Jury by what Means you first became acquainted with him.

Lynch. I became acquainted with him by Dr. *Murphey*: About the Month of *April* last I came into *England* from *Flanders*; at my Arrival in *England* I met with Dr. *Murphey*, that was my Acquaintance several Years before, who met me and told me he had some particular Business to tell me, and desired me to meet him at *Cooper's* Coffee-house in *Cornhill*, where I met him; and he told me that material Things were acting in the Kingdom in order to a Rising, and if I would be of the Party, he would recommend me to a Gentleman that had the Management of it: I asked Time to consider it, and in two or three Days time I told him that I was resolved to be of the Party. I frequently told him I was impatient to know who the Gentleman was that I was to be recommended to; about the Month of *June* he told me I should go with him to his Lodgings, which were at the upper End of *Chancery-lane*, right over-against the *White-Hart*.

Mr. *Soll. Gen.* Whose Lodgings did you go to?

Lynch. The Lodgings of Mr. *Layer*: Mr. *Layer* was at home, and desired us to go to the *Griffin* Tavern in *Holborn* and he would meet us there; we went, and in a little while Mr. *Layer* came to us; and then Dr. *Murphey* told him that I was the Gentleman he had spoke to him of. Mr. *Layer* was glad of my Acquaintance, and told me that he had had such a strong Recommendation of me, that he was fully satisfied in me; and then he held a Discourse about a Rising that was to be in the Kingdom in Favour of the Pretender, and that it would be back'd by a great many of the Army and the Guards, and several other Gentlemen.

Mr. *Hungerford.* The Overt-Act is laid in *Essex*, and here is an Evidence given of an Overt-Act in *Middlesex*; with Submission, they can give no Evidence of an Overt-Act in another County, till they give Evidence of an Overt-Act in *Essex*, where the Indictment is laid.

L. C. Just. All they say of Matters in the County of *Middlesex*, unless they give Evidence of an Overt-Act in the County of *Essex*, it signifies nothing.

Mr. *Hungerford.* My Lord, with Submission,

they ought not to be suffered to give Evidence of an Overt-Act in *Middlesex*, before they give Evidence of some Overt-Act in *Essex*; for the proving some Overt-Act in *Essex* is the only thing which can entitle them to prove any Overt-Act elsewhere. For by the Method they would go on in, the Jury may be captivated with a Story of the *Griffin* Tavern, and of Mr. *Layer's* other Assignations and Actions in *Middlesex*, which cannot be imputed to him upon this Indictment until some Treason be proved in *Essex*: I hope therefore the King's Council shall receive your Lordship's Directions to go on regularly, to begin to give an Account of the Overt-Acts in *Essex*, before they go into another County.

L. C. Just. Mr. *Hungerford*, you must give them leave to go on in their own Method, of that that first happened in *Middlesex*, and afterwards of what happened in *Essex*; and if you dare not trust them and us, but will have your own Method, it would be to put us into Confusion.

Mr. *Soll. Gen.* My Lord, we insist upon it in point of Law, that we are intitled to give Evidence of Overt-Acts of the same Species of Treason laid in the Indictment, though done in any County in *England*, provided we also prove an Overt-Act in the County of *Essex*; which we must do, otherwise this will pass for nothing. Mr. *Lynch*, go on, and give my Lord and the Jury an Account of what Mr. *Layer* said, when you were together at the *Griffin* Tavern.

Lynch. The first thing he told me was, That he was very glad to meet me, that he had had a good Recommendation of me from Dr. *Murphey*, as being a Man he could confide in; and beginning his Discourse of an Insurrection in the Kingdom, he told me, that they were back'd with a great many of the Army and the Guards; that there was a great many of the Nobility and Gentry of the Country that would come in to them: He told me then, that he wanted a Man of Resolution that would take upon him the seizing of some Person of Note, as a General, or some other great Man: The Discourse run all upon the same thing.

Mr. *Soll. Gen.* Recollect as well as you can, the Particulars Mr. *Layer* told you relating to this Design.

Lynch. He told me the general Design of a Revolution in the Kingdom, in favour of the Pretender, and that they were back'd by a great many of the Army, and a great many of the Nobility and Gentry; and then he told me he wanted a Man of Resolution, to undertake with some others, to seize a great Man, as a General or some other great Man: At that Time I took upon myself to do it, so that Time we discoursed no more.

Mr. *Soll. Gen.* How long were you together?

Lynch. About half an Hour.

Mr. *Soll. Gen.* When had you the next Meeting?

Lynch. A Day or two afterwards.

Mr. *Soll. Gen.* At what Place?

Lynch. At the same Tavern, the *Griffin* Tavern; when I came there, I sent a Boy for Mr. *Layer*, as he had ordered me to do when I wanted to see him.

L. C. Just. When was your first Meeting?

Lynch. About the Month of *June*.

L. C. Just. And the second Meeting was two or three Days after the first?

Lynch.

Lynch. Yes, my Lord.

Mr. Serj. Cheshire. At your parting after the first Meeting, what did Mr. *Layer* say to you?

Lynch. Mr. *Layer* told me, if I had Occasion to speak to him that I should not come to his Lodgings, but to go to a Tavern and send for him, which I did; I sent a Boy for him, and he came to me. Then talking over a Glass of Wine, he told me that he had pitched upon me to seize the Earl of *Cadogan*, and that I should chuse as many Persons as I thought fit who would answer the same Design; and he being the principal Man in the Army, it would discourage the King's Party, and animate the Pretender's Party; which, as I said before, I agreed to undertake, and to do the utmost of my Endeavours to do it.

Mr. Serj. Pengelly. Was you to do it alone, or was you to have any Assistance?

Lynch. Yes, I was to have Assistance.

Mr. Serj. Pengelly. What Assistance?

Lynch. Such that I should chuse; such People that I could confide in.

Mr. Soll. Gen. Did you undertake it?

Lynch. Yes I did undertake it, and to pitch upon such Persons as should be proper to assist me in it.

Mr. Soll. Gen. Was any thing said at that time relating to any Person, who was to have the Conduct of the Design?

Lynch. He told me that there was some great Man that did not want Wit, Courage or Resolution, and was at the Head of this Affair, who would at a proper time give me an Order to effect something further about it.

Mr. Soll. Gen. Had you any more Discourse with the Prisoner about this Affair?

Lynch. Yes, we had several Discourses about it.

Mr. Att. Gen. Tell my Lord and the Jury what more Discourse you had, if you can remember.

Lynch. The chief Part I was to act was to seize the Earl of *Cadogan*, with such Gentlemen as I should think proper to answer the end of seizing him.

Mr. Serj. Cheshire. Was there any other Meeting, and when, and how long after?

Lynch. After that I came to a Tavern in *Holborn*.

Mr. Serj. Cheshire. How long after?

Lynch. Some few Days; it was at the *Castle Tavern* in *Holborn*.

Mr. Att. Gen. Who was with you at the Tavern?

Lynch. I came to the Tavern and sent for Mr. *Layer*.

Mr. Att. Gen. Did he come to you?

Lynch. Yes, he came to me.

Mr. Att. Gen. What Discourse had you with him at that time?

Lynch. We had no particular Discourse, but in general we talked about the Uneasiness of the Nation, and the fair Opportunity there was to rise.

Mr. Att. Gen. Pray give an Account of what else passed.

Lynch. I say, the Discourse that we had at two Meetings before, he repeated, and said, Now is a fair Opportunity, the Uneasiness of the People being such, to bring about a Revolution, since they would be back'd by the Army and the Guards, and several other People. Soon after that we parted.

Mr. Serj. Cheshire. When had you any other Meeting?

Lynch. Some Meetings we had at Mr. *Layer's* House in *Southampton-Buildings*.

Mr. Serj. Cheshire. How long after?

Lynch. A few Days only.

Mr. Serj. Cheshire. At the several Meetings at his House, what was the Subject of your Discourse?

Lynch. It was upon the same, about the Rising and Uneasiness of the People; and the fair Opportunity of bringing about a Resolution; of the Disposition of the Army and the Guards.

Mr. Serj. Cheshire. Did he give you any Encouragement?

Lynch. After I met him at his House in *Southampton-Buildings*, I told him of my Uneasiness; because he had told me at the beginning, that these things would be soon put in Execution: I told him, if they were delayed, I was afraid they would not succeed. He then animated me, by telling me that there was no fear of its succeeding; and that I should not be discouraged, for there was a great Man, a Man of Wit and Conduct; that was at the Helm, and that had the Management of the Scheme: That I should always keep a good Heart; and that Things went on very well.

Mr. West. Did he tell you in whose Favour this was to be?

Lynch. Yes, in Favour of the Pretender. He mentioned him by the Name of King.

Mr. Serj. Cheshire. Do you know any thing about his going into the Country?

Lynch. After I met him at his House, he went into the Country and staid sixteen or seventeen Days at his Return I went to see him, expressing how uneasy I was about the Delay.

Mr. Serj. Pengelly. About what Time was this?

Lynch. I believe it was in *July*. And then I told him again how uneasy I was at the Delay. To which he answered, keep a good Heart, all Things go on very well.

Mr. Serj. Cheshire. Had you any Apprehensions that all was to be done at home, or that you was to have any foreign Assistance?

Lynch. In my Discourse to him of the Uneasiness I was under at the Delay, I asked him if he had any Promise of any Succour from any Power Abroad? He told me, if we once made a Beginning, we should not want them: But did insinuate, that we should not want Encouragement from the Court of *France*.

Mr. Att. Gen. When you expressed your Uneasiness at the Delay, what did he say to encourage you?

Lynch. The Reason he told me was, that things went on very well, and would very soon be put in Execution.

Mr. Att. Gen. In what Manner did you express your Uneasiness?

Lynch. Nothing but that I was uneasy, and I was afraid that things did go wrong.

Mr. Soll. Gen. What did you say, did you say any thing relating to your own Circumstances?

Lynch. In the Beginning I told Dr. *Murphey*, because it would be a long while, some five or six Weeks, before I was to be introduced to Mr. *Layer's* Company, that I came on my own particular Business, and my Circumstances would not permit me to be long here at my own Expence.

At the Meeting with Mr. *Layer*, when I first made this Complaint to him, Mr. *Layer* told me I should not want for a small Matter, to maintain me in *England*. Accordingly Mr. *Layer* gave me some Money.

Mr. *Att. Gen.* Do you remember how much that was ?

Lynch. I cannot remember.

Mr. *Att. Gen.* Did he give you Money at any other Time ?

Lynch. Mr. *Layer* gave me some Money the first Time, and afterwards he sent me some Money by Dr. *Murphey*.

Mr. *Serj. Pengelly.* Did he give you any Money at any other Time ?

Lynch. Yes, the last time I was with him I had more.

Mr. *Att. Gen.* How many times had you Money of him ?

Lynch. Five or six times.

Mr. *Att. Gen.* Do you know what the Sums did amount to together ?

Lynch. I can't recollect ; but I believe about eight or ten Guineas.

Mr. *Att. Gen.* What was it given you for ?

Lynch. To keep me in *England*, and to assist in the intended Design of a Revolution.

Mr. *Serj. Pengelly.* After you went to him, upon his Return out of the Country, do you remember the Discourse that passed between you then ?

Lynch. Yes : After I came to his House, I expressed my Uneasiness at the Delay ; Upon which he encouraged me, giving me to hope that Things went on very well, and our Design would effectually take Place.

Mr. *Serj. Pengelly.* Did you ask him any thing about the Army ?

Lynch. I asked him if he had any Encouragement from the Guards and the Army ? He told me, Yes, he had ; that a great many of the Officers would not engage themselves now, being well paid ; but he said he had spoke with several Officers of the Guards, who had assured him, that most of the common Soldiers would come in, as soon as we had made a Beginning.

Mr. *Serj. Pengelly.* Did he mention any thing of the Time ?

L. C. Just. When you asked him if he had any Encouragement from the Army, what did he say ?

Lynch. He told me, that he had Encouragement from many of the Officers of the Army : That he had discoursed with several Serjeants of the Guards, who told him that the common Soldiers would be glad, after they had made a Beginning, to come in to them.

L. C. Just. Did he give you any Reason for this ?

Lynch. Mr. *Layer* told me, the Serjeants told him so before they were encamped, and complained of their ill Usage, and hard Usage from the subaltern Officers.

Mr. *Serj. Pengelly.* Was you acquainted with any Time or Day that was fixed ?

Lynch. There was no fixed Time : Mr. *Layer* told me, it was to be on the Rising of the Camp ; because they could not talk with the Soldiers so well, while they were encamped, as they could afterwards, when they were in their Quarters.

Mr. *Serj. Cheshire.* Was there any Consultation of viewing any one's House ?

Lynch. Afterwards in Discourse he told me, that it was fit to go and view the Earl of *Cadogan's* House, in case it was necessary to seize the said Lord in his House.

Mr. *Serj. Cheshire.* Where is his House ?

Lynch. In *Piccadilly*. Accordingly we appointed a Day to go ; and I came to his Lodgings, and we took Coach, and away we went ; and talking to him about it, he told me, he was very well acquainted with my Lord *Cadogan*, and had some Business with him, about an Estate which his Lordship was about buying : We went to his House, but my Lord was not to be spoke with, or was not within, I don't remember which, but we were conducted into his House : We viewed the inner Part of the House, afterwards we went into the Garden, we view'd the lower Part of the Garden, then we went out in the Yard, and took a View of the Avenues round about the House. I don't remember exactly the Time, but it was that Day that a Soldier should have been shot in *Hyde-Park*.

Mr. *Serj. Cheshire.* Had you any Discourse about the Feasibleness of it ?

Lynch. Yes, that it was easy to be done ; if we had but some resolute Gentlemen to stand by us, that it was very feasible to be done.

Mr. *Serj. Cheshire.* Had you any Talk at that time relating to the *Tower* ?

Lynch. He told me, the *Tower* would be immediately surrendered to the Party ; on the Day the Plot was to be put in Execution, a certain Officer of the Guards would take upon him to mount the Guards there, who would facilitate the Delivery of the *Tower* to them.

Mr. *Serj. Cheshire.* Was there any talk of the Mint ?

Lynch. Yes, afterwards : He said there would be no doubt of the Mint ; they would be glad to take the Opportunity to shake off their Confinement : And that they would put Arms into their Hands, according as they repaired to their Party.

Mr. *Att. Gen.* When did you see the Prisoner next after the time that you speak of viewing my Lord *Cadogan's* House ?

Lynch. I saw him at his own House, and at several Taverns in the City ; and once he wrote to me, desiring me to come to his Lodging ; accordingly I went, and when I came to his House, I met with a little Paper that was left for me, directing me to go to the *Queen's-Head* Tavern in *Great Queen-Street* near *Lincoln's-Inn-Fields*, and to enquire there for one Mr. *Wilson* ; which I did, and I was conducted into a Room where the said Mr. *Wilson* was, with Mr. *Layer* and another Man, who seemed, by his Clothes, to be a Serjeant of the Guards. I do not know the Man.

Mr. *Att. Gen.* What passed then ?

Lynch. We staid a little while there, we talked over the Business, and drank good Success to the Enterprize.

Mr. *Serj. Cheshire.* Your Lordship will please to take Notice, that when he went to Mr. *Layer's* Lodging, he found a Letter there, directing him to go to the *Queen's-Head* Tavern, and enquire for one *Wilson* ; that when he came there, *Wilson* was there, and Mr. *Layer*, and another Man.

Mr. *Serj. Pengelly.* What passed at that time ?

Lynch. Nothing material.

Mr. *Att. Gen.* You talked about drinking good Success to the Enterprize : Who drank that ?

Lynch.

Lynch. We all drank that.

Mr. Att. Gen. Did the Prisoner at the Bar drink it?

Lynch. Yes, he did. I told the Prisoner, when he went out, that I was mighty uneasy at the Delay of this Affair. He told me, I need not be uneasy, for every Thing went on well; and they had a Nobleman at the Helm, who had Authority from the Pretender, and would lose no Opportunity when a fit Time offered.

Mr. Serj. Pengelly. What did he call the Pretender?

Lynch. He called him the King. I was uneasy at the Delay, for fear of being discover'd.

L. C. Just. What Reason did he give you, why you should not be uneasy?

Lynch. Because their Designs were quickly to be put in Execution; and there was a Nobleman at the Helm who would put the Design in Execution, as having full Power and Authority from the King to act as he thought proper.

L. C. Just. Did you ask who that Nobleman was?

Lynch. Yes; but he never told me his Name, but said, that I should, in a proper Time, be presented to him, and receive my Commission and Orders from him to seize my Lord Cadogan.

Mr. Serj. Pengelly, My Lord, we shall now gratify the Prisoner's Counsel, with an Account of what happened in *Effex*; I hope they will not be impatient to hear that: Therefore, pray acquaint my Lord, and the Jury, when you went out of Town with Mr. *Layer*.

Lynch. My Lord, I was at Mr. *Layer's* House the Day when the Bishop of *Rocheſter* was sent to the *Tower*; he ask'd me, if I would ride abroad with him the next Day to take the Air; I consented to it, and came the next Morning to his House; and Mr. *Layer* asked me if I mounted with Furniture: I told him no; but that I had a double Barrel Fowling-piece, which if his Servant would carry, would do as well. He then desired me to go and stay for him without *Aldgate*, and get my Gun ready loaden, for he had that about him which he would not lose for any thing in the World. I went and staid till about ten or eleven o'Clock, when Mr. *Layer* met me, and gave the Gun to his Servant to carry. On the Road he told me, we were going to my Lord *North* and *Gray's*, whom he was very well acquainted with, and that he would recommend me to him as a Friend of his. When we got to the *Green Man*, he told me, we had better go in and dine there, because Dinner-time would be over before we could get to my Lord *North* and *Gray's*. Whilst Dinner was getting ready, we had several Discourses on the same Subject, Of the Uneasiness of the Nation, and its Inclination to a Revolution, and how to bring it about; upon which he pulled a Paper out of his Pocket, and gave it me to read the latter Part of it.

Mr. Serj. Pengelly. Can you remember what it contained?

Lynch. I remember some Lines of it; which was, in general, to invite the Nation to an Insurrection, and to shake off the Calamities and Miseries they endured under the present Ministry. And it was mentioned in the said Paper, that the Earl of *Cadogan* was actually in their Custody; thereby encouraging the Army to revolt,

with an Offer of three Guineas to every Horseman and Serjeant, and two Guineas to every Corporal, and one Guinea to every common Soldier, to be paid immediately on their joining the Party, and a Promise of farther Preference.

Mr. Att. Gen. Did you read this?

Lynch. I did, out of the Paper in Mr. *Layer's* Hand.

Mr. Att. Gen. Do you know whose Hand-writing it was?

Lynch. According to our Discourse, I thought it might be his writing.

L. C. Just. But he produced it?

Lynch. Yes, my Lord, he produced it.

L. C. Just. You say you imagine, from some Discourse between you, that it was his Hand-writing; what Reason was there in all his Discourse, that induced you to think so?

Lynch. He talk'd of it as being of his own making; besides, there were several Interlineations, Dashings-out, and Interlineations afterwards. He was very well satisfied and easy as to me, and said, he could wish that he could bring Matters about so, as that I could have the sole Direction of seizing some of the Ministry, and namely, my Lord *Townshend*, my Lord *Carteret*, and Mr. *Walpole*.

Mr. Att. Gen. Was there any Discourse about seizing the King?

Lynch. He said, when the Design was put in Execution, the Army would declare in their Favour, and they would send a strong Guard to take care of the King's Person.

Mr. Att. Gen. How to take care of the King's Person? What was you to do?

Lynch. Nothing but to secure the King's Person; by what he told me, it was for the Public Good of the Kingdom; that they did not mean, nor had they any Design on the King's Person, but only to keep him in Security from any Insult.

Mr. Att. Gen. What more passed at that Time?

Lynch. Nothing more in particular.

Mr. Att. Gen. Had you any talk relating to the Army?

Lynch. I said before what related to the Army.

Mr. Serj. Pengelly. Was there any Discourse about a Scheme or Plan?

Lynch. He told me there was a Scheme laid on that Foot, of which I told you the first Step was to seize the Earl of *Cadogan*, and then, according as the Army came over, to take care and seize the King's Person; and he thought the proper Time to put this in Execution, would be at the Rising of the Camp in *Hyde-Park*.

Mr. Serj. Pengelly. Was there any Objection made to this?

Lynch. No; I made no Objection, only shew'd my Uneasiness at the long Delay.

Mr. Serj. Pengelly. When you so expressed your Uneasiness, what did he say?

Lynch. He told me, if I could think or propose any Thing more proper, that I should do it. After that we rode toward *Epping*, and went to my Lord *North* and *Gray's*; and there Mr. *Layer* introduced me as his Friend. We staid there all Night, and dined there the next Day. In the Evening we came away, in company with another

ther Gentleman that I did not know; but we talk'd on the Road about the Situation of my Lord's House; and Mr. *Laver* told me he had recommended me to his Lordship as his particular Friend, and asked me how I liked him.

Mr. *Serj. Pengelly*. Did he ask you any Questions? Do you remember what he called his Lordship?

Lynch. I don't remember any other Name but *My Lord*.

Mr. *Serj. Pengelly*. When he asked your Opinion of him, and how you liked him, did he describe him in any other manner, or only called him *My Lord*?

Lynch. He only called him my Lord *North* and *Grey*; he only asked me how I liked my Lord *North* and *Grey*.

Mr. *Serj. Pengelly*. Liked his Lordship, for what?

Lynch. That was all.

Mr. *Reeve*. Had you any Talk with him about the Person that was to have the chief Command?

Lynch. Yes; but he never named the Person.

Mr. *West*. Had you never any Discourse who was to command the Party that was to seize my Lord *Cadogan*?

Lynch. I was to command that Party.

Mr. *West*. Was you any other Time at my Lord *North* and *Grey*'s?

Lynch. Yes; another time I went to my Lord *North* and *Grey*'s, where I found Mr. *Laver*, and expressed to Mr. *Laver* the Uneasiness I was in at the long Delay, and that I was afraid our Hopes would vanish; and told him, if things were not soon put in Execution, I would withdraw my self. Mr. *Laver* bid me not be uneasy, Things might perhaps be sooner put in Execution than I imagined.

Mr. *West*. Where was this?

Lynch. At *Epping*, at my Lord *North* and *Grey*'s.

Mr. *West*. Did you come home together?

Lynch. No; I came home that Night: Mr. *Laver* remained there.

Mr. *Serj. Pengelly*. Did you see him some time afterwards?

Lynch. I met him at his own House, where I expressing my Uneasiness as formerly, he said, I should not be uneasy, for Things would soon take Effect; and bid me get myself ready to execute my Design; because they had Notice the Camp would soon break up, which was the Time designed to put Things in Execution. And at another time he told me, that the Declaration which he had shewn me at the *Green Man*, had mentioned no particular Persons, but in general the Safety and Public Good of the Kingdom: There was nothing mentioned of the Pretender in it, but that he had thought fit to put it now in the Pretender's Name.

Mr. *Serj. Pengelly*. Who was you to receive your particular Orders from, for the executing your Design?

Lynch. From that Nobleman, who was to act as General in this Affair.

Mr. *Serj. Pengelly*. Did you never hear from Mr. *Laver* who that was?

Lynch. No; I don't recollect he was ever named by Mr. *Laver*; he told me, that the Declaration was afterwards put in the Name of the Pretender.

Mr. *Serj. Pengelly*. What was it he recommended you to my Lord *North* and *Grey* for?

Lynch. He recommended me to him as one of his particular Friends.

Mr. *Serj. Pengelly*. What Discourse had you at that Time?

Lynch. We talk'd indifferently; we discours'd nothing of the Revolution at that Time: He told me he had given the Declaration to a Non-juring-Minister to get printed, and had given twenty Guineas for that Purpose.

Mr. *Soll. Gen*. Was you acquainted before with my Lord *North* and *Grey*?

Lynch. No; he introduced me as one of his Friends.

Mr. *Serj. Cheshire*. Did you know when Mr. *Laver* was first taken up?

Lynch. Yes.

Mr. *Serj. Cheshire*. How long before that had you been with him?

Lynch. I can't recollect the Time. I first became acquainted with Mr. *Laver* about *June*.

Mr. *Serj. Cheshire*. What passed the last time you was with him, before he was taken up? Was there any particular Conference between you?

Lynch. I told you about the Declaration, and about my Uneasiness, and that he told me Things would succeed sooner than I thought for.

Mr. *Serj. Cheshire*. When you express'd your Uneasiness, did he use any Vehemence of Expression, as to what Part he would act?

Lynch. He told me several times, when I was so irresolute and uneasy, saith he, don't you be uneasy; rather than all should fail, I will stir up and be a second *Maffinello*.

Mr. *West*. Had you any Conversation about the taking up of any Person?

Lynch. He only told me at that Time, that if the Nobleman at the Head of Affairs should be taken up, every thing would be quash'd.

Mr. *Serj. Pengelly*. That Nobleman was not taken up at that Time then?

Lynch. No.

Mr. *Serj. Pengelly*. What Recommendation had you to my Lord *North* and *Grey*?

Lynch. Only as a Friend of Mr. *Laver*'s, to pass away the Time in Summer.

Mr. *Hungerford*. I presume they have done with giving the Evidence, which they intend, of any Overt-Act in the County of *Essex*; if they have, I would crave the Liberty to observe.

Mr. *Serj. Pengelly*. We have not done; if you have any thing to observe, it must be when we have gone through our Evidence.

L. C. Just. When they have given all their Evidence, then will be your proper time to object to the Evidence, and to shew whether 'tis competent or no.

Mr. *Hungerford*. I do not press to make any Remarks upon their whole Evidence; but if they have given all the Evidence they intend to give of any Overt-Act in *Essex*, for on that depends the Fate of this Gentleman at the Bar, I hope we are now (before they shall be permitted to give Evidence of any farther Overt-Act of Treason in another County) at Liberty to object, that the Transaction in *Essex* is not an Overt-Act at all of the High-Treason laid in this Indictment.

Mr. *Soll. Gen*.

Mr. *Soll. Gen.* We have not done: When we have given our Evidence, then it will be proper for them to make their Objections to the Whole.

Mr. *Hungerford.* I humbly offer it to your Lordship's Consideration, whether it is right and proper to go on in such a Method, and to take up the Time of the Court, when the Gentlemen on the other Side say, they have done with giving Evidence as to any Overt-Act in the County of *Essex.*

Mr. *Soll. Gen.* No; we have not done with that Evidence.

Mr. *Ketelbey.* I don't know whether your Lordship will indulge us to ask the Witness a Question or two now.

L. C. Just. Propose your Questions, and we will tell you.

Mr. *Ketelbey.* Whether he hath any Offer of Pardon proposed to him to induce him to give Evidence against the Prisoner at the Bar; which if he hath, we apprehend will invalidate his Evidence.

Lynch. No, Sir; I have no Promise of Pardon at all: I only do this out of Justice, to make what Reparation I can, and to save the Blood of many People.

Mr. *Ketelbey.* I beg leave to ask him a few more Questions. I think you say the first time you were introduced into this Gentleman's Company, the Prisoner at the Bar, was at the *Griffin-Tavern* in *Holborn*, and that he then told you he had great Designs in hand; and that there was an Infurrection designed, and they wanted a Person of Resolution to seize a General: This, you say, was the first Time that ever you saw the Prisoner at the Bar. How came you to have that Share of Confidence in a Man that you never saw before?

Lynch. I told you I was in Discourse with *Dr. Murphey* a great many Days and Weeks before I saw *Mr. Layer*; I told you how every Day I saw him, and always discoursed about the Infurrection, and how he told me then that he would recommend me to a Man that had the Management of the greatest Part in this Affair; and I asked every Day when I should be introduced to him: He told me, the Time was not come yet; but when it was a proper Time, he would introduce me.

Mr. *Ketelbey.* I think you give that for a Reason, why you had that Confidence in him, because you had been recommended by one *Dr. Murphey.* How came you to have that mighty Dependance on *Dr. Murphey*?

Lynch. Because *Dr. Murphey* and I had been acquainted several Years ago.

Mr. *Ketelbey.* I hope you was not in any wicked Design with *Dr. Murphey*, and so much acquainted, as to recommend you in a Case of Treason.

Lynch. There was a common Friendship between us.

Mr. *Ketelbey.* How came he to trust you? Would you have trusted him in a Business of Treason?

Lynch. We have been concerned in Affairs together.

Mr. *Ketelbey.* How long was you at the *Green Man* with *Mr. Layer*?

Lynch. I can't say exactly the time.

Mr. *Ketelbey.* I don't ask you exactly to a

Minute or two; but was you there an Hour, or two, or three Hours?

Lynch. I can't say whether we were there an Hour or two; but we had something dressed for Dinner, and the Matters was discoursed of by us before Dinner.

Mr. *Ketelbey.* When you first alighted from your Horses, what Room was you shewn into?

Lynch. We were shewn into a Room up one Pair of Stairs on the Right Hand, the first Room.

Mr. *Ketelbey.* Was it towards the Street, or backwards?

Lynch. It looked into the common Road.

Mr. *Ketelbey.* Did you look out of the Window and see a Person of your Acquaintance?

Lynch. I saw two Gentlemen, but did not know them.

Mr. *Ketelbey.* Did you not look out of the Window, and say, you saw a Gentleman of your Acquaintance?

Lynch. I said I saw two Gentlemen that I thought I had seen before.

Mr. *Ketelbey.* Did not you go down to those Gentlemen?

Lynch. No, I did not go down to them.

Mr. *Ketelbey.* Did not you go down to them?

Lynch. No.

Mr. *Ketelbey.* Did not you say so to *Mr. Layer*, in the *Drawer's* Prefence?

Lynch. No.

Prisoner. Did not you tell me that those Gentlemen were your Acquaintance?

Lynch. I told you, those two Gentlemen I had seen before.

Prisoner. How long were we together at the *Green Man*? Were the Horses put up or not?

Lynch. I can't tell.

Prisoner. Was there any thing dressed for our Dinner but a Beef-Stake?

Lynch. No, nothing else.

Prisoner. Did not you go down Stairs, pretending you went to those Gentlemen?

Lynch. No, I did not tell you I went to those Gentlemen.

Prisoner. Did you not go down Stairs?

Lynch. Yes, I did, and came up again immediately.

Prisoner. Was not Dinner on Table when you came up again?

Lynch. I went down twice before Dinner.

Prisoner. Then you must consequently leave me in the Room.

Lynch. I went down to make Water.

Prisoner. What did you go down the second time for?

Lynch. Out of Curiosity.

Prisoner. How long did you stay?

Lynch. Not both times above two Minutes.

Prisoner. I was then alone, when you went down.

Lynch. Yes.

Prisoner. Was this Discourse before or after Dinner?

Lynch. It was before Dinner.

Prisoner. When you came up the second time, was not Dinner on the Table?

Lynch. It was come up.

Prisoner. And yet the Discourse we had was before Dinner?

Lynch. Yes, it was before Dinner.

Prisoner. How much Time might we spend before Dinner, half an Hour or an Hour?

Lynch. I don't remember, but it was a good while.

Prisoner. Was not the double Barrel Gun in the Room?

Lynch. I don't know whether it was there, or whether your Servant had it.

Prisoner. At the Time of Dinner was my Servant, or Drawer, in the Room?

Lynch. Neither of them was in the Room.

Prisoner. You say we were a good while, you and I, alone; pray, how long?

Lynch. I cannot say positively how long.

Mr. Hungerford. Have you any Copy of that Part of the Paper he gave you to read, and which you read?

Lynch. No.

Mr. Hungerford. Was the Whole of it of any Length?

Lynch. To the best of my Remembrance it was a common Sheet of Paper.

Mr. Hungerford. Did you read the Whole?

Lynch. No; he doubled it down, and gave me the latter Part of it to read.

Mr. Ketelbey. Some Things you seem to remember, and some Things you don't remember: Was it printed, or written?

Lynch. It was written.

Mr. Ketelbey. Did he not mention it to be the Prince of Orange's Declaration?

Lynch. No, he did not.

Prisoner. Was not the Paper blotted?

Lynch. In that I saw there were two or three Places interlined.

Mr. Hungerford. My Lord, I think the Gentlemen did say they had not done with their Evidence, with relation to an Overt-Act in *Essex*; if they have not, they will do well to go on now: But we hope they shall not go into Overt-Acts committed in any other County, till they make the Whole of their Proofs of an Overt-Act in *Essex*.

L. C. Just. You have been told, they should proceed in their own Method, and when they have done, you may make what Observations may be of Service to your Client.

Mr. Hungerford. Relations of Fact arising in another County, which have no Relation to the Fact arising in *Essex*, we hope they shall not go into, to amuse or captivate the Jury, the Court, and the Auditory.

L. C. Just. Sure never any Thing was like this! It is our Province to give Directions, and we think it not proper to interrupt the King's Counsel, but that they should proceed in their own Method: You shall be heard as long as you please, when you come to make your Observations.

Mr. Soll. Gen. The Prisoner hath a Right to say any thing that is proper to the Court and the Jury, in his Defence, but he must say it openly; he is not to talk privately with the Jury; tho' I am sure they are Gentlemen of so great Worth and Honour, as not to be influenced.

Mr. Att. Gen. I dare say the Jury won't be influenced; but he talks to his Counsel so loud, that the Jury may easily hear every Word he says.

L. C. Just. He must not speak so loud.

Mr. Att. Gen. I just now heard him say, It was strange to go on with Evidence that would

not be to the Purpose. I heard him, as I sat here; let him deny it if he can.

L. C. Just. I hope you will not offer any thing of that Kind, Mr. Layer: You have a Right to discourse with your Counsel, but you must do it in such a Manner as the Jury may not hear.

Mr. Hungerford. Indeed, my Lord, he shall have no Encouragement from us for any such Conduct.

Matthew Plunkett sworn.

Mr. Serj. Cheshire. Tell my Lord and the Jury, whether you know the Prisoner at the Bar.

Plunkett. Yes, I do know him.

Mr. Serj. Cheshire. Will you tell my Lord and the Jury, upon what Account, and by whose Means, you first became acquainted?

Plunkett. One Major *Barnewell*, brought me first acquainted with Mr. Layer; he had an Execution in his House in *Great Queen-street*, and this Major *Barnewell* came to me, and desired me to get a Couple of Grenadiers. I brought him two; we went to Mr. Layer's House, and his Clerk let us in at the Back-door, and the Grenadiers turned the Officers out, and Mr. Layer gave them a Crown, and a Glas of Brandy.

Mr. Serj. Cheshire. When was this?

Plunkett. As near as I can guess, it is going on of five Years.

Mr. Serj. Cheshire. Tell my Lord and the Jury what Month in this last Year you renewed the Acquaintance, and who brought you to him?

Plunkett. The next Acquaintance I had afterwards, was by Major *Barnewell*, who was arrested, and he sent me with a Letter to his House, to desire him to relieve him.

Mr. Serj. Cheshire. Do you know any thing of one *James Plunkett*?

Plunkett. Yes; he came to me from Mr. Layer, in *July* last, to desire me to meet him; but how this Counsellor Layer and this *James Plunkett* came acquainted I don't know.

Mr. Serj. Cheshire. What was he?

Plunkett. I don't know what he is; he is acquainted with Mr. Layer.

Mr. Serj. Cheshire. What Profession is he of?

Plunkett. I don't know; nor how he lives, or gets his Bread.

L. C. Just. Go on.

Plunkett. Mr. Layer paid the Charges for Major *Barnewell*, and brought him out of the *Marshalsea*.

Mr. Reeve. How long was this ago?

Plunkett. To the best of my Knowledge, four Years ago.

Mr. Reeve. He is giving an Account how he came to be acquainted with Mr. Layer; the first time was upon the Account of rescuing Mr. Layer's Goods; the other time was by Mr. Layer's redeeming Major *Barnewell* out of the *Marshalsea*, and paying his Debt: Give an Account how you came last acquainted with him.

Plunkett. I being at home, in my own Room.

Mr. Reeve. How long ago?

Plunkett. I believe, as near as I can guess, it was last *July*.

Mr. Reeve. Give an Account of what happened then.

Plunkett. Now this *James Plunkett* came into my Room, sat down, and he asked me how I did,

did, and said, he was glad to see me; and he asked me, Are you not well acquainted in the Army? Yes, saith I, I know a great many in the Army, both Officers and common Soldiers. Do you know, saith he, any of the Serjeants of the Guards? I know some of 'em, said I. He brought me out of the Room, because my Wife was there, and then he opened his Mind to me: Saith he, Do you know one Mr. *Layer*? (I had forgot the Gentleman, being so slightly acquainted with him;) No, saith I, I don't know him. No matter, saith he, I have appointed a Place for you to meet him at, at the *Italian Coffee-House* in *Russel-Court*; and at the End of this, Mr. *Plunkett* asked me to keep Correspondence with them for the Pretender's Service. I did not go to the *Italian Coffee-House*, not being in a proper Station, nor having Money for that Purpose: So I did not think proper to go to the *Italian Coffee-House*; but the *Sunday* following I went to *St. Andrew's Church*, and meeting with some Friends, they told me Dr. *Sacheverel* preach'd there; and so they decoy'd me to go and hear him preach there. When Service was over, to the best of my Knowledge, as I was going Home, between twelve and one a-Clock, I met Mr. *Layer* accidentally in *Lincoln's-Inn-Fields*; Mr. *Layer* he look'd at me, he was really a perfect Stranger to me, for I did not know him again; saith he, Is not your Name *Plunkett*? Yes, saith I. Was there not one with you t'other Night, one *James Plunkett*? Yes, Sir, says I. Where did he desire you to go? said he. I answer'd, He desired me to go to the *Italian Coffee-House* in *Russel-Court*. Saith he, 'Tis well enough: Do you not know me? No, saith I, you have the Advantage of me; I ask your Pardon, for I don't remember you. Don't you remember one *Layer*? said he. Then I call'd to Mind that I knew the Gentleman. Saith he, Will you walk on this Side? I walked back again towards *Little Turn-Style*, and we struck up the Wall-Side, and just as we came under a great Coach-House Gate-Way, we went in, and in the Gate-Way he talk'd to me; saith he, I am told that you are a very honest Man, and well-affected so and so.

Mr. *Reeve*. Well-affected, to whom?

Plunkett. Well-affected as to the Business of the Pretender. At the same Time we had this Talk, he bid me not mention it to *James Plunkett*, that I had seen him: Then he asked me if I knew any Serjeants in the Guards; for saith he, I want such old Soldiers as you are yourself, that could discipline a Mob, for we have other Men enough amongst us; but if we could get some old Soldiers, if that could be managed, they would be finely rewarded. But Sir, saith I, the Pretender is a Papist. Saith he, what Difference is there between a Papist King, and a *Lutheran* King?

Mr. *Reeve*. He said he wanted such old Soldiers as you; for what?

Plunkett. He wanted them to discipline a Mob, and to put them in Order. Then we began to reason about the Pretender; Why, saith he, we had as good have a Papist for our King as a *Lutheran*.

Mr. Serj. *Cheshire*. What did you object?

Plunkett. I said he was a Papist. Says he, We had as good have a Papist for our King, as to have a *Lutheran*, I don't know what Difference there is; but as it was, the Nation was enslaved, and the People were obliged to be Slaves. I asked him, Sir, who is the Promoter of this,

that may join us? You see, says he, what Injustice is done to you, you have served Abroad, and others are put over your Head; you have had and found great Hardships. I asked him who promoted this? He said, the Lord *North* and *Grey*. Says I, He is a Peer of the Realm. Saith he, He is a fine General. And the Earl of *Strafford* he mentioned.

Mr. *Reeve*. Who did he say was a fine General?

Plunkett. He said my Lord *North* and *Grey* was a fine General; and ask'd me what I thought of him? I said I had never been under his Command, but I look'd upon him to be a great Man, and one of the Peers of the Land. And then he mentioned my Lord *Strafford*, What do you think of him? To which I made the like Answer. And what do you think of General *Primrose*? I said, I had lately seen him at *Chelsea*, passing by in his Coach, but that he was an old Man; however, Mr. *Layer* said he was a brave General. Then he ask'd me what I thought of General *Webb*? I said, I had heard of his Fame.

Mr. Serj. *Pengelly*. When he had said my Lord *North* and *Grey* was a fine General, and when you ask'd who promoted it, whether did Mr. *Layer* tell you what their Design was to do? When Mr. *Layer* ask'd you what do you think of this Person, and the other Person, what were they to do?

Plunkett. To raise a Rebellion.

Mr. Serj. *Pengelly*. Was that talk'd of at that Time?

Plunkett. Not at that Time:

L. C. Just. You say he wanted such old Soldiers as you; for what Purpose? You say he wanted them to discipline a Mob, and put it in Order.

Plunkett. Yes, my Lord.

L. C. Just. Did he tell you how many he wanted?

Plunkett. No; he did not say how many:

Mr. Serj. *Cheshire*. Was there any thing said about their Names at that Time?

Plunkett. Mr. *Layer* would have me take a List of their Names, and to enroll them, that they might know where they lodg'd, and where they quartered; that so when he wanted them, he might send for them to be in Readiness.

Mr. Serj. *Cheshire*. Was there any Number he ask'd you the Names of?

Plunkett. I said I knew a great many, and that I could get twenty five. Saith he, you ought to have a List of their Names, where they lodge, that they may be in Readiness for a Call: And saith he, This would have gone on some Time ago, only Somebody made Discovery of it to the *French* Ambassador, and he wrote to the Regent, and so it was discovered to the King: And saith he, The Duke of *Ormond* was to come in one Ship, and General *Dillon* in another, and they would bring their Numbers with them; and then I should see that the Army would not oppose them. And when I parted from him, he gave me half a Crown to drink.

Mr. Serj. *Cheshire*. What was that to do?

Plunkett. It was to encourage me. And he said he would send a Messenger to me; and in a Day or two afterwards there came a Messenger from him: I was not at home, but he spoke with my Wife.

Mr. Serj. *Cheshire*. Who was that?

Plunkett. The Un-juring Minister.

Mr. *Att. Gen.* What was his Name?

Plunkett. His Name was *Jeffreys*.

Mr. *Att. Gen.* You say you was not at home the first Time; did he come again?

Plunkett. Yes.

Mr. *Att. Gen.* How long after?

Plunkett. A matter of five or six days after.

Mr. *Att. Gen.* Did you see him?

Plunkett. Yes, I saw him.

Mr. *Att. Gen.* What passed between you?

Plunkett. He ask'd me if I knew Mr. *Layer*? I told him I did. He then carried me to the *Castle Tavern* in *Drury-Lane*, where we drank two Pints of Wine, which he paid for; after the Nonjuring Parson told me he came from *Layer*, who gave his Service, and told me that he was employed by Mr. *Layer* to go to such as I was, who were old Serjeants, to get a Parcel together to discipline Citizens, and other Mob in the Country.

Mr. *Att. Gen.* What further pass'd between you and Mr. *Jeffreys*?

Mr. *Ketelbey.* I beg leave to object to that Question.

Mr. *Att. Gen.* If I don't bring it home to Mr. *Layer*, it will signify nothing.

L. C. Just. Mr. *Ketelbey*, you know that many times in Discourse it is necessary to mention Introductions, to let in what is material: Whatever pass'd between him and *Jeffreys*, don't affect your Client.

Mr. *Hungerford.* It is a constant Rule, if a Man speaks of a third Person's Transactions, it is declared as nothing, and commonly stop'd from being given in Evidence.

L. C. Just. If they begin right, they will give Evidence in such a Method as to be understood: By declaring what passed between him and *Plunkett*, the Evidence may be the better understood.

Mr. *Ketelbey.* I don't doubt your Lordship's giving Direction right; but I observe this, lest some of the Jury should not take it right.

L. C. Just. Let the Evidence be given in such a manner as may be understood; what is introductory goes for nothing, but it is in order to explain the Evidence.

Mr. *Att. Gen.* What pass'd between you and the Nonjuring Parson, at the *Castle Tavern*?

Plunkett. He talk'd to me of the same Subject, desiring me to get Men in Readiness; he told me, he had a great many Places to go to besides me with this Errand, and then we parted. Another time he came to me, we went to an Ale-House, to the *Cock and Bottle* in the *Strand*, where he gave me half a Guinea, and said, there is a Token, Mr. *Layer* had sent it me to give me Encouragement.

Mr. *Serj. Pengelly.* At that Time that Mr. *Layer* said he would send a Messenger to you, did he mention any thing of Money?

Plunkett. Mr. *Layer* said he would send Money by the Messenger to me.

L. C. Just. You say he told you, that he would send you Money by the Messenger.

Plunkett. He told me so.

L. C. Just. Afterwards you say, one came to you as from him, and encouraged you, and gave you half a Guinea.

Plunkett. He did: I am upon my Oath before God and Man, I will say nothing but the Truth.

Mr. *Serj. Cheshire.* Did you receive any Message from *Jeffreys* to appoint a Meeting with Mr. *Layer*?

Plunkett. Some Time afterwards I met Mr. *Layer*, at eight a-Clock, at the *Castle Tavern* in *Drury-Lane*; there was the Landlord, and Mr. *Layer*, who had two Bottles of Wine, and some Bread and Cheefe: He would have had me eat, but I told him I could not eat; but I drank of the Wine. When he had discours'd with me about the Affair, to encourage me he gave me a Crown; I went cross *Lincoln's-Inn-Fields*, so went home.

Mr. *West.* What did he give you the Crown for?

Plunkett. To encourage me to list Men for the Pretender.

Mr. *Att. Gen.* Had you any Letter by the *Penny-Post*?

Plunkett. That Morning Mr. *Layer* was going to *Norfolk*, *Plunkett* told me Mr. *Layer* was going out of Town, and would be glad to see me. I went to Mr. *Layer*, and his Horses were at the Door; he desired me to walk up two Pair of Stairs forwards, and by the same Token order'd his Servant to charge his Blunderbuss in the Room. Saith Mr. *Layer*, I have given a Guinea to the Nonjuring Minister to give you, to do what Service you can; and when I am abroad, you may be sure I shall not be idle.

Mr. *Reeve.* Was any Proposal made to any other Person?

Plunkett. I brought an old Soldier who had been in the Service many Years.

Mr. *Reeve.* What was his Name?

Plunkett. *John Child*; I brought him as thinking he might have been of Service to them.

L. C. Just. What was it Mr. *Layer* said when he was going into the Country?

Plunkett. He told me he would not be idle there.

Mr. *Serj. Pengelly.* What did he desire of you?

Plunkett. He desired me to see and get what Soldiers I could for him: I came to the Nonjuring Minister, and told him I had got twenty five. Then Mr. *Layer* ask'd me, why I did not bring a List of them, that he might know where their Habitations were, and that they might be in Readiness at the Time. I disputed with Mr. *Layer* what they would do for Arms? No fear of Arms, saith he; Arms will be provided for them. After he returned from the Country to the Town, this Mr. *Plunkett* was the first Messenger that was sent to me; he came and told me Mr. *Layer* was come to Town; and this Nonjuring Parson sent me a Letter by the *Penny-Post*; Mr. *Child* was in my Room and read it; the Contents were, *Mr. Layer is come to Town, and would be very glad to see you: No more, but your humble Servant, William Jeffreys.* By this I knew his Name.

Mr. *Att. Gen.* By this Letter he told you Mr. *Layer* would be glad to see you; did you go to him?

Plunkett. Yes, I went to him.

Mr. *Att. Gen.* Where? To his own House?

Plunkett. Yes, to his own House.

Mr. *Att. Gen.* What passed between you and Mr. *Layer* at that Time?

Plunkett. I remember at that Time, when I came to him, he gave me a Guinea with his own Hand.

Mr.

Mr. Att. Gen. Who gave it you?

Plunkett. Mr. Layer, after he came from the Country, gave it me, and I recommended Mr. Child to him.

Mr. Serj. Pengelly. When you recommended Mr. Child, what did Layer say?

Plunkett. He said he had no Business for him.

Mr. Serj. Pengelly. For what Purpose was Child recommended to Mr. Layer?

Plunkett. I recommended him as an honest Man, as one that was well-affected, as he desired me.

Mr. Serj. Pengelly. Upon what Account did you recommend him?

Plunkett. Upon the Account to be a Pretender's Man.

Mr. Serj. Pengelly. Did you ever receive any Money to give to Child?

Plunkett. I received half a Guinea from Mr. Layer to give to Mr. Child.

Mr. Serj. Pengelly. For what Purpose was it?

Plunkett. For to encourage him in the Service, to be trusty to him, and to be a Pretender's Man.

Mr. Serj. Pengelly. By what Name did he call the Pretender?

Plunkett. He called him the King.

Mr. Serj. Pengelly. Had you any Talk with him any other time?

Plunkett. The Sunday before he was taken up I was with him, and he was talking and saying the King was as fine a Shooter as any in Europe.

Mr. Serj. Pengelly. Whom did he mean by the King?

Plunkett. The Pretender, that he was as fine a Shooter as any in Europe; he shot nineteen out of twenty; I said, that was fine shooting.

Mr. Att. Gen. Where was this Discourse?

Plunkett. In his own Parlour.

Mr. Att. Gen. Can you recollect any other Discourse there was at that Time, besides that of Shooting?

Plunkett. Yes, there was; We talked of those Men that would do Service. I asked him what Rewards those Men, that would do Service for their King and Country, should have; he told me, that they, and their Families, were to be for ever taken Care of.

Mr. Serj. Pengelly. Was there any other Promise made to you?

Plunkett. There was no Promise; only he was the Man who said, if I would follow his Directions, he would promote me; that he would engage to do great Matters for me; and what I suffered in the Army, he would make me Amends for.

Mr. Serj. Pengelly. Had you any Discourse about the Disposition of the Nation?

Plunkett. He said, that most of the Nation was tired with the present Government; and he said that King George was for ruining of the Nation.

Mr. Serj. Pengelly. Had you any Talk of any Persons at Court?

Plunkett. Yes; he said, what signified the Government; there were but only eight or nine Upstarts that belonged to King George's Court; that the ancient Peers of the Realm would not be run down; for they should be made Slaves, if they did not prevent it.

Mr. Serj. Pengelly. Had you any Discourse any other Time about the Dutch or the French?

Plunkett. Yes; I do remember that he said,

here is a Dutch Army come in upon this Nation, and then the French Army will come in, and take our Rights and Liberties from us: You will keep a Dutch Army, and it will be to make a War among our selves.

Mr. Serj. Cheshire. What would he have to cure all this?

Plunkett. He told me, that when the Insurrection was, there would be a great many Half-Pay-Officers as I knew that would be on the Pretender's Side, and especially those of the Names of Fitzgerald; but I never knew any Fitzgerald Abroad.

Mr. Att. Gen. We have done examining this Witness.

Prisoner. You say your first Acquaintance with me was in Queen-Street, and that Major Barnewell desired you to assist me, there being an Execution in my House: Was it not so?

Plunkett. Yes.

Prisoner. At the same time you called me Counsellor Layer?

Plunkett. Yes; I came to your House.

Prisoner. Did I employ you?

Plunkett. Major Barnewell sent me to get a Couple of Grenadiers, and you ordered your Clerk to let them in at the Back-door; and the two Grenadiers, which were confined in the Savoy afterwards for it, drove the Officers out.

Prisoner. Was it the Landlord of the House's Goods, or my Goods?

Plunkett. I cannot tell; how should I know whether they were yours, or his? they were in your House.

Prisoner. You said it was about five Years before I saw you in Lincoln's-Inn-Fields.

Plunkett. It was when the Army was broke; and I came over from Ireland.

Prisoner. Well, you say, five Years afterwards I met you in Lincoln's-Inn-Fields, and gave you half a Crown to drink. I told you my Lord North and Grey was to be General: That my Lord Strafford was concerned in it.

Plunkett. No, you told me they were Promoters of it.

Prisoner. Promoters of what?

Plunkett. Of this Conspiracy.

Prisoner. So you did not know me? nor I did not know you.

Plunkett. Yes, you knew me; therefore, Sir, said I, you have an Advantage against me; for I don't know you. Afterwards we met one another by Accident: Says you, don't tell Plunkett you met me.

Prisoner. What Plunkett?

Plunkett. James Plunkett.

Prisoner. Where lives James Plunkett?

Plunkett. I don't know: However that's not material.

Prisoner. Did not you come to my House some time after this, and desire me to lend you thirteen Shillings, upon Account of being Bail in an Action in the Marshal's Court?

Plunkett. That was two Months after: There was a Soldier which was arrested by a Marshal's Court Writ.

Prisoner. And I lent you thirteen Shillings in order to discharge him?

Plunkett. Yes, you did.

Prisoner. Did not you afterwards ask me for some Money on Account of Sir Daniel Carrol?

Plunkett. No.

Prisoner,

Prisoner. Did not you make a Demand on Sir Daniel ?

Plunkett. No : I told you my Affairs with Sir Daniel. You said you would not meddle yourself, but you would write to him.

Prisoner. Did you not bring a Paper, and say, Sir Daniel had agreed to pay you twenty Pounds when he received his Pay ?

Plunkett. No : I brought no Papers to you.

Prisoner. Did not you tell me, it would be the greatest Kindness in the World to you to advance twenty Shillings for you ?

Plunkett. I never asked you in the Course of my Life.

Prisoner. Did you never borrow any Money of me ?

Plunkett. No ; I never borrowed any Money of you, otherwise than to get Men listed for the Pretender.

Prisoner. I shall shew that you are a little mistaken by and by.

Mr. Hungerford. You said you was decoyed to Church ?

Plunkett. Decoyed ! I said it was out of my Way, when my own Parish Church was nearer.

Mr. Hungerford. What do you use to go to Church ?

Plunkett. Yes.

Mr. Ketelbey. You say, the first time you saw this James Plunkett, he came to you when your Wife was in the Room ?

Plunkett. The first time I saw him, was, when Mr. Layer released Major *Barnewell* out of the *Marshalsea*.

Mr. Ketelbey. When James Plunkett came to your House, he took you by the Arm, and told you, he came from Mr. Layer ; did he tell you that first time, he came from Mr. Layer ?

Plunkett. Upon my Oath he did.

Mr. Ketelbey. What Discourse had you the first Time ? Did he only ask you to go and meet Mr. Layer ?

Plunkett. He came to me, and desired me to meet Mr. Layer at the *Italian Coffee-House* in *Russel-Court*.

Mr. Ketelbey. Did James Plunkett talk to you about lifting Men for the Pretender the first time he saw you ?

Plunkett. No ; he only was sent on an Errand from Mr. Layer.

Mr. Ketelbey. And then you came to the Nonjuring Parson : The Unjuring Parson, as you call him : What Discourse had you with him ?

Plunkett. The same Discourse passed between us about lifting Men.

Mr. Ketelbey. What, the first time you saw James Plunkett, and the first time you saw the Nonjuring Parson ?

Plunkett. Because he came from Mr. Layer.

Mr. Ketelbey. So you trusted both of them at first Sight, and talked to them about lifting Men for the Pretender ?

Plunkett. Yes, both talk'd to me.

Mr. Ketelbey. How many times had this Unjuring Parson been with you, before you knew his Name ?

Plunkett. He had been with me two or three times ; he told me his Name was *Jeffreys*, but did not tell me his Christian Name.

L. C. Just. Did he tell you his Name was *Jeffreys* the first time ?

Plunkett. He told me his Name was *Jeffreys*.

L. C. Just. How long after was it that this Letter was sent to you by Mr. *Jeffreys* ?

Plunkett. It was the time when Mr. Layer came from the Country.

L. C. Just. How long ago was that ?

Plunkett. I believe about ten Months ago : I mean ten Weeks ago.

Mr. Ketelbey. I would not surprize you ; I would have you consider you are upon your Oath : Is it ten Months, or ten Weeks ?

Plunkett. Ten Weeks.

Mr. Ketelbey. How came you to remember the Contents of the Letter so exactly ?

Plunkett. I heard it repeated over.

Mr. Ketelbey. Pray repeat it over again.

Plunkett. Mr. Plunkett, Mr. Layer is come to Town ; I should be very glad to see you : So I rest your humble Servant,

William Jeffreys.

Mr. Ketelbey. Where is that Letter ?

Plunkett. I don't know ; the Letter is lost.

Mr. Ketelbey. Do you remember how long 'tis since this Letter was lost ?

Plunkett. Why, I missed it about two Months ago, or more.

Mr. Ketelbey. Two Months ago, or more. How long was it after you received it that you missed it ?

Plunkett. I kept the Letter in my Pocket some time.

Mr. Ketelbey. How long ?

Plunkett. I believe I had it three Weeks.

Mr. Ketelbey. So that 'tis ten Weeks since you received this Letter, two Months since you lost it ; you kept it in your Pocket three Weeks : You can read Writing ?

Plunkett. No, I cannot.

Mr. Ketelbey. What not read Writing ?

Plunkett. No, Sir.

Mr. Ketelbey. How can you be so paticular as to the Writing ?

Plunkett. I have heard it read often enough.

Mr. Ketelbey. Who read it to you ?

Plunkett. John Child read it over to me two or three times.

Mr. Ketelbey. Why, this is mere Romance, that at twice hearing it read, you can remember it, the very Words.

Plunkett. I can remember those Words to the best of my Knowledge.

Mr. Hungerford. How can he tell, when he cannot read at all ? There is nothing in it : If one was to ask him, whether you can recite the Articles of the Creed, I believe he could not do it ; and yet is so exact in repeating the Words of this Letter.

Prisoner. What Countryman are you ?

Plunkett. An Irishman : You knew that long ago ; you need not ask me that Question now.

Mr. Serj. Pengelly. My Lord, we shall now proceed, and produce the Plan of this Conspiracy, which was found among the Papers taken in Mrs. *Mason's* Possession ; and shall shew how they came to be in Mrs. *Mason's* Possession ; and we shall prove this Plan to be Mr. Layer's own Hand-Writing.

John Turner, one of the Messengers, sworn.

Mr. Att. Gen. Look upon these Papers.

[Turner looks upon the Papers.]

Mr. Att. Gen. Do you know any thing of those Papers, and where they were found ?

Turner. My Lord, by Warrant from my Lord *Carteret*, Principal Secretary of State, dated the

29th of September last, I was directed to search for one Mrs. *Mason* and Mrs. *Cook*, and the very same Day I executed that Warrant. I found out Mrs. *Cook's* House in *Stone-Cutter's Yard* in *Little Queen-street* near *Lincoln's-Inn-Fields*, and in searching the House—

Mr. Serj. *Pengelly*. Who lodged there?

Turner. One Mrs. *Mason* lodged there: I found her in the House; and in her Lodging there was a Trunk, and being demanded to open the Trunk—

L. C. Just. Was your Warrant to search for both Mrs. *Mason* and Mrs. *Cook*?

Turner. For both; and in Mrs. *Mason's* Lodgings there was a Trunk which the other Messenger and I demanded to be opened: She opened the Trunk, and in the Trunk there were two Bundles of Papers sealed up; which Papers being opened, this Paper was found amongst them, (*meaning the Plan or Scheme.*)

Mr. Serj. *Pengelly*. Look upon it: How do you know that to be the same?

Turner. I know it to be the same, because I writ upon't, I set my Mark upon it.

Mr. *Att. Gen.* You say that these Papers were found in the Trunk, in two Bundles sealed up?

Turner. Yes.

Mr. *Att. Gen.* (*Shewing the Witness another Paper*) Look upon that; see if that was in the same Bundle with that you last gave an Account of?

Turner. Yes, that was in the same Bundle.

And so he was examined as to several particular Papers, which he swore to have been all found in the two Bundles taken out of Mrs. Mason's Trunk, and that he had set his Mark upon them.

Mr. *Ketelbey*. I beg leave to ask Mr. *Turner* a Question or two. Mr. *Turner*, I think you give a positive Account of several Papers; what they are I know not; of several Papers handed to you from Mr. *Paxton*. You had a Warrant to search for Mrs. *Cook* and Mrs. *Mason*, and in a Trunk you found these Papers sealed up in a Bundle.

L. C. Just. He said he had Directions from my Lord *Carteret*, to search for Mrs. *Cook* and Mrs. *Mason*. That he searched Mrs. *Cook's* House, and found Mrs. *Mason* there; he sees a Trunk in the House, in Mrs. *Mason's* Lodgings, and he demanded the Trunk to be opened, and in the Trunk is found two Bundles of Papers; in these Bundles are these Papers which have been shewn to the Witness. When he is asked how he knew them to be the same that were in the Bundle, he says, he knows them to be the same, because he set his Mark upon them.

Mr. *Just. Fortescue Aland*. Were the Bundles sealed up?

Turner. Yes, my Lord, they were sealed up when we took them out of the Trunk.

Mr. *Att. Gen.* In whose Lodgings were they found?

Turner. At Mrs. *Mason's* Lodgings, in her Bed-Chamber.

Mr. *Ketelbey*. You say these Papers handed to you, you found in the Trunk in Mrs. *Mason's* Lodgings. Where have they been ever since? How come you to be so positive that these Individual Papers are the same Papers that you found in Mrs. *Mason's* Room?

Turner. I put my Name upon them.

Mr. *Ketelbey*. Is your Name put upon those?

Turner. Yes, upon each of them at that time.

Mr. *Ketelbey*. How long were they in your Custody?

Turner. About an Hour.

Mr. *Ketelbey*. Who did you deliver them to, when you parted with them?

Turner. I think, to Mr. *Stanyan*.

Mr. *Ketelbey*. I ask you, when you put your Name on each of them, was it before you first parted with them?

Turner. After the Trunk was open, and the Bundles were opened; in the Bundles finding Papers of Consequence, I was directed to go and fetch Mr. *Stanyan* as being a Magistrate, to give that Person her Oath. While I was gone, I delivered the Papers into my Brother Messenger's Hand, and he signed them.

Mr. *Ketelbey*. So you only swear for your Brother Messenger. How long after your first seizing the Papers was it before you put your Name upon them?

Turner. I believe three Quarters of an Hour.

Mr. *Ketelbey*. Who had you left them with?

Turner. I left them with this Man, my Brother Messenger.

Mr. *Ketelbey*. You left them with your Brother Messenger before you set your Mark upon them; how comes it that you are sure they are the same? How can you swear they are the same, when you went away and left them in your Brother Messenger's Hands, and did not set your Name upon them, till you returned?

Mr. *Soll. Gen.* You say these Papers were seized in Mrs. *Mason's* Lodgings, and that she was by, and unlocked the Trunk, and you took out the two Bundles.

Turner. Yes.

Mr. *Att. Gen.* You say you delivered the same Papers to this Person here?

Turner. Yes, Sir.

Prisoner. Mr. *Turner*, in Mrs. *Mason's* Lodgings you say you seized two Bundles of Papers sealed up?

Turner. Yes.

Prisoner. When Mrs. *Mason* had them locked up, were they then sealed up?

Turner. They were then sealed up.

Prisoner. Did not the Seals appear to have been broke open?

Turner. No.

Prisoner. You saw two Bundles?

Turner. Yes.

Prisoner. You saw this Paper, and that, and all the Papers taken out of the Bundles. What Bundle was this Paper in? (*Meaning the Plan or Scheme.*)

Turner. This was in the same Bundle.

Prisoner. Was there a small Bundle, and a great Bundle?

Turner. Yes, there were two Bundles.

Prisoner. And this was out of one of the Bundles?

Turner. Out of the small Bundle.

Prisoner. Did you see them taken out of the Bundle?

Turner. I can't say that.

Mr. *Hungerford*. If I observe that Paper or Bundle right, it is one that consists of several Sheets of Paper; I desire he may hold it in his Hand, till we have done examining of him.

Mr. *Ketelbey*. Mr. *Turner*, that consists of more

more Sheets than one; did you sign your Name to each Leaf, or only to the first and the last Leaf of the Book?

Turner. I sign'd my Name to each Sheet.
Edward Speare, sworn.

Mr. Att. Gen. Mr. *Speare*, Did you go with Mr. *Turner* to seize any Papers at Mrs. *Cook's* House?

Speare. Yes; I did.

Mr. Att. Gen. Give an Account of what you know of seizing any Papers there.

Speare. My Lord, by a Warrant directed to us from my Lord *Carteret*, Mr. *Turner* and I were to seize Mrs. *Cook* and Mrs. *Mason*; and searching Mrs. *Cook's* House, I found Mrs. *Mason* there. At Mrs. *Cook's* I found no Papers in the first Room; I proceeded into a second Room, where there was a Trunk, which I ordered to be opened, and I took two Parcels out of it; one of 'em was seal'd with three Seals, which I looked at; they did not appear to have been open'd and seal'd up again. I open'd them, and mark'd them.

Mr. Att. Gen. Who was by?

Speare. Mrs. *Mason* was.

Mr. Att. Gen. Was she there when you open'd them?

Speare. She was by when they were open'd.

Mr. Att. Gen. Look upon them, are they the same Papers?

Speare. I have look'd upon them, and know them to be the same.

Mr. Att. Gen. Are those the Papers that were taken out of the Trunk?

Speare. The very Papers.

Mr. Att. Gen. In whose Room were they taken?

Speare. In Mrs. *Mason's* Room.

Mr. Serj. Cheshire. Where they ever out of your Custody, till you mark'd them?

Speare. No, Sir.

Mr. Soll. Gen. During the Time that *Turner*, your Brother Messenger, was gone for Mr. *Stanyan*, who had the Custody of the Papers?

Speare. I had the Custody of them.

Mr. Soll. Gen. Were any of them taken away, or was there any Alteration in, or Addition to them, during that Time?

Speare. No, Sir.

Mr. Serj. Cheshire. Do you remember that Mr. *Turner* set his Name upon them?

Speare. Yes, he did.

L. C. Just. How long after your Brother Messenger returned back to you, was it before you set your Name upon them?

Speare. Immediately, my Lord.

Mr. Ketelbey. How long did you stay in the Place after the Return of *Turner*?

Speare. I believe I might stay there an Hour, or an Hour and an half.

Mr. Ketelbey. When did you first part with the Papers out of your Custody?

Speare. I gave them to Mr. *Stanyan*.

Mr. Ketelbey. How long after you first seized those two Bundles was it before Mr. *Stanyan* came to you?

Speare. I believe about half an Hour, or three Quarters of an Hour.

Mr. Ketelbey. What, did you deliver them to Mr. *Stanyan* then?

Speare. After Mr. *Turner* and I had sign'd them, I deliver'd them to Mr. *Stanyan*.

Mr. Ketelbey. Was it not before you sign'd them?

Speare. No, upon my Oath.

Mrs. Elizabeth Mason sworn.

Mr. Att. Gen. Mrs. *Mason*, Give an Account of what you know of these Papers?

Mrs. Mason. Mr. *Layer* left two Parcels of Papers with me: He told me they were of the Value of 500 *l.* He afterwards took them away from me; and afterwards brought them to me again.

Mr. Serj. Cheshire. You say, he deliver'd two Bundles first?

Mrs. Mason. No; he deliver'd only one, and that was the largest Bundle: He told me it was of the Value of 500 *l.* and desired me to take care of it, and lock it up.

Mr. Serj. Cheshire. When was the lesser Bundle deliver'd to you?

Mrs. Mason. Some time after; and after that, he took them away from me; and in four or five Days time he brought them to me again: He took them away, and brought them to me again, and told me they were a few Love-Letters; and begg'd of me not to let Mrs. *Cook* know it, for she would make a Disturbance, and tell his Wife.

Mr. Serj. Cheshire. When had you the lesser Bundle?

Mrs. Mason. I had that some time after.

Mr. Serj. Cheshire. What Directions had you with the little Bundle?

Mrs. Mason. He desired me to take the same Care of that, as of the other.

Mr. Serj. Cheshire. Was that seal'd up?

Mrs. Mason. They were both seal'd.

Mr. Serj. Cheshire. Where did you put them?

Mrs. Mason. I put them into my Trunk.

Mr. Serj. Cheshire. After this; you know when the Messengers came?

Mrs. Mason. Before that, he came one Day in the Afternoon to our House, and ask'd where I was. It was the Beginning of *Bartholomew-tide*. I was not at home: He left a Message for me, that I should bring those Writings home. I carried them home.

Mr. Serj. Cheshire. Home! What do you mean by Home?

Mrs. Mason. Mr. *Layer's* own House: He left word, that he wou'd be at home by eight a-Clock that Night. I was there about eight a-Clock: I asked the Maid where he was? She said he was in the Back-Parlour. I asked her if any body was with him? She said, there were two Gentlemen. Said I, tell your Master that I am here.

L. C. Just. You say the great Bundle was taken from you again, and afterwards he brought the lesser Bundle; and after this you receiv'd a Message, or Intimation, that you shou'd bring home that Bundle.

Mrs. Mason. My Lord, I had two Bundles. He left Word, that I should bring his Papers Home; for he staid at Home 'till eight a-Clock that Night. I went to his House: And when I knock'd at the Door, the Maid came to the Door. I asked her, if her Master was within? she told me, yes; he was in the Back-Parlour; and that there was a Gentleman or two with him. I desir'd her to go and tell her Master that I was there. And he came out to me; and I gave him the Writings; and he desir'd me to come again the next Morning; which was on a *Saturday*, about eleven a-Clock, for he was going out of Town: And that I would come and take those Writings again. Which accordingly I did. It

was

was in the Morning, at the Time that the Bell was ringing at *Lincoln's-Inn* Chapel, when I went to him, and he delivered me the Papers again.

Mr. *Soll. Gen.* Can you recollect the Day that he left Word for you to come to him?

Mrs. *Mason.* It was the Beginning of *Bartholomew-tide*.

Mr. *Soll. Gen.* What Day of the Week was it?

Mrs. *Mason.* It was on a *Friday* Night that I went and carried them to his House.

Mr. *Soll. Gen.* And when was it that he desired you would come and call for them again?

Mrs. *Mason.* It was the next Morning at eleven a-Clock, or near the matter, that I went to his House; and he gave me the Writings again, and charged me to take Care of them.

Mr. Serj. *Cheshire.* What was you to do with them?

Mrs. *Mason.* To take Care of them.

Mr. Serj. *Cheshire.* Did you meddle with them, or open them?

Mrs. *Mason.* No, Sir; I put them in my Trunk: They lay there all the time.

Mr. Serj. *Cheshire.* Were they there when the Officers came?

Mrs. *Mason.* Yes, Sir.

Mr. Serj. *Cheshire.* Was you there when the Bundles were opened?

Mrs. *Mason.* I was there.

Mr. Serj. *Cheshire.* Did you mark the Papers yourself?

Mrs. *Mason.* I did.

Mr. Serj. *Cheshire.* Look upon the Papers, and see if you find your Mark on those Papers?

Mrs. *Mason.* Yes, this is my Mark.

Mr. Serj. *Cheshire.* Mr. *Speare*, you was present at the opening of them?

Mr. *Speare.* I was: They were sealed up when I opened them.

Mr. Serj. *Cheshire.* Did you put your Name on them?

Mr. *Speare.* I did put my Name on them.

Mr. Serj. *Cheshire.* Were they out of your Custody before you put your Name on them?

Mr. *Speare.* No, they were not.

Mr. Serj. *Cheshire.* Did Mr. *Turner* put his Name to them?

Mr. *Speare.* He put his Name to them, before ever they were out of my Custody.

Mr. *Att. Gen.* You have marked all those Papers. You are sure those are the Papers you took out of the Trunk in Mrs. *Mason's* Lodgings?

Mr. *Speare.* I am sure they are.

Mr. *Att. Gen.* Shew them to Mrs. *Mason*. Mrs. *Mason*, were those Papers in the Bundles that were delivered to you by Mr. *Layer*?

Mrs. *Mason.* Yes, Sir; they were.

Mr. *Att. Gen.* You have marked those Papers, have you not?

Mrs. *Mason.* Yes, I have.

Mr. *Soll. Gen.* You said, you gave the Bundles back to Mr. *Layer* on a *Friday*, about the Beginning of *Bartholomew-tide*: Do you remember whether it was upon *Bartholomew* Day or not?

Mrs. *Mason.* Indeed I don't know.

Mr. *Soll. Gen.* What did Mr. *Layer* say when you brought them to him again?

Mrs. *Mason.* He only thanked me; and desired me to come the next Day and take them from him again: Which I did.

Mr. *Soll. Gen.* Did he mention then, that he was going out of Town?

Mrs. *Mason.* Yes: And it was about eleven a-Clock on a *Saturday* Morning that I went to him, and he delivered the Papers to me again.

Mr. *Hungerford.* Can you write?

Mrs. *Mason.* No.

Mr. *Hungerford.* Have you made the same Mark on all those Papers?

Mrs. *Mason.* I was so frightned at that Time, that I hardly knew what Mark I made.

Mr. *Hungerford.* If you was frightned at that time, and did not know what Mark you made, how can you be sure you know your Mark again?

Mrs. *Mason.* Yes, I can tell it very well.

Mr. *Hungerford.* When you say you was so frightned you did not know what Mark you made?

Mrs. *Mason.* Yes, sure I do.

Mr. *Hungerford.* Upon the Oath you have taken, hath any Body seen those Papers before they were taken by the Messengers; whether Sir *John Meres*, or his Man *Thomas* hath seen them?

Mrs. *Mason.* No.

Mr. *Ketelbey.* Nor his Man *Thomas*?

Mrs. *Mason.* No, nor his Man *Thomas*.

Mr. *Ketelbey.* I ask you, can you write or can you read Writing?

Mrs. *Mason.* I told you I can't.

Mr. *Ketelbey.* You only can make your mark?

Mrs. *Mason.* No.

Mr. *Ketelbey.* Do you only make but one mark, or use several marks?

Mrs. *Mason.* I make but one mark.

Mr. *Ketelbey.* Pray make the mark you generally use? With Submission, my Lord, I desire she may have a Pen and Ink to see if she can make the same mark again.

Mr. *Hungerford.* Surely we are regular in desiring that?

L. C. Just. What you desire is proper. She says she knows them to be the same Papers, because she hath set her Mark upon them; they doubt whether she may mistake in her Mark, and desire she may make her Mark again.

Mr. *Ketelbey.* My Lord, we desire she may make her mark again.

Mr. *Soll. Gen.* We desire she may have a convenient Place to do it in, and that she may sit down while she writes?

Mrs. *Mason.* No, I can do it without. (*A Pen and Ink and Paper is given to her, and she sets her Mark an E and an M.*)

Mr. *Soll. Gen.* Here are the Letters *E* and *M* set to the Papers produced; and tho' in this Confusion she should not make her Letters exactly like those, yet I apprehend that would weigh very little.

Mr. *Att. Gen.* My Lord, I can't tell what they mean? this doth not depend——

Mr. *Ketelbey.* My Lord, I desire to go on with our Questions. I ask you——

L. C. Just. (*Having compared the Letters made by Mrs. Mason in Court, with those on the Papers*) The Character which she now writes is like what she writ on those Papers, and so confirms her Evidence.

Mr. *Ketelbey.* After the delivery of those two Bundles to you by Mr. *Layer*, I ask you whether Sir *John Meeres's* Man *Thomas* ever saw those Bundles opened?

Mrs. *Mason.* No, he never was up in my Room; there was no such Familiarity between us.

Mr. *Ketelbey*. Did one *Wilson* ever see them?

Mrs. *Mason*. No.

Mr. *Ketelbey*. Did ever you produce them to one *Binks*?

Mrs. *Mason*. No.

Prisoner. No: Nor did Sir *John Meeres's* Man *Thomas* never see them?

Mrs. *Mason*. No, never upon my Oath.

Mr. *Ketelbey*. Did you ever produce them sealed up? Did you ever let *Thomas* or *William*, or Sir *John Meeres* himself see either of those Bundles as they were sealed up?

Mrs. *Mason*. No, they were in my Trunk: I always kept them in my Trunk; perhaps as I opened my Trunk, they might see them lie in my Trunk.

Mr. *Ketelbey*. Do you know one Mrs. *Buda*?

Mrs. *Mason*. No: I don't know the Name. I don't know one Mrs. *Buda*.

Prisoner. Did you ever know one Mrs. *Herbert*?

Mrs. *Mason*. I know many of that Name.

Prisoner. Did you ever go by that Name?

Mrs. *Mason*. No.

Prisoner. Did you ever go by the Name of *Corbet*?

Mrs. *Mason*. No.

Prisoner. Did you ever go by the Name of *Bevan*?

Mrs. *Mason*. No, I never did go by the Name of *Bevan*.

L. C. Just. Mr. *Ketelbey*, I don't know what the Meaning of this Examination is; when it appears beyond Contradiction, that this Woman was an Acquaintance of your Client's.

Mr. *Ketelbey*. My Lord, if we prove her to be an ill Woman, I hope it will take off her Credit so that her Evidence will not weigh with your Lordship, or the Jury.

L. C. Just. At the Time when these Bundles were seized, had they Mr. *Layer's* Seal upon them?

Mrs. *Mason*. Yes, the Seal of Mr. *Lawyer* was upon them.

L. C. Just. What says the Messenger? At the Time that you seized these two Bundles of Papers, was there any Seal upon them?

Messenger. There were three Seals upon one, and some Seals upon the other; the Seal was something of a small Head.

L. C. Just. What is Mr. *Layer's* Seal?

Mrs. *Mason*. Something of a Head, but I can't tell what Head.

Mr. *Ketelbey*. Do you know Mr. *Layer's* Seal?

Mrs. *Mason*. It is something of a Head.

Mr. *Ketelbey*. Was it the Representation of a Man's Head, or the Head of a Beast?

Mrs. *Mason*. It is a Head, with something of a Ruff about it.

L. C. Just. Mrs. *Mason*, look upon the Head: Is that Head the Seal of Mr. *Layer*?

Mrs. *Mason*. Yes: Upon my Oath it is.

L. C. Just. What says the Messenger: Was that Seal of a Head upon them, when you seized them?

Messenger. Yes, it was.

Mr. *Ketelbey*. Before that Time that the two Messengers came, Mr. *Turner* and Mr. *Speare*, and seized the Papers, and afterwards one of them went for Mr. *Stanyan*; I ask you, whether you had shewn those Bundles to any Body before that Time?

Mrs. *Mason*. No; I had shewn them to no Body.

Mr. *Att. Gen.* She hath said so two or three Times before.

L. C. Just. Indeed, Mr. *Ketelbey*, we must direct you not to spend the Time of the Court so. You have asked her that Question two or three Times over.

Mr. *Ketelbey*. My Lord, I would very fain have the Truth come out.

Mr. *Hungerford*. I will ask you a Question or two. What Trade or Business do you follow? What is your Trade or Occupation?

Mrs. *Mason*. What is that to you? I have no Trade.

Mr. *Hungerford*. I should have ask'd you another Question before; have you not a Promise of Reward for the Service you do here, in giving this Evidence?

Mrs. *Mason*. No, I have not.

Prisoner. Nor you have received none?

Mrs. *Mason*. No: You are an unjust Man.

L. C. Just. Are you promised any Reward? Why don't you ask her whether she is to swear for Hire? Is that a proper Question to ask a Witness?

Mr. *Ketelbey*. I submit it to your Lordship, whether it is not proper to ask her this Question; Whether she hath not told any Person, and whom, that she was to have a Reward for coming hither?

Prisoner. The Question is, Whether she hath never owned and confessed to any Body, that these Papers were opened before a Friend of hers, before the Messenger seized them?

Mrs. *Mason*. No, my Lord, I never did. I never opened them before any body.

Mr. *Att. Gen.* They have asked you what Names you went by; do you know what Names the Prisoner at the Bar has gone by?

Mrs. *Mason*. He had once given me Orders, that if any Letter came directed in the Name of *Fontaine*, that I should take it in; accordingly in two or three Days Time, there came a Letter, directed to Mr. *Fontaine*, and I took it in; and when he came, I gave it to him, and he opened it, and read it.

Prisoner. Where is your House?

Mrs. *Mason*. Where! Where you left the Writings.

Prisoner. How can you tell how that Letter was directed, which you took in, since you say you cannot Read?

Mrs. *Mason*. It was directed to Mr. *Fontaine*.

Prisoner. Did you read the Supercription?

Mrs. *Mason*. No; Mrs. *Cook* did.

L. C. Just. You say you was desired by Mr. *Layer*, when any Letter came directed to Mr. *Fontaine*, to take it in; and that a Letter came directed to Mr. *Fontaine*, and you took it in, The Question is asked you, since you cannot read, how could you tell it was directed to Mr. *Fontaine*?

Mrs. *Mason*. My Landlady told me it was for Mr. *Fontaine*, and she knew he went by the Name of *Fontaine* sometimes.

Prisoner. She said she read it.

Mrs. *Mason*. No; I said I gave it to you, and you opened it, and you read it.

L. C. Just. The Occasion of this Question is, that this *Misnomer* was approved of by you. She says that you order'd her, that if any Letter came directed to Mr. *Fontaine*, she should take it in; a Letter did come directed so, she took it in, and then delivered it to you; and you receiv'd it from her, and opened and read it; but how, say they, could you know this Letter was directed

to Mr. *Fountaine*, when you can neither write nor read? She having received such an Order, when there was a Letter come, it was natural enough, that she that could not read, should ask her Landlady the Directions of the Letter, and it was directed for *Fountaine*; it was natural enough for her to take it in, and give it to you.

Who brought the Letter?

Mrs. *Mason*. A Porter.

L. C. *Just*. Did he say from whence he came?

Mrs. *Mason*. He told me he came from the *Ditch-Side*, and ask'd me if Mr. *Fountaine* lodg'd there.

Mr. *Hungerford*. This Trunk that the Papers were in, did it use to be kept open, or was it lock'd up?

Mrs. *Mason*. It was always lock'd up.

Mr: *Doyley* sworn.

Mr. *Att. Gen.* Mr. *Doyley*, do you know Mr. *Layer*; and how long have you known him?

Doyley. I have known him about seventeen or eighteen Years; he was my Clerk; 'tis thereabouts, I believe.

Mr. *Att. Gen.* Do you know his Writing?

Mr. *Doyley*. I believe I do.

Mr. *Att. Gen.* Look upon that Paper. (*He is shewn the Scheme.*)

Mr. *Att. Gen.* Do you take that to be his Hand?

Doyley. If you ask me as to my Belief, I believe it is.

Mr. *Att. Gen.* Have you often seen him write?

Doyley, Yes, Sir.

Mr. *Att. Gen.* Have you seen him write since he left your Service?

Doyley. I have had several Letters from him, since he was my Clerk.

Mr. *Att. Gen.* Look upon that Paper; can you swear that you believe that is his Hand-Writing?

Doyley. I have seen the Paper before, and I do believe it to be his Hand-Writing.

Prisoner. Have you seen me write any thing but my Name these fourteen Years?

Doyley. I can't particularly recollect whether I have or no.

Prisoner. How long is it since I was your Clerk?

Doyley. About fourteen or fifteen Years.

Prisoner. Have you seen me write since?

Doyley. I can't say I have, or I have not.

L. C. *Just*. How long is it since you received any Letters from him?

Doyley. About five Years ago.

L. C. *Just*. How do you know those Letters came from him?

Doyley. Because he was my Client, and writ to me about Business; and I answered those Letters, and did the Business that he desired me to do by those Letters.

L. C. *Just*. Did he pay you for that Business done?

Doyley. Yes, very honourably.

Prisoner. You say you don't remember you have seen me write since I came from you; as to that Paper which you say you believe to be my Hand, have you compar'd it with those Letters?

Doyley. I have.

Prisoner. Is that what you found your Belief upon?

Doyley. That is what I chiefly found my Belief upon.

Prisoner. Consider, Mr. *Doyley*, my Life is

at Stake, and you say you have not seen me write these fourteen Years?

Doyley. I don't know that I have.

Prisoner. Have you any of my Letters in Court?

Doyley. I have not your Letters in Court.

Prisoner. You say, you found your Belief only by Comparison of those Letters. Now I wish you had brought those Letters here.

Mr. *Att. Gen.* He doth not say so.

Doyley. If you had desir'd it, I cou'd have brought 'em.

Prisoner. I desir'd it! I little thought to have seen you here on such an Occasion.

Mr. *Att. Gen.* Mr. *Doyley*, I ask you, if you had no Dealings with him since he was out of his Clerkship?

Doyley. Yes, I was his Agent.

L. C. *Just*. Whose Name is subscribed to those Letters?

Doyley. *Christopher Layer's*.

L. C. *Just*. You did the Business mentioned in those Letters; and he honourably paid you for it?

Doyley. Yes, my Lord.

L. C. *Just*. I suppose, in your time, that you will shew that other People writ Letters in your Name?

Mr. *Ketelbey*. You say, you believe that Paper to be Mr. *Layer's* Hand-writing. And if I did not misunderstand you, I took it down in Writing, you founded your Belief on the comparing that Writing with the Letters which you receiv'd?

Doyley. I said, I chiefly founded my Belief upon such Comparison of Hands.

Mr. *Ketelbey*. That you chiefly did so; and you have not those Letters here in Court, on which you chiefly founded this Belief.

Mr. *Soll. Gen.* Mr. *Doyley*, I think you say you have seen him write several Times?

Doyley. I don't remember that I have seen him write these fourteen Years.

Mr. *Soll. Gen.* During the Time he was your Clerk, you have seen him write?

Doyley. Yes; he was but two Years with me: He had been Clerk with Mr. before.

Mr. *Soll. Gen.* Then he had been us'd to Business before he came to you; and had form'd his Hand.

Mr. *Hungerford*. How old was he when he was your Clerk?

Doyley. Indeed I don't know.

Mr. *Hungerford*. You form your Belief upon the Remembrance you have of what was his Hand-writing fourteen or fifteen Years ago?

L. C. *Just*. You say, you have received Letters subscribed by his Name five Years ago?

Doyley. Yes, my Lord.

L. C. *Just*. Was the Character of those Letters that you receiv'd five Years ago, agreeable to the Characters that he writ when he was your Clerk?

Doyley. Yes, my Lord.

L. C. *Just*. Then I ask you upon the whole, whether you believe it to be his Hand-writing, or not?

Doyley. Yes, I do believe it to be his Hand.

Prisoner. Since my unhappy Circumstances, have you had no Promise of being restored to your Place again, or the Promise of some other Office or Place?

Doyley. No; I never, to my Knowledge, have seen one Man that had the Power to put me in my Place again; nor ever conversed with any one Great Man upon that or any such Affair.

Mr. Serj. *Pengelly*. We think we are entitled to read it: However, that there may be no Dispute, we desire to call Mr. *Delafaye* and Mr. *Stanyan*, in whose Presence the Prisoner at the Bar, confess'd it to be his Hand-Writing.

Mr. *Delafaye* was sworn.

Mr. Serj. *Pengelly*. Sir, was that Paper shewn to the Prisoner at the Bar?

Mr. *Delafaye*. I was not near enough when he was before the Lords of the Council, to see what was on the Table; neither did I look upon the Table, to see whether this Paper was on it or not. But upon a Question that was ask'd him relating to some Arms, if he knew where any were lodg'd in such a Place, he said no: Upon which, one of the Lords of the Council held up a Paper; it might be this, for I ought I know; and said, here is your own Paper, your own Hand-writing; which says, Arms that are there lodged; says he, I should have writ Arms that should be there lodged.

L. C. Just. Whether is that the Paper or no, and did he own that Paper that was then shewn to be his?

Mr. *Delafaye*. The Question was not ask'd, is this your Paper and your Hand-Writing? But it was shewn to him as such; and he said, I should have wrote Arms that should be there lodg'd.

Mr. *Stanyan*, sworn.

Mr. *Att. Gen.* Mr. *Stanyan*, do you remember whether this Paper was shewn to the Prisoner at the Bar, or any Questions ask'd him about it, when he was before the Lords of the Council?

Mr. *Stanyan*. Upon the Question that was ask'd him about the Arms, this Paper was shewn him; I think this is the Paper: I was nearer to the Table than Mr. *Delafaye*, and did observe this Paper to lie upon the Table before the Lords, and do take this to be the individual Paper that was shewn him then.

Mr. *Att. Gen.* What was said to him at that time?

Mr. *Stanyan*. The Question was ask'd him, what he knew of any Arms that were lodg'd in *Westminster*? He said, he knew of none. Then this Paper was shewn to him, and a Question was ask'd him; here the Arms are said to be lodg'd in this Scheme of your own Hand-writing: how came you to write so, if there be no Arms lodg'd? Mr. *Layer* said, it was a mistake: It was not intended Arms that are there lodg'd, but Arms that should be there lodg'd. He said, I shou'd have writ Arms that shou'd be lodg'd, instead of Arms that are lodg'd.

Mr. Serj. *Chebbire*. The Question was concerning a Paper of his own Hand-Writing?

Mr. *Stanyan*. Yes, it was concluded, that the Paper was of his own Hand-Writing, and he did not deny it.

Mr. *Att. Gen.* Did he say it was not his own Hand-Writing?

Mr. *Stanyan*. No, he did not.

Mr. *Ketelbey*. Was the Question ask'd, whether that Paper was his Hand-writing or no?

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

Mr. *Ketelbey*. Then if there was no Question ask'd, whether did he own it to be his Hand-Writing, or no?

Mr. *Stanyan*. He did not expressly own it to be his Hand-Writing.

Mr. *Att. Gen.* He was not ask'd that Question, whether it was his Hand-Writing, or no?

Mr. *Stanyan*. No, Sir.

Mr. Serj. *Pengelly*. He did not deny it to be his own Hand-Writing?

Mr. *Stanyan*. No, Sir.

Mr. *West*. Whether the Lords in their Question did state it so, as taking it for his own Hand-Writing?

Mr. *Stanyan*. It was taken for granted that it was so, and he made no Offer to deny it.

Prisoner. Pray, Sir, let me ask you one Question about the Arms? When I was ask'd, if there were any Arms lodg'd, did I not answer in the Negative, and said, No?

Stanyan. Yes.

Prisoner. In relation to the Arms, you say, that I said Arms that should have been lodg'd?

Stanyan. That was upon the Lords asking you, to explain that part of the Scheme relating to Arms; and when you said you knew of no Arms that were lodg'd, then said they, how come you to mention in this Scheme of your own Hand-Writing, Arms that are lodg'd? To which you answer'd, I should have writ Arms that shou'd be lodg'd.

Prisoner. When I was ask'd, why I did say Arms that are lodg'd? Why, faith I, my Lords, I know of no Arms. If that was my Paper, and I had writ it, I should have writ Arms that shou'd be lodg'd.

Mr. *Att. Gen.* My Lord, we pray that the Papers may be read.

Mr. *Hungerford*. My Lord, we hope that these Papers, (tho' for my Part I know not what they are; for there is no Hint of them in my Brief) shall not be read, for this Reason; the Evidence which hath been given for the King, hath not brought them home to the Prisoner. There is no legal Proof that the Papers are of his Hand-writing; and consequently he cannot be affected by any thing that is in them. As to what is said of the Likeness of Hands, that we humbly hope is no Evidence at all. The first Witness, Mr. *Doyley*, he hath said it is like his Hand; but he gives that Opinion of his, on the Knowledge he had of the Prisoner's Hand fourteen Years ago; and by some Letters he received from him about five Years since. Men's Hands may differ and vary even in five, much more in fourteen Years.

What follows is the Evidence that hath been given by the Gentlemen belonging to the Secretaries Office.

I personally know them to be Gentlemen of good Sense, Integrity and Honour, and for my part I believe every Word they say; which is more than I can say of the other Witnesses hitherto produced. But what these say, doth not, with Submission affect the Prisoner: They were present when the Prisoner was examin'd before the Lords of the Council; none of them heard the Prisoner acknowledge that the Papers were writ by him, or that he did own them as his; neither was he asked any Question to that Purpose; neither did the nature of the Examination my Lords of the Council were then upon, lead them to such a Question: The Lords were not asking Mr. *Layer* Questions to fix an Evidence upon himself. But the Lords having some Papers before them, and, according to the Duty of their high Stations, being intent upon discovering what might be of Danger to his Majesty and the Public; they ask'd Mr. *Layer*, where the Arms were deposited at *Westminster*? He answers, that he knew of none there,

there, or to that Purpose. It cannot in Law or Reason be from hence infer'd, that he did own the Papers to be of his own Hand-Writing. The only Evidence therefore which can be insisted on to entitle these Papers to be read, is the Evidence of Likeness of Hand, which is no Evidence at all in a criminal Case.

In my Lady Carr's Case, it was not allow'd to be Evidence; and yet that was not a Capital Case, but a Case of Misdemeanor only, it was Perjury. But there is an Authority beyond all that; we have the Act of Parliament for the Reversal of the Attainder of Colonel Sidney, who had been convicted upon Evidence given of the Similitude of Hands, and that a much stronger Proof than what appears here; for Cook and Cary, two famous Goldsmiths, swore they believ'd the treasonable Libel laid to Colonel Sidney to be writ by him; and assign'd that for a Reason of their Belief, for that they had receiv'd several Bills from him of the like Hand-Writing, which they constantly paid. Nay, one of the Goldsmiths swore, (as I remember the Tryal) that he saw the Colonel write a Receipt. Some other Cases of this Nature might be quoted, but we depend upon the Authority of my Lady Carr's Case, and the Act for reversing the Attainder of Colonel Sidney, which is *instar omnium*; for in that Act the Reason assign'd for reversing the Attainder, is, for that the Conviction and Attainder was found upon a Similitude of Hands: We have an attested Copy of the Act here ready to be read. In Consequence of this Act, my Lord, Similitude of Hands is never to be given as Evidence in a criminal Case: And therefore we humbly hope, that this Paper is not so prov'd, as to be read in any Court, but must be reject-ed: It is not proved to be his Hand by any that ever saw him write; neither hath any body heard him own it to be his.

Mr. Ketelbey. My Lord, I beg Leave to say a few Words in Support of this Objection. We don't know what is the Purport of this Paper. I dare say, Mr. Hungerford, as well as my self, hath not seen one Tittle relating to it whatsoever; but I hope, for the Sake of Evidence, the sacred and eternal Rule of Evidence, that similitude of Hands shall not go for Proof, where a Person is charged with a Capital Offence. We shall in due time endeavour to lay before the Court several material Objections to the Credit of some of the Witnesses; but at present we must suppose them unexceptionable, and consider, with respect to this single Point, whether this Paper is sufficiently proved to be his Hand-Writing, so as to be read. Mrs. Mason and the Messengers have endeavour'd, by a jumbling Evidence, to prove the Identity of the Papers, and to hand them down from one to another: But how do they appear to be of the Prisoner's Hand-Writing? Mr. Doyley says, fourteen or fifteen Years ago he was his Clerk; that five Years ago he receiv'd Letters from him; and that he chiefly founded his Opinion that it was the Prisoner's Hand-Writing, because he had compared it with those Letters, and that the Hands were alike: And yet those Letters with which he compar'd this Paper, he hath not in Court to produce. This is the Substance of Doyley's Evidence.

My Lord, I humbly insist, that this is not sufficient; and if comparison of Hands was to be Evidence, surely this would not do, unless he

produced those Papers, on which he owns he founded his Opinion. I refer it to the Jury, whether he may not possibly, nay probably make an erroneous Judgment. Shall a Man be believ'd out of his Life, because the Witness saw him write fifteen Years ago, and received Letters from him five Years ago? Is any thing more changeable than a Man's Hand-Writing? Can either of you Gentlemen, take upon you to say what is or is not your Writing after so great a Length of Time? Would not the different Subjects, the one a common Letter of Business, the other a treasonable Scheme, make a sensible Variation even in a Man's usual Character?

The Case of my Lady Carr is reported in *Siderfin*, fo. 419. and was upon an Indictment of Perjury, an Offence of a much lower Nature than what this Gentleman is now tried for: There a Witness swore he believed the Paper produced in Court to be her Hand-Writing, yet it did not amount to such a Proof as to make her guilty: Nay, the Court said expressly, that it was not Evidence, and should not be admitted; and accordingly she was acquitted. But the highest Authority is what Mr. Hungerford hath named, the Act of Parliament for the Reversal of the Attainder of Col. Sidney; and we have a Witness here ready, that examined it with the Record, that proves it to be a true Copy. *Algernoon Sidney*, was attainted of High-Treason by similitude of Hands; and that was the Reason of the Reversal:

The two next Witnesses are Mr. Delafaye and Mr. Stanyan, Gentlemen of Honour, and that would not strain a Point upon any Account whatsoever. Mr. Delafaye doth not know whether this Paper was on the Table, when Mr. Laver was examined before the Lords of the Council, or no: Mr. Stanyan says, he was somewhat nearer the Table, and he takes the Paper that is now produced to be the same Paper that was upon the Table in the Room before the Lords of the Council, when Mr. Laver was there; because when it was produced there, and shewn to him, he said, shou'd have I wrote Arms that shou'd be lodg'd.

Mr. Stanyan owns, that he never was ask'd the Question, whether it was his Hand-Writing or no? How then should he deny it, if it was never put to him? And therefore to say, because he did not deny a Question that was never asked him, that that shall import, as to this particular Matter, a Confession, is to me strange and unaccountable! The natural Sense of the Prisoner's Words, as proved, is no more than this: No, if I had writ it, I shou'd have rather wrote Arms that shou'd be lodg'd, than Arms that were lodg'd. Therefore, my Lord, we humbly apprehend they have not given Evidence in this Case, sufficient Evidence to support the Reading of those Papers.

Your Lordships are now to lay down a perpetual Rule of Evidence: For latest Posterity will pay a just Regard to the present Determinations; and if Comparison of Hands in this Case be allowed as Evidence, the same Rule must for ever hold in all parallel Cases; and God knows what may be the Consequence of such a Revolution, or who may be affected by it.

Mr. Serj. Pengelly. My Lord, we hope, that notwithstanding what hath been objected to the Reading of this Paper, that we are proper to have it read: Tho' they have mentioned some Cases for to maintain their Objection, yet the latter Authorities,

Authorities, and the constant Course of Evidence since, as we think, are directly with us: As the Case of my Lord *Preston*, where eight or nine of the Judges were present.

In the Case of the Lady *Carr*, there is that Opinion insisted on given at the End of the Case in a short unintelligible Manner.

[Here Mr. *Hungerford* interrupted.]

Mr. *Hungerford*. My Lord, I don't know whether we shall be at Liberty, when the King's Counsel have done, to read the Act; and therefore I offer it to your Lordship's Consideration, whether we should not read it now.

L. C. Just. Read the Act of Parliament.

Mr. *Ketelbey*. Call Mr. *Theedam*.

Mr. *Att. Gen.* We are apprized of that Act of Parliament; I have an examined Copy of that Act; but we apprehend it will not come up to what they cite it for.

Mr. *Ketelbey*. We have five Acts of Parliament that we have examined with the Records; we did not know where they would shoot at us, and therefore were resolved to be armed *Cap-a-pee*.

Mr. *Serj. Pengelly*. As to my Lady *Carr*'s Case, it will be hard to maintain that Opinion, because the Letters they produced were not in the direct Instance of the Perjury.

Even the Act of Parliament, which they produce, it takes Notice, that a Paper was found in the Closet of Mr. *Sidney*, and was read, without proving it to be his own Hand-Writing: Is this Paper found without any Owning and Acknowledging it by the Prisoner? Is not this Paper delivered by Mr. *Layer* himself to Mrs. *Mason*? Had not he this Paper in his Custody, and it proceeded from him?

In the Case of my Lord *Preston*, there were a great Number of Judges, My Lord Chief Justice *Holt*, Lord Chief Justice *Pollexfen*, and others; there the Indictment of my Lord *Preston* was his adhering to the King's Enemies, and amongst other Overt-Acts alledged his carrying several Papers of Instructions to inform the *French King* how to attack the Kingdom: Mr. *Warer*, who had been an under Secretary to my Lord *Preston*, swore that he believed some of those Papers to be like the Lord *Preston*'s Hand, and they were all read in that Case by the Opinion of the whole Court, though they were the very express Overt-Acts alledged in the Indictment it self: How doth this stand here, supposing no Use is made of the Evidence of Mr. *Doyley*? When this Paper is shewn to Mr. *Layer* himself, before the Lords of the Council, and was mentioned as a Paper of his own Writing, and he is asked how he came to write Arms that are said there to be lodged, his Answer is, I should have wrote, Arms that shou'd be there lodg'd; Is not this sufficient Evidence to prove a Confession? Doth not this amount to an Evidence of his confessing it to be his own Writing? So here is, as we apprehend, the Evidence not only of the Thing it self, but likewise the Prisoner's own Declaration, that he was the Person who wrote it. In Sir *Henry Vane*'s Case, the Warrant given in Evidence against him was proved only by Witnesses who believed it to be his Hand; but here is a particular Fact which (we apprehend) amounts to a Confession, and is a proper Evidence for the Jury to consider of, whether this be not a Confession.

Mr. *Att. Gen.* My Lord, I apprehend that

we have given very proper Evidence to intitle us to read this Paper: My Lord, I beg leave to observe first, that it hath been proved that this Paper was found among the Papers, which the Prisoner delivered to Mrs. *Mason*, to be kept for him, which were seized in her Lodgings, as the Witnesses have before acquainted your Lordship, and if that were all, this Paper must be read. As to that, the Lord *Preston*'s Case is direct in Point, and so determined by six or seven Judges, *viz.* that Papers found in the Possession of the Prisoner may be read without further Proof. But we insist that this Paper is legally and regularly proved to be his Writing by the Evidence of Mr. *Doyley*, and the Prisoner's own Confession: The Council for the Prisoner have mentioned Lady *Carr*'s Case, and the Act for the Reversal of the Attainder of Col. *Sidney*, and say they have a great many other Cases to the same Purpose.

I defy them to shew any one single Case, wherein it has been determined, that Proof of a Person's Hand by a Witness, who swears he has seen him write, and knows his Hand, and believes the Paper produced to be of his Hand-Writing, is not a sufficient Proof in a criminal Prosecution, that that Paper is such a Person's Hand, before my Lady *Carr*'s Case; if that Case does support the Opinion they have laid down: In all Actions such Evidence hath been constantly allowed; then I should be glad to know what Law or what Reason has made a Difference as to such Evidence, between civil Actions and criminal or capital Prosecutions. As to my Lady *Carr*'s Case, the Book is very dark and obscure; I believe the Prisoner's Counsel cannot make it support what they now contend for.

Lady *Carr* was indicted for Perjury, supposed to be committed in an Answer sworn by her before a Master in Chancery: What is there said about a Letter does not appear at all to relate to the Case there; and if any Judge did lay down such a Position, as has been mentioned by the other Side, the meaning must be, that an Answer on Oath shall not be falsified by a Letter only under the Party's Hand; and that such a Letter should not be a sufficient Evidence to convict him of Perjury.

As to the Case of Col. *Sidney*, 'tis very well known that he was a Gentleman of Quality, and in his Study a Writing was found, *viz.* *A General Treatise of Doctrines and Positions*, which were very distasteful to the then Government, writ in answer to a Book formerly published. It was not a Scheme for raising a Rebellion, nor was it design'd, for any thing that appeared, that it should go out of his own Closet, but his Papers being seized, this Paper was found there among them; and for this he was indicted of High-Treason. It was generally thought extremely hard to make his having by him such a General Tract, writ in answer to a particular Book, and kept private in his Closet, an Overt-Act of Treason. However, he was found guilty, and attainted. No wonder then, when this came into Parliament, that they resenting this Proceeding, and revers'd his Attainder. And the Reasons recited in this Act, as Inducements for this Reversal, are accumulative; every Step taken in that Proceeding is complained of, and there is not Stress laid only upon the Proof of this Paper, but

The Act recites, *That Col. Sydney, by Means of an illegal Return of the Jury, by denying him his lawful Challenges to the Jurymen, for want of Freehold, and without sufficient legal Evidence of any Treasons committed by him, there being produced a Paper found in his Closet, supposed to be his Hand-Writing, which was not proved by any one Witness to be written by him; but the Jury was directed to believe it by comparing it with other Writings of his: And besides that Paper so produced, there was but one Witness to prove any Matter against him, and by a partial and unjust Construction of the Statutes of Treasons was most unjustly attainted. And then the Act reverses the Attainder.* Surely, if the Nature of the Evidence we have given, to prove this Paper to be the Prisoner's Hand is consider'd, it stands clear of any material Objection that can be raised from that Act. This is not barely proved by a comparison of Hands; here is a Witness, that often saw him write, swears it to be his Hand-Writing: There was a Multitude of Papers, some offered to be proved by similitude of Hands, and every one of them was read in my Lord *Preston's* Case.

Besides, here is that, which I beg Leave to insist upon, as a Confession by Mr. *Layer*, that this Paper was his Writing; if the Question proposed to the Prisoner by the Lords of the Council and his Answer are consider'd, it amounts to a plain Confession of it; therefore we must insist on it, that we have given a sufficient Evidence for the Reading of this Paper; and I hope we shall have your Lordship's Direction that it shall be read.

[Here some other of the King's Counsel offered to speak.]

L. C. Just. If there was any Occasion, you should be heard; but there is no Occasion.

It is proved by the Witnesses that these Papers were in Mr. *Layer's* Possession, that he delivered them to Mrs. *Mason*, that she lock'd them up in her Trunk, sealed as they were delivered to her by Mr. *Layer*, and afterward taken out of her Trunk by the Messengers, so that if they rest it here, and no other Evidence had been given, the Papers ought to be read, as being his Papers, which he once had in his Possession, if nothing else had been the Case.

Can any thing in the World be an Authority more express than that of my Lord *Preston*, where all the Papers which were in his Custody, and taken out of his Custody, were read without any Offer of Proof that they were his Hand.

And then consider, this goes further; it is not only a Paper found in his Custody, but it is a Paper written with his own Hand! How do you prove that?

The Master of this Gentleman tells you he was his Clerk, lived with him two Years; afterwards he received Letters from him about Business, which Business he did according to the Direction of those Letters, and was paid honourably by him for it, and that he believes it to be his Hand. If they had gone no further, nobody could have doubted, but that according to the usual Course and Rule of Evidence it ought to be read. Then they make an Objection, and ask how long it is since he was his Clerk? Why about fourteen or fifteen Years ago: His Hand may be altered in that Time very much: therefore how can you swear it, when it is so long

since, that it is his Hand? Why, says he, because I have received Letters from him five Years ago; I dealt for him as his Agent; this Gentleman, Mr. *Layer*, was my Client, he sent Letters to me, and the Characters of the Letters I have compared with this Paper, and from hence it is I believe that his Character is not changed. How do you know he write those Letters? I answered those Letters, and they were about Business which I did for him, and afterwards he paid me very honourably for it; and therefore I believe they were his Writing, and therefore I believe he hath not changed his Character; and upon the whole Matter, says he, I verily believe it to be his own Hand-Writing. Consider, this is confirmed by his own Confession; but if it had been an independent Evidence, it is an Evidence sufficient for to have had this Paper read; because if a Man says he verily believes it to be his Hand-writing, it is always allowed to be read. You did ask him, but upon what Grounds do you believe his Character is not changed? Why, says he, I do principally believe it from the Letters I received from him; which I should have doubted on the Hand, which he writ fourteen Years ago, whether it was changed or not; and I believe it is not changed, because it is agreeable with the Characters he writ, when he was my Clerk; and upon the whole, I believe it to be his Hand-Writing.

Then they tell you of an Examination of this Gentleman before the Lords of the Council, when they asked him about Arms, he knew nothing of them; then they shew him this Paper, and ask him, how came you in a Scheme, all of your own Hand-Writing, to say, Arms that are provided? What was more natural than for him to say, here is a Paper that doth mention it, I deny it to be my Hand-Writing? But he was so far from denying it, that as the plain Sense and import of the Words spoken must be understood, he owns it to be his Hand.

It is a Mistake, says he, I should have writ which should have been provided.

How should he have writ that, if he had not writ the other?

So considering the whole Contexture of the Business, and Course of Proceeding, it is, and I believe none can doubt it, as plainly proved to be his own Hand-Writing, as if he had said in so many Words, it is my Hand-Writing. It must have been read as a Paper found in his Custody. The other Evidence, that is given to the Jury, will be a Matter proper for their Consideration; but if that Evidence had not been, they must have been read; they offer that as of greater import, because it is of the Prisoner's own Hand-Writing.

You tell us of the Lady *Carr's* Case, which was an extraordinary Case, when she in her Answer in Chancery swore that it was not her Hand, they come to convict her of Perjury, by proving it to be her Hand by a Letter they produced.

Gentlemen, there is no Pretence to make this a Question. Do you think that the Paper, which you offer, shall convict this Woman of Perjury? No, when she had sworn it was not her Hand, they come to prove it by a Witness, that says he believes it to be her Hand, because they produce a Letter, which they say is her Hand. Upon this the Court determines that this Evidence should not be allowed, that is, that it could

could be of no Consequence to falsify any Matter, which she had declared upon Oath.

But as this Case is, sure there is not the least Doubt but if the Proof of his Hand had been out of the Case, it must be read as a Paper that was in his Custody, and taken out of the Custody of one, with whom he had deposited it, which is proved beyond all Contradiction.

And in Case of my Lord *Preston*, and in a thousand Cases, it hath been so, and never was denied.

True, if they come and say, is this his Hand? and the Witness says I don't know whether it is his Hand or no; I have seen something of his Hand, and I don't know but it may be his Hand; it is not right; but the Witness must ground his Belief stronger; I have seen him write, and I know his Writing, therefore I believe it to be his Hand. If they had rested it on that, that the first Evidence knew his Hand fourteen Years ago, that must be left to the Jury, whether they believe Mr. *Doyley's* Evidence; because, says he, I saw him write fourteen Years ago. The Possibility of that, if there was nothing else in the Case, might be left to the Jury, whether that Evidence was sufficient to satisfy them, that it was his Hand. Upon the Whole, never was any thing clearer than that this must be read as a Paper found in his Custody, that hath in the usual Manner and Method the Proof of being his Hand-writing.

Prisoner. If I am out of Time I beg your Lordship's Pardon; I will not take up your Lordship's Time; I only beg a Word or two; whether there is any legal Evidence as to the Publishing; the Indictment says, *publicavit quoddam malitiosum seditiosum & preditorum scriptum*, and that is not that, that is the Declaration.

L. C. Just. Whatever you say or offer, although it happen to be out of Time, we will dispense with you, when out of Time; but what you offer now is upon a Mistake, we are not upon the Paper you should apply it to, that is, the Matter of your Declaration, but we are upon the Scheme Paper, not whether you published it, but whether you writ it.

Prisoner. I am charged in the Indictment as publishing a malicious, seditious and traitorous Writing.

L. C. Just. You are charged with that as an Overt-Act of the Treason, of Compassing and imagining the Death of the King; that you did publish a malicious, seditious, and traitorous Paper, that is the matter of the Declaration. The Matter now is, not for Publishing, but whether there is a reasonable Proof given that it is your Hand-Writing.

Mr. Just. Powys. This is only a Circumstance, not an Overt-Act sufficient to convict you.

Mr. Sol. Gen. My Lord, we offer this Paper as a strong Evidence corroborating and confirming every Thing which hath been sworn by the Witnesses, and we pray it may be read.

Mr. Hungerford. I was reading the Act of Parliament when they——

Mr. Soll. Gen. My Lord, we must beg leave to insist upon the Course of Proceeding, that the Counsel shall not go on to argue a Point, after the Opinion of the Court has been given.

L. C. Just. Now you have heard the Opinion of the Court, you must not go on.

Mr. Hungerford. I was looking upon the Act of Parliament——

L. C. Just. You remember *Francia's* Case, there was a Letter taken up at his Bedside, it was disputed whether that should be read, at last a Witness came and said, I have seen him write several Times, and I believe it to be his Hand; and it was read.

Mr. Hungerford. Ay, hastily read.

Clerk of the Crown reads the Scheme.

The S C H E M E.

Au défaut de la force, il faut employer la ruse.

1. **L**ET the General, and only one Officer of Note in the Camp, agree upon a Day for Execution.
2. Let the Officer that Day put himself on the *Tower-Guard*.
3. And as there is eight Serjeants (*viz.*) three of the first Regiment of Foot-Guards, three of the Second, and two of the Third, all ready at an Hour's warning to obey Orders; early that Morne, let the Officer see a single Person namely *George Wilson*, who manages these Serjeants, and give him Directions to bring them all to some convenient Place at four that Afternoon.
4. Then the Officer must give each Serjeant Money sufficient for the Purpose, and direct 'em, that each Serjeant order twenty five Men (making together two hundred, which they have ready) to go singly out of the Camp, and meet together an Church-Yard, exactly half an Hour past eight in the Evening, when and where another Officer that they know, must meet 'em, and take the Command, give 'em Muskets ready loaded, and march with them in a Body to the *Tower-Gate*, at nine that Night exactly.
5. Our Friend, the Officer within, must precisely at that Hour of nine be on the Guard at the *Tower-Gate*, and seeing this Body of Men appear, order the Garrison to let 'em in, as a Recruit sent to the *Tower-Guard*.
6. As soon as ever they have entered to seize the Arms at the *Tower-Gate*, shut the Gate up, and secure every one in the *Tower*, that the Officer on Guard gives them Orders to secure, but not to shed any Blood.
7. The *Tower* being thus seized, to leave only a small Guard there under that Officer who lets 'em in, and then, with all those that join you, march directly to the *Exchange*, where the great Doors must be ready opened, and the *General* there in Person.
8. At the exact Hour of nine, that the *Tower* shall be thus seized, the Persons of some great Men to be arrested at their Houses, brought directly into the City, and delivered to the *General*.
9. That upon our Meeting at the *Exchange*, the annexed Proclamation to be spread about; the Gates of the City to be shut up, and Pieces of Canon brought down against 'em, but every Man that desires to enter the Gates, before any regular Force appear, to be admitted to come in, and after the *General* has appointed a Guard at each Gate, and Inlets of the City, with proper Officers to command there; let him march back to *Tower-Hill*, for a Place of
General

General Rendezvous under the Cannon of the *Tower*, and order the Lord Mayor a good Guard to watch over the *Bank*, but first take Money from thence to the *Tower*, in order to pay the Men.

10. That on the Morne of this same Day, our General to have an Interview with some other principal Officer of the Camp, and order him to engage all Friends to attend at their respective Posts, and expect a ^a Token to be sent to each of them as that very Night, on receipt of which Token they are to draw their Men out, and march directly to the *Artillery in the Camp*, as ^a a Place of General Rendezvous; and that the Captain of the Artillery may not be alarm'd, let this Principal Officer previously send a Message to him, that Orders are come from the General (*Cadogan*) to double the Guard of the Artillery, on a Rumour that is spread of the Mob being up in the City.

11. The Party being come to the Artillery with the said Principal Officers at the Head of 'em, let 'em immediately draw the Guns round 'em, and stand upon their Defence, without making any Declaration, until the said principal Officer, who commands in chief there, receive certain ^b Intelligence from our General that the *Tower* is seized upon, and the City all in Arms, and then under a Pretence of securing the King's Person from the Insults of the Mob, let this Officer make a Detachment to take him into Custody, and send him into the City to the General at the *Tower*.

12. To facilitate these Proceedings, let the General the same Day speak to the *Horse-Officers* in the Camp, who he knows to be our Friends, and upon the very first Alarm of the City's having revolted, let 'em march their Men to either *Ludgate* or *Newgate*, on pretence to suppress the Mob; and when they are at the Gate, as a Token of their being Friends, let the Watch-Word be *This Morning*, and upon giving us the Word there, to open the Gates and let 'em in, and as soon as they are entered, to march directly to *Tower-Hill* and join themselves with the General there.

13. Let the General also the same Day order four of the Half-pay Captains to take upon 'em the following Commands, (*viz.*)

14. First Captain to go into *Southwark*, and exactly at the Hour of nine, to make a Bonfire in the Fields there, and give some Money among the Mob, and when you have got a Number together, send an Account to the General, take the Arms that must be lodged there, and distribute out amongst 'em to your Acquaintance in the first Place, and to those which they recommend, and then issue out the Declarations; and after the Receipt of a Token from the Captain next mentioned, who is to command in *Palace-Yard*, to ferry over thither in Lighters, with the Watch-Word *This Morning*, and join the Captain in *Palace-Yard*.

15. Second Captain exactly at the Hour of nine, to be in *Privy-Garden*, adjoining to *White-Hall*, with a few Gentlemen armed, and seize upon the great Guns there, and then spread the Declarations, and stay there under the Cannon till a greater Body join you from *Southwark*; or otherwise nail up the Cannon, and march directly to the next Captain in *St. James's Park* with the Watch-Word *This Morning*, and then send the Token, as above, to the first Captain in *South-*

wark, and let the Messenger you send, conduct him and his Men to you at *St. James's-Park*.

16. Third Captain, at the said Hour of nine, to go into *St. James's Park*, with the Key that is given you of the Private-Door out of *Arlington-Street*, and appoint only some few Gentlemen to meet you there exactly at the Hour and ready, one to have the Watch-Word you give 'em, which must be *This Morning*. Let your first Rendezvous be at the little Grove under the Wall near the Gate leading to *Hyde-Park*; and there you'll meet Fire-Arms ready charged. Then march down to the Parade next the Horse-Guard, and seize upon the Cannon there, and Ammunition in the Store-House, and the better to secure *St. James's Park* for a Place of general Rendezvous, you shall have an Officer out of the Camp exactly at the Hour of nine come to your Assistance with some Men, as he and you shall agree in the Morne of this Day, and as soon as you have seized the Cannon here, and Ammunition aforesaid, you are to put your selves in a Posture of Defence, and publish the Declaration, and send forthwith to the General at the *Tower* to let him know of your Situation, and also send to the Captains in *Palace-Yard*, *Southwark*, and *Tuttle-Fields*, that they immediately come and join you.

17. Fourth Captain, exactly at the Hour of nine, the Evening of the same Day to be in *Tuttle-Fields*; raise the *Westminster* Mob there, and with the Arms that are there lodg'd, equip them as you can; publish the Declarations, and march directly to *St. James's Park* and join with them there, who, on your giving them the Watch-Word, are to admit you into the Park.

18. So here being two Bodies of Men thus gotten together the first Night, *viz.* One on *Tower-Hill*, and the other in *St. James's-Park*, (besides our Friends at the Artillery in *Hyde-Park*.) The next Morning, if not sooner, let our General order a Detachment to *Lincoln's-Inn-Fields*, and some Cannon to be placed on the Terras of the Garden there, lest the Enemy come in there between *St. James's Park* and the City.

19. A proper Captain must be appointed to head the Watermen belonging to the *Thames*, and previous to the Day of Execution, he must agreed with the Duke's Bargemen, that upon the least Notice to be given them, that they alarm all the Watermen, and bring them to a Rendezvous the same Hour of nine that Night of Execution, and this Captain's Rendezvous must be at *Greenwich*, where he must seize the Magazine of Powder, and take out such part of it as each Man will carry, then blow up the rest, march from thence to the *Tower*, and join his Men with the General there, to whom he must first send a Messenger with the Watch-Word, and an Account of his Numbers:

20. Some Time before Execution, the General to send a Messenger to particular Men in the Country, that they rise in their respective Counties upon the first News of what is done here.—

21. An Officer, &c. to go to *Richmond*, and at the exact Hour of nine to seize upon Prince *Pritty Man*, and bring him away to *Southwark* to some particular Place appointed, where an Agent from the General must meet them with his further Orders.

^a It may be a Note in Writing thus, Sir, I'll meet you at nine to Night, don't fail me. J. S.

^b A verbal Message by a third Person that must be by, when the General and this Chief Officer consult together till Morne.

Mr. *Ketelbey*. I ask you, whether it was reduced into Writing?

Mr. *Stanyan*. Yes, it was; the Lords sent to me, to assist Mr. *Delafaye*; upon Mr. *Layer*'s being examined: Mr. *Delafaye* took the Heads of the Questions propounded; and I sat near the Table, looked over Mr. *Delafaye*; attended to the Questions and Answers; so that we could set one another right when we came to consider them.

Mr. *Ketelbey*. This you Wrote, was it read over to the Prisoner?

Mr. *Stanyan*. No.

Mr. *Ketelbey*. Do you believe the Prisoner at the Bar saw you write?

Mr. *Stanyan*. Yes, I believe he saw us write.

Mr. *Ketelbey*. Do you believe he thought any Person was taking his Confession in Writing?

Mr. *Stanyan*. I think it cannot be otherwise.

Mr. *Ketelbey*. I ask you, do you believe that Mr. *Layer* knew that you was taking his Confession at that Time?

Mr. *Stanyan*. The Lords spoke thus; *Pray take Notice*, and then take down such a Thing, and such a Thing; and I believe Mr. *Layer* heard them say, *Take down that, and take down that*.

Mr. *Ketelbey*. Was it ever known for one to take down the Questions, and the other the Answers; and then to compare them together, in Order to make a Confession?

Mr. *Stanyan*. No; Mr. *Delafaye* wrote down the Questions and Answers.

Mr. *Hungerford*. How was the Position of Mr. *Layer*, with respect to you; was your Back or Face towards him?

Mr. *Stanyan*. It was on one Side.

Mr. *Hungerford*. Was you in the Room when Mr. *Layer* came in first?

Mr. *Stanyan*. I was; I called in Mr. *Layer* by the Lords Order.

Mr. *Hungerford*. Was it ever read to him?

Mr. *Stanyan*. No.

Mr. *Hungerford*. Was it drawn up in Form, so that you might call it an Examination?

Mr. *Stanyan*. I will tell you what we understood by it; it was the Minutes of an Examination to be drawn out in Form: But the Lords finding Mr. *Layer* not so candid and ingenuous as they thought he would have been, did not ask him to sign it; and we only make use of it to refresh our Memories.

Mr. *Ketelbey*. He calls it an Examination, and it appears by what Mr. *Stanyan* saith, that he and Mr. *Delafaye* took it; one takes one Part, and the other takes another Part.

Mr. *Soll. Gen.* He did not say any such Thing.

Mr. *Ketelbey*. His Confession was never read over to him.

Mr. *Soll. Gen.* Mr. *Stanyan*, when the Lords directed Mr. *Delafaye* and you to write this or that particular Thing, was the Prisoner so near, that in your Apprehension he might hear their Lordships give such Directions?

Mr. *Stanyan*. Yes, he was.

Mr. *Hungerford*. Sure they are not contending, that any Confession shall affect a Man, unless it was read to him, and it ought to be signed by him; my Lord, the Man is no Way answerable for any Thing taken in Writing, without his Consent or Privity, in a Criminal Case: It is called Minutes or an Examination, which

they might enlarge as they please; therefore we humbly submit it to your Lordship, Whether it ought to be offered in Evidence at all as a Confession.

Mr. *Ketelbey*. What will be the Consequence, if this be allowed here? Is a Person to be convicted of Treason upon a Confession taken, without its being read to him, and without his signing it? A Confession to a Justice of Peace, in Cases of Felony, unless read to the Party, and signed by him, must not be given in Evidence.

L. C. Just. Mr. *Ketelbey*, you seem to mistake what it is that is contended for by the King's Council: They are not going to offer any thing to be read in Evidence; your Objection would prevail, if they were going to read a Confession as Evidence, which was neither read to him, nor signed by him; but if there is no Examination reduced into Writing, and signed by the Party, the Consequence of that is, that the Witness is at Liberty to give an Account of what was said; and he may look to his Notes to refresh his Memory: If you will say, it is not so great an Evidence, of so great Weight, as an Examination taken, and signed by the Party, there is some Room left, some Foundation to suppose the Evidence may be mistaken.

He says, he was examined before the Lords of the Council; and he took Minutes of his Examination: And afterwards to refresh himself, he looks upon them, and says, he believes that is the Substance of what he confessed at that Time. You say, there is no Precedent for it; for God's Sake! Recollect your self, it is every Day done at the *Old-Bailey*: If a Person confesseth, and it be not in Writing, they do prove his Confession, *Vivâ Voce*.

Mr. *Soll. Gen.* My Lord, *Coleman's Case*, which was during the Time that Sir *William Jones* was Attorney General, went further than this: There his Letters were laid in the Indictment, as the very Overt-Act of the High-Treason charged against him; and yet one of those Letters was proved by his Confession, upon an Examination before a Committee of the House of Lords; and that Confession was prov'd, *Vivâ Voce*, by Sir *Philip Lloyd*.

Mr. *Ketelbey*. Whether that Case will be a Precedent? I never heard it so reckoned.

Mr. *Hungerford*. And I hope it will never be one.

Mr. *Delafaye*, sworn.

Mr. *Serj. Cheshire*. Mr. *Delafaye*, pray give an Account what Mr. *Layer* declared before the Lords of the Council concerning these Receipts.

Mr. *Delafaye*. The Account he gave——

L. C. Just. Mr. *Delafaye*, you was present at the Time of taking this Examination; you say, you took Minutes in Writing; you have told us the Reason why it was not in Form, and read to Mr. *Layer*: If you have not already done it, you may look to your Minutes, and refresh your Memory: That which the Court demands of you is, what Mr. *Layer* did confess at the Time of his Examination before the Lords of the Council.

Mr. *Delafaye*. He told the Lords, that he did write to Sir *William Ellis*, that he would send over some blank Receipts under the King's own Hand, that might be made use of, for the carrying on his Cause: That he did receive such

Receipts, and his Intention was to have tried his Friends; and to have raised Money on those Receipts.

Mr. Serj. Chesbire. Did he give any Reason why he went into that Method?

Mr. Delafaye. For a Precedent, he said, a little before the Restoration of King Charles II. a Method of this Kind had been used.

Mr. Att. Gen. My Lord, we shall now proceed to read the Letters that were sent and passed between them, Sir William Ellis and Mr. Layer: But it will be proper first to lay before you the Cyphers which they made use of to explain several cant Words and Expressions, which they used in their Letters.

L. C. Jusf. Were the Cyphers found among Mr. Layer's Papers?

Mr. Att. Gen. Yes, my Lord.

Mr. Serj. Chesbire. Pray read No. 38.

Mr. Att. Gen. I don't know whether we shall trouble your Lordship to read the whole Cypher; it is very long, but when we meet with a Word in the Letters which wants Explanation, we may have Recourse to the Cypher.—Read the Letter No. 38.

Cl. of the Cr. reads. This Letter is signed Eustace Jones, &c.

Dear SIR,

I Receiv'd with a great deal of Pleasure and Satisfaction, a Letter of the 24th of November, from my worthy Friend, with an Account of his safe Arrival; of which I was in some Doubt before, and in no small Pain on that Account: I easily conceive he must needs have had a great deal of Business on his Return, as well of his Unkle's as of his own; and therefore, I don't think much that I heard no sooner from him, believing he was much better employed, and that Business is to be preferred before Compliment.

I was entirely of his Opinion as to the Method of carrying on the Manufactory; the procuring of good Workmen, is the first Step to be made, and if he can get such, the rest will be easy; and particularly, if he could gain some of the ablest of Mrs. Barbara Smith's, I know it would be very agreeable to all concerned, and particularly to Mr. Atkins, to whom he spoke of Writing; and which, I am satisfied, will be very acceptable: And if he thinks fit to inclose it to me, I shall convey it safely to his Hands, who, I find, was very glad to hear of him, counts very much upon his Friendship, and hopes for the Continuance of it.

I made his Compliments to Mr. Timothy Watson's Wife, who took them very kindly, and returns hers, with her most humble Service. She and her Charge are very well, God be praised, as are also all Friends here.

He having read over several times the Paper I shew'd him, and having a good Memory, I don't think it necessary to send a Copy of it.

I am, with great Esteem and Respect, ever most entirely,

Dear SIR,

30th January.
For James Fountaine, Esq;
to be left at Howell's Coffee-House, in Great Wild-Street, LONDON.

Your most affectionate,
most humble and most
obedient Servant,

Eustace Jones.

Mr. Att. Gen. Your Lordship is pleased to remember, Mr. Stanyan said that Sir William Ellis was to write by the Name of Jones.

Mr. Stanyan. My Lord, he did say, that he had received a Letter since he had settled a Correspondence with Sir William Ellis subscribed by the Name of Jones.

Mr. Att. Gen. In the Cypher Sir William Ellis is called Jones.

Cl. of the Cr. reads. This Letter is signed Eustace Jones, dated 30th January, no Year, Dear Sir, I receiv'd, &c.

Mr. Att. Gen. Your Lordship will be pleased to observe the Expressions in this Letter, the procuring good Workmen: Now look in the Cypher, and Soldiers are meant by Workmen; Manufactory is not in the Cyphers, but I don't know for what Manufactory they wanted Soldiers, unless to raise a Rebellion. The Ablest of Mrs. Barbara Smith's; look for Army in the Cyphers, and you will find, that is signified by Barbara: It will be very acceptable to all concerned, and particularly to Mr. Atkins; in the Cypher that is the Pretender. Compliments to Mr. Timothy Watson's Wife; look in the Cyphers, and Timothy stands for Hughes, whose Wife is Nurse to the Pretender's Child. This Letter is directed for James Fountaine, Esq; to be left at Howell's Coffee-House in Great Wild-street, and I observe, Mrs. Mason said the Prisoner went by the Name of Fountaine.—No. 10. are six fictitious Names, and the Key to them: Read it.

Cl. of the Cr. Reads No. 10.

Digby—Dillon.

Orrery—Burford.

Regent—Steel.

Tories—Tanners.

Wiggs—Waggs.

Rogers—Plunkett.

Mr. Att. Gen. Read the Letter No. 40.

Cl. of the Cr. Reads, signed N. C. Dated the 11th of July, 1722.

Dear SIR,

The 11th of July, 1722.

I Received with all possible Satisfaction your most affectionate Letter of 8th May with its inclosed, which was presently delivered to Mr. St. John, who took it extream kindly; but could not well understand what relates to Mr. Burford; he hopes, your Answer to what I writ, in the beginning of last Month, may soon clear that: You will have seen, by what I then told you, that the former came safe to his Hands, and the Reason of your not having had a distinct Answer to it: He had the Stockings you sent for him, and returns you many Thanks for them; as also for all other Marks of your Affection and Concern for him and his, and will be ready to shew his Sense thereof on all Occasions. I am in earnest Expectation of hearing soon again from you, and am, with all possible Affection and Esteem,

Dear SIR,

For James Fountaine, Esq;
to be left at Howell's Coffee-House in Great Wild-Street, LONDON.

Your most faithful and
most humble Servant,

N. C.

L. C. Jusf.

L. C. Just. Who is that *N. C*?

Mr. Att. Gen. My Lord, we do not know, it is directed to *James Fountaine*, Esq; *Mr. St. John* in the *Cypher* signifies the *Pretender*.

Mr. Soll. Gen. *Mr. Burford* appears to stand for my Lord *Orrery* in the little *Cypher*.

Mr. Hungerford. Look into the Paper, pray what do *Stockings* stand for?

Mr. Soll. Gen. Read the Letter No. 41.

Clerk of the Cr. This is dated the 27 *May*, it is sign'd by no Body, nor directed to any Body; the Cover is off: *I receiv'd with a great*, &c.

Dear S I R,

27 *May*.

I Receiv'd with a great deal of Pleasure, the Favour of your most obliging Letter of 22d March, with an inclosed for our Friend, who was very glad to hear from you; and is very sensible of, and takes very kindly, the Care you take of his little Concern there; but says, he doth not sufficiently understand the State you sent, so as to be able to make a particular Answer, till you shall further explain it; there being some Tenants, mention'd by you, whose Names he does not find in the Rental, as Burford, Steel, Digby, the little Soldier, and Simmonds; the latter, he believes should be Simmes, he is of the North, a grey hair'd antient Man, whom he very well remembers, and has a particular Esteem and Value for, as a very good Tenant, and a very honest Man.

All Friends here are in perfect good Health, God be thanked, and remember themselves kindly to you, and I am most entirely,

Yours, &c.

Mr. Soll. Gen. If you look into the *Cypher*, you will find *Rental* stands as the fictitious Name for the *Cypher* itself; *Burford* stands for the Lord *Orrery*, *Steel* for the *Regent*, and *Digby* for General *Dillon*.

Simmons; he believes should be *Simmes*, but *Simmonds* in the large *Cypher* is put for Lord *North* and *Grey*, and who is meant, appears pretty plain from the Cant which follows. *He is of the North a grey hair'd antient Man, whom he well remembers, and hath a particular Esteem and Value for, as a very good Tenant, and a very honest Man.*

Mr. Att. Gen. Look for *Simmons* in the *Cypher*.

Mr. Hungerford. I can make one Observation, that *Mr. Harcourt* is very ready at.

Cl. of the Cr. It is alphabeted, so that it is easy to look for it.

L. C. Just. What Use do you make of these Letters?

Mr. Soll. Gen. The Use we make of them is to shew that *Mr. Loyer* who took on him the Sham-Name of *Fountaine*, by which Name some of these Letters are address'd, had a Correspondence with the Friends of the *PRETENDER* at *Rome*. That this Correspondence related to a Conspiracy, which was formed and carrying on here; and it appears, they took upon them to mention several Persons of Distinction under a kind of Jargon.

Mr. Att. Gen. The first Letter, wherein is mentioned the carrying on the *Manufactory*, the procuring good *Workmen*, and particularly, if he could gain some of the ablest of *Mrs. Barbara Smith's*, and that it would be very agreeable to all concern'd, and particularly to *Mr. Atkins*, which is the Name for the *Pretender*;

shews, that the Agents of the *Pretender* at *Rome*, had laid Designs to procure Soldiers, and those, if possible, out of his Majesty's Troops; which falls in with the Evidence we have given of the Prisoner's Endeavours to get Soldiers and Sergeants out of the Army.

Mr. Serj. Cheshire. It may not be improper, since we have explain'd it, to lay before you the Lists of several Persons Names that are in the Army.

Pray read No. 7. out of the large Bundle.

Cl. of the Cr. Reads a List of Officers Names with Marks and Numbers to some of them.

Mr. Att. Gen. We did mention before, that there were the Names of several Persons of very great Honour and Loyalty to his Majesty in some of the Lists; but this is to shew, that the Prisoner was consulting how he might get an Account of the Number of the Forces; as how many Colonels, how many Captains, and how many Soldiers there were in the Guards and other Troops of his Majesty.

Read No. 5. in the large Bundle.

Cl. of the Cr. Reads No. 5. A List of Officers of the Second, or *Coldstream* Regiment of Guards.

Mr. Att. Gen. We make the same Use of this to shew, that he was searching and examining to get an Account of the Guards.

L. C. Just. I suppose he is taking a Survey of the Persons that were of the Guards, that he might be capable of making a Judgment.

Mr. Att. Gen. Yes, my Lord; and to know their Strength: Look out No. 6. in the large Bundle.

Cl. of the Cr. Reads No. 6. A List of Officers in the first Troop of Horse-Grenadiers, the Names being distinguished by different Letters.

No. 7. out of the small Bundle. A List, &c. here are eleven of them put down.

Mr. Soll. Gen. Read No. 8. in the large Bundle.

Cl. of the Cr. Reads No. 8. A List, &c.

Mr. Att. Gen. Your Lordship will observe, that this is a List of some Persons Names, and the Numbers of Horses and Men they were to provide.

L. C. Just. You'll have this to import an Account of what Quota's several Persons were to find.

Mr. Att. Gen. The last was read for that Purpose: Read No. 15. in the large Bundle.

Cl. of the Cr. Reads No. 15. Containing divers Names, with Numbers set against some of them.

Mr. Serj. Pengelly. Read No. 20, 21, 22, 23, and 24, in the large Bundle.

Cl. of the Cr. Reads No. 20. Containing a List of the Great-Officers of the *Tower*. No. 21. Containing Names of Officers of the Second Troop of Horse-Guards, Second Troop of Horse-Grenadiers, and Fourth Troop of Horse-Guards. No. 22. Containing a List of Names. No. 23. Containing Names of Officers of the First, Second, Third and Fourth Troops of Guards. No. 24. Containing the Names of two Officers of the Horse-Guards.

Mr. Att. Gen. Look upon that List, No. 21. whether there are not some private Marks upon it.

Cl. of the Cr. Yes, here is upon one of them a *Dott*, and on the other Side there is a *Dott*; and

and in two or three Places some Men mark'd and cross'd.

Mr. Serj. *Cheshire* Read No. 25.

Cl. of the Cr. Reads No. 25. Containing a List of Officers, five of them marked to be *not bad*.

Mr. *Reeve*: Are the Words *not bad* of the same Hand-Writing?

Cl. of the Cr. Yes; it doth appear to me to be so.

Mr. Serj. *Pengelly*. Read the Title of No. 22.

Cl. of the Cr. Here are a great many Peoples Names, with Marks upon some, and none upon others: Upon one of them is Writ *William Johnson, to be gained*.

Mr. Serj. *Pengelly*. Read No. 27.

Cl. of the Cr. Reads, A List of the Third Regiment of Guards; against several of which Names are Dotts and Marks.

Mr. Serj. *Pengelly*. Read No. 28.

Cl. of the Cr. Reads, A List of the Officers of the *Coldstream* Regiment of Guards; and a List of the Officers of the *Scotch* Guards.

Mr. *Soll. Gen.* Read No. 35.

Cl. of the Cr. Reads No. 35. A Paper, containing an Account of the Numbers of the Officers and Soldiers in the First, Second, and Third Regiment of Foot Guards.

Mr. Serj. *Pengelly*. My Lord, we beg leave to ask Mr. *Delafaye* and Mr. *Stanyan* two or three Questions, to support the Evidence of Mr. *Lynch* and Mr. *Plunkett*, in relation to some particular Facts; whether at the time of the Examination of Mr. *Layer* before the Lords of the Council, any thing was said of Mr. *Layer's* being at *Rome*?

Mr. *Hungerford*. With humble Submission, Mr. *Layer's* being at *Rome*, and corresponding with the *Pretender*, (if he did so) is made Treason by another Act of Parliament, not by this Act of Parliament upon which he is indicted: Therefore, whether he was himself at *Rome*, or corresponded with the *Pretender*, cannot be offered as an Evidence of High-Treason upon this Indictment.

Mr. Serj. *Pengelly*. It is only to shew the Probability of his receiving those Receipts.

Mr. *Ketelbey*. Since we did not know any thing of those Papers, we could not properly make our Exceptions against them, till we heard them read; and now, if they prove any thing, 'tis the holding Correspondence with the *Pretender*; but that relates to another late Act of Parliament; 'tis another Species of Treason; and the Evidence which they would give of his Confession, *Vivâ Voce*; they say, it is only to support these Papers that are read; Who can make any Objection to a Paper which we did know nothing of? I believe few in the Court know what the Meaning of these Papers are now they are read; for my Part, I know very little of them; we apprehend that instead of being allowed to support this Evidence, by proving a foreign Correspondence between Mr. *Layer* and the *Pretender*, by the Name of King *JAMES*, which is made Treason by a particular Act of Parliament; they ought rather to have indicted him upon that, than endeavour to support their defective Proof by giving Evidence of an Offence, which may be matter of another Enquiry.

Mr. *Att. Gen.* My Lord, we apprehend a Proof, that the Prisoner was at *Rome*, and had

Conferences with the *Pretender*, will be very proper to corroborate, and explain the Evidence that hath been given by the Witnesses, and the *Pretender's* Notes; and Sir *William Ellis's* Letters to the Prisoner; and for those Purposes we would make Use of it.

Mr. *Soll. Gen.* Though we apprehend we have made our Case extremely strong already, yet this which has been opened may be offered by Way of further Confirmation: Notwithstanding the Objection which is made, that we are attempting to give Evidence of another Kind of Treason not alledged in the Indictment, yet we insist upon it, that it is proper here, as circumstantial Evidence of the Treason which is alledged. We have proved a Conspiracy entered into between this Gentleman and others, to bring in the *Pretender*, and levy War for that Purpose; and also, Notes sign'd *JAMES R.* which he received from Sir *William Ellis*, a Person at the *Pretender's* Court. Now, if we follow this by shewing, that the Prisoner was actually at *Rome*, and had Personal Conferences with the *Pretender* himself; that, surely, must be admitted to be a material Circumstance to support the Proof of those other Facts. I beg Leave to say, that it has been held, even since the Stat. 7^o *Will. Tertij*, That Acts of High-Treason not laid in the Indictment, may be given in Evidence, if they conduce to the Proof of some Overt-Act which is there laid.

Mr. Serj. *Cheshire*. We apprehend your Lordship will receive Evidence of the same Kind of Treason in a lower Degree, in order to prove the Overt-Act, whereby he consulted and conspired to bring in the *Pretender*, and place him upon the Throne.

As the Prisoner did correspond with his Ministers, so he had Access to the *Pretender* himself; and he did own it. That we apprehend is going a Step higher, something further than already is admitted; and if it is proper Evidence, there is no reason why it should be rejected.

Mr. *Reeve*. It is true, we have not indicted him for a treasonable Correspondence with the *Pretender*, therefore they object, we cannot give Evidence of any such Correspondence upon this Indictment.

My Lord, we humbly apprehend, every thing that is a Circumstance that will gain Credit to the Witnesses examined is proper Evidence. It looks indeed improbable, that a Gentleman of the Profession of the Law should enter into this treasonable Design, which is expressly sworn upon him by two Witnesses, whose Credit they design to impeach; therefore we humbly offer this as a circumstantial Evidence. This Gentleman having gone from his Profession, hath been at *Rome*, was kindly receiv'd and entertain'd by the *Pretender*; thereupon he hath entered into an Intercourse with his Ministers: And, if we prove this, it is to induce Credit to the Evidence we have given by positive Witnesses. We therefore think it proper, and submit it to your Lordship.

L. C. Just. They must go on, they are not going upon an Evidence of a new Overt-Act of Treason; the Overt-Acts are consulting, advising, and agreeing to raise a Rebellion.

Mr. *Hungerford*. I humbly beg your Lordship's Pardon.

L. C. Just.

L. C. Just. If you will not hear me, you will teach me not to hear you.

Mr. Hungerford. My Lord, I hope we have a Right to reply.

Mr. West. Upon the first Letter of Sir *William Ellis's* he congratulates him, as his Friend on his safe Arrival.

Mr. Hungerford. My Lord, I beg your Lordship's Pardon; I am in the Service of my Client, and in endeavouring to do him Service, I am verily persuaded, I shall not offend your Lordship: Really for my part, I cannot satisfy my self, that the Evidence which they tender to the Court is a proper Evidence.

This Gentleman is indicted upon the Statute *de Proditionibus*, 25^o Ed. 3. The Overt-Acts laid in the Indictment are, his consulting, conspiring and agreeing to raise a Rebellion, and to levy War against the King, &c.

There is an Act of Parliament in the last Year of King *William*, whereby the *Pretender* is attainted, which makes corresponding with the *Pretender*, or any of his Adherents High-Treason; and when any Man commits that particular Treason, he is liable to be taken up and prosecuted for it. Now my Lord, shall they be admitted to give an Evidence of a Treason committed in breach of one Act of Parliament, when they are prosecuting him upon another, they may as well offer Evidence against him for counterfeiting the Great Seal, or clipping and coining for the Sake of Evidence: We hope this Practice shall not be allowed; if they are so full of Proof (as by their opening they seem'd to be) which by the Rules of Law can reach this Man's Life, which I cannot yet see, let Justice take its Course: But we humbly hope they shall not be permitted to give Evidence of Facts which are entirely foreign to the present Accusation, and can be calculated for nothing but to captivate the Jury, by acquainting them that the Prisoner hath been at *Rome*. But if the King's Counsel will have it effectually publish'd, that the Prisoner hath been at *Rome*, let them consent to have him found not guilty upon this Indictment, and let him then be prosecuted upon the Act, for corresponding with the *Pretender*, and see what will come of it.

Mr. Ketelbey. The Act of Parliament that makes this new Treason is the 13 and 14 of King *William*; which not only makes that Treason which was not Treason before, but puts it on a new Method of Trial in any County of *England*, where it is laid. Now they would give in Evidence a Fact, which *Mr. Serj. Cheshire* says is Evidence of the same Kind of Treason, tho' in a lower Degree, and ought to be received to prove the Overt-Acts of consulting and conspiring to restore, and bring the *Pretender* to the Throne: As to the Evidence that hath been read we could not have objected to the Papers, because we did not know what they were, nor whether they related to a Foreign or Domestick Correspondence. Now because they are read as being found on a Person to whom he gave them; shall they, to support a Treason, of compassing and imagining the Death of the King; give Evidence of corresponding with the *Pretender*.

My Lord, I don't apprehend the King's Counsel have given us any manner of Answer, and therefore shall not take up any more of your Lordship's Time, by repeating in a Reply, what

I offered before by way of Objection: I submit it to your Lordship.

L. C. Just. Sure as this Evidence is offer'd it is very proper; consider, in the Indictment the Overt-Acts are, meeting, consulting, advising, and agreeing to raise a Rebellion. The next is, publishing a Traiterous Libel, in which Rewards are promised to those that would assist in this Rebellion; a third Overt-Act is, the engaging and lifting Men for the Service of the *Pretender*; a fourth is, a designing to depose the King; and another is, to set up the *Pretender* on the Throne; Now, consider, if they have not given an Evidence of these Overt-Acts, whether sufficient or not, that must be left to the Jury; if they have given Evidence of these Acts, a Design to set up the *Pretender*, and to depose the King, &c. If they are not proper to shew for this Purpose this Gentleman corresponded with *Rome*, was with the *Pretender*, these Letters sent from Sir *William Ellis* to him: Letters (according to his Desire) purporting Receipts for Sums of Money to be signed by the *Pretender*, as a Foundation to oblige him to make Repayment: After this and these Things have been offer'd, is it not proper to go as far as they can on this Head, and shew how far he hath been engaged with the *Pretender* and his Accomplices? Sure it is proper, as a further Evidence of these Overt-Acts.

Don't trouble yourself as to that, no Use shall be made of that, to charge you with the Treason made so by another Act of Parliament, about corresponding with the *Pretender*, for Evidence it is proper here; and it neither can, nor shall be made Use of to any other Purpose.

Mr. Reeve. *Mr. Stanyan*, pray go on and give an Account of what he confess'd, when examined before the Lords of the Council about his being at *Rome*.

Mr. Stanyan. *Mr. Layer* did acknowledge he had been at *Rome*, and returned from thence in *July 1721*. he said he had had two Conferences with the *Pretender*.

Mr. Ketelbey. I think *Mr. Stanyan* said, he had taken Minutes of his Examination; I had rather see the Minutes than trust to his Memory. My Lord, in the Trial of the two *Bailiffs* in this Court, the Substance of what the Deceased said was reduced into Writing; and therefore the Parole-Evidence, that was offered to be given was rejected. I submit it to your Lordship, whether the Rule is not the same in greater Cases, and much stronger in this Point before your Lordship. I have not the least Disrespect for *Mr. Stanyan*, and could take his Word for any thing, but my Client's Life; therefore, we hope he shall produce those Notes, which he hath refer'd to once or twice, now he is going to give a further Account of his Examination.

Mr. Hungerford. My Lord, I was Counsel in that Case; the Justice of Peace who had taken *Mr. Lutterell's* Examination did not appear, and that Examination could not be had; there was a Copy of it taken and produced, and proved in Court to be a true Copy, but your Lordship would not let that Copy be read, or the subject Matter of it to be given in Evidence, unless the original Examination it self were produced.

L. C. Just. *Mr. Attorney*, you hear how the Matter is, *Mr. Delafaye* and *Mr. Stanyan* give an Account that they were commanded by the Lords of the Council to attend and take Minutes of

of Mr. *Layer's* Examination before them; that they have those Minutes, and have look'd into those Minutes to refresh their Memories: If they desire they may be produced, do you oppose it? Have you the Minutes here?

Mr. *Stanyan*. Yes, my Lord.

Mr. Serj. *Pengelly*. There may be a great many Things that are not material to the present Case of Mr. *Layer*; why should they have all these Minutes read? It is not for the Sake of the Prisoner at the Bar, but for the Sake of some other People, who may be listening here.

In the Case of *Lutterel*, there was a compleat Examination taken by a Justice of the Peace: In this Case there is no Examination compleated and drawn up; it is nothing but an oral Confession, and amounts to no more. The Minutes the Witnesses may take in their Hands, as proper to refresh their Memories.

Mr. *Att. Gen.* Their desiring to have these Minutes read, is not so much for the Sake of their own Client as for the Sake of other People.

Mr. Serj. *Cheshire*. How the Matter in that Case was——

L. C. Just. It is enough, I only ask'd Mr. *Attorney-General*, whether he thought fit to consent to it; and without his Consent, we are of Opinion, that they cannot be read.

I ask'd Mr. *Attorney* the Question, and was not aware of any ill Consequence.

Mr. *Attorney* says, the Minutes refer to the whole Examination, and to a great many other People, and it would be for the Disservice of the King, to have these Things disclos'd. Mr. *Attorney* might have refus'd to consent without giving a Reason, but he hath given a good Reason, and therefore will not consent that they be read.

Mr. *Ketelbey*. We do not consent to wave them, but insist upon their being read.

Mr. *Att. Gen.* We don't ask your Consent.

Mr. *Ketelbey*. If you don't ask it, nor give it, we are so far even, but I assure you, Sir, we are retained only for one Gentleman; the Prisoner at the Bar, and we have as little Reason to be solicitous for the Innocence of others, as some have for their Guilt?

L. C. Just. You cannot read the Minutes taken against the King, because these Matters are not ripe yet, nor to be discover'd to the World.

Mr. *Hungerford*. Something drop'd, as if we did insist upon the Matter for the Sake of Others; they are mistaken, we condemn such an Insinuation. We are of Counsel for this Man, and for this Man singly.

L. C. Just. You are assign'd Counsel for him, and unless you had, I believe you would not have ventured to have said so much.

Mr. *Hungerford*. No indeed.

L. C. Just. Go on.

Mr. Serj. *Pengelly*. Mr. *Stanyan*, please to recollect, whether when Mr. *Layer* was examined before the Lords of the Council, (it is to confirm the Evidence of Mr. *Lynch*) any thing pass'd about the Declaration.

L. C. Just. But before you was intending to ask him about his going to *Rome*, and having Conference with the *Pretender*.

Mr. Serj. *Pengelly*. My Lord, that he hath said already, therefore I ask you what was said

by Mr. *Layer*, relating to the Declaration?

Mr. *Stanyan*. The Lords ask'd Mr. *Layer*, if he had seen any Declaration; he said no, he had only the Heads of one which he drew himself: The Lords ask'd him where that Declaration was, he said, he believ'd one *Wilson* had it.

Mr. Serj. *Pengelly*. Was any Questions asked relating to the Persons that had seen it?

Mr. *Stanyan*. Yes, he said the only Persons that had seen it was, that *Wilson*, one *William Jeffries*, a *Nonjuring Parson*, and one *Lynch*.

Mr. Serj. *Pengelly*. Where did he mention to have shew'd it to *Lynch*?

Mr. *Stanyan*. On his Way to my Lord *North* and *Grey's*, at the *Green Man* at *Epping*.

Mr. Serj. *Pengelly*. Was there any thing more said by *Layer*, relating to that Journey to *Epping*, and what?

Mr. *Stanyan*. He said that he went to my Lord *North* and *Grey's*, and dined at the *Green-Man* as he went, then he carried Mr. *Lynch* to my Lord *North* and *Grey's*, and recommended him to my Lord *North* and *Grey*, as a proper Person to be employed. I think it was employed in an Insurrection, or in any thing else, that his Lordship should command him.

Mr. *Ketelbey*. If he is not certain, I desire he may produce his Minutes, as he gives his Evidence *vivá voce*, to refresh his Memory.

Mr. *Att. Gen.* We submit to it.

L. C. Just. It is always so.

Mr. *Stanyan*. He recommended him, as a proper Person to be employed in an Insurrection, and that *Lynch* having told *Layer* before that he would seize the Earl of *Cadogan*, that *Layer* did mention him to my Lord *North* and *Grey*, as a proper Person for such an Attempt.

Mr. *Ketelbey*. The first time you said, in an Insurrection, as you remembred or thought; how come you now to be more certain on the second Repetition of your Evidence than at the first? On the first Account you gave you say, it was employed in an Insurrection, as you thought; now upon the second Repetition you give a positive Evidence, that this was confest by Mr. *Layer*.

Mr. *Stanyan*. I have recollected the Words, and Mr. *Layer* used those Words.

Mr. *Ketelbey*. From whence is it that you are now so positive, and were not so at first?

Mr. *Stanyan*. I did say the Words at first.

Mr. *Ketelbey*. But you said it with an Alleviation; I desire to know, if you are positive those were the Words.

Mr. *Stanyan*. I am very positive.

Mr. *Ketelbey*. And yet you were not positive before.

Mr. *Stanyan*. I did not say I was not positive.

Mr. *Hungerford*. Did you give your Evidence, that you was certain he said that he had recommended *Lynch*, as a proper Person to be concerned in an Insurrection in General, or only as a proper Person to seize my Lord *Cadogan*, or both? how did he express himself?

Mr. *Stanyan*. I will tell you how the Words were: *Lynch* having told him he would seize my Lord *Cadogan*, *Layer* recommends *Lynch* to my Lord *North* and *Grey* as a proper Person for such an Attempt.

Mr. *Hungerford*. Then the Insurrection was out of the Case; he was only recommended to my

my Lord *North* and *Grey*, as a proper Person to seize my Lord *Cadogan*.

Mr. *Ketelbey*. I think you have repeated it three times, and different at each time; now please to rectify your Memory, and let us have it so as it may be understood.

I must desire it in this Case, my Client is upon his Life, and he should have right, I am sure he will have it from the Court and the Jury.

We desire to know whether you give such an Evidence of this Part of his Confession, with respect to his recommending Mr. *Lynch* to my Lord *North* and *Grey*, as you will stand by?

Mr. *Hungerford*. Mr. *Stanyan*, pray give an Account once for all how that Matter was.

Mr. *Stanyan*. I can give no other Account.

Mr. *Ketelbey*. He hath vary'd every Time; I appeal to Mr. *Attorney*, I appeal to your Lordship.

L. C. *Just*. Wherein is the Variation?

Mr. *Ketelbey*. First he acquaints you, that he confessed, that he recommended *Lynch* to my Lord *North* and *Grey*, as a fit Person to be employed, he thinks, or believes, it was in an Insurrection; and then he says, he is positive that he recommended him to my Lord *North* and *Grey*, as one that was fit to be employed in an Insurrection, and at last he says he was recommended by Mr. *Layer* to my Lord *North* and *Grey*, as the fit Person to seize my Lord *Cadogan*. I appeal to your Lordship's Memory, and his own Oath, whether this was not so, and yet he is positive of it, he is sure of it.

L. C. *Just*. Is there any Difference in all this?

Mr. *Ketelbey*. As much as between being certain, and being uncertain.

L. C. *Just*. For what? You talk of the Variation between an Insurrection and seizing my Lord *Cadogan*. The Insurrection was partly to be made on the seizing my Lord *Cadogan*, at the same Time, as to facilitate the Insurrection; both were to go together; if he was a proper Person to seize my Lord *Cadogan*, he was a proper Person to be employed in an Insurrection.

Mr. *Ketelbey*. He is charging the Prisoner with his Confession, and therefore I say, he hath mentioned it with two or three Variations: First, that he was fit to be employed in an Insurrection, and he explains that by seizing my Lord *Cadogan*.

L. C. *Just*. That is Part of the Insurrection.

Mr. *Ketelbey*. Surely, my Lord, this serves to make our Objection so much the stronger against allowing parol Evidence of a Confession, which was put in Writing.

Mr. *Att. Gen*. I can't imagine what they mean; here is a Gentleman, that gives an Account, that the Prisoner confessed that he recommended *Lynch* to my Lord *North* and *Grey*, as a proper Person to be employed in the Insurrection, and to seize my Lord *Cadogan*; where is the Variation in this?

Mr. *Soll. Gen*. Mr. *Stanyan*, you was giving an Account of Mr. *Layer's* recommending *Lynch* to my Lord *North* and *Grey*; did Mr. *Layer* declare any thing further relating to that Matter?

Mr. *Stanyan*. He said my Lord *North* and *Grey* received him civilly; he supp'd there and lay there that Night, and they din'd there the next Day.

Mr. *Soll. Gen*. Did he give any Account of what passed at Dinner?

Mr. *Stanyan*. I don't know whether it was

just at Dinner, or afterwards: But he said that several Healths were drunk, which were begun by my Lord *North* and *Grey*; and after Dinner there came in a Man they called a Citizen, the drank the Pretender's Health, his Wife and the young Prince.

Mr. *Soll. Gen*. Did the Prisoner say any thing about the Christning of his Child?

Mr. *Stanyan*. That was when he confessed before the Lords, that he was at *Rome*, in the Conference he had with the Pretender, he took Occasion to speak of the Discontents of the Nation, which had been occasioned by the Losses sustained in the *South-Sea*. The Pretender asked him if he knew any Persons of Distinction in that Case? He said, that he knew a great many, that were well-affected to his Interest; that he was not acquainted with People of Quality: But that he knew several of good Estates, that were very well affected to his Interest. Upon this the Pretender asked him several Questions, says he, it must be very expensive to you to come hither to *Rome*, it must cost you 500 *l*. No, saith he, not above half so much. Then the Pretender praised his Zeal, and commended him; after that Mr. *Layer* asked the Pretender to give him some Tokens or Credentials, that he might have something from his Majesty; that would be a Means of his gaining Credit among his Friends here. He says the Pretender scrupled that: Then Mr. *Layer* proposed afterwards that the Pretender's Wife should stand as Godmother to his Daughter, to Mr. *Layer's* Daughter; that afterwards Col. *Hay*, to whom he was introduced at the Pretender's Court, brought him Word, that the Pretender's Wife would stand as Godmother to his Child: But then the Question was, who should represent her? And after some time it was proposed to Mr. *Layer* to find out a fit Person to represent her. Mr. *Layer* proposed the Dutchess of *Ormond*, which was agreed to; after that the Pretender agreed to stand Godfather with his Wife, and then the Point was, who should represent him? And Col. *Hay* told him that he must take care of that, to find a proper Person to represent his Majesty.

Mr. *Soll. Gen*. What Account did he give of what was done in Pursuance of this, when he came into *England*?

Mr. *Stanyan*. When he came into *England*, he said, he applied himself to one Mr. *Thompson*, to speak to my Lord *Orrery* to stand to represent the Pretender, with the Dutchess of *Ormond*: But he said my Lord *Orrery* declined it; and afterwards he got my Lord *North* and *Grey* to stand. That Mr. *Thompson* did Christen his Child, my Lord *North* and *Grey* and the Dutchess of *Ormond* standing as Proxies for the Pretender and his Wife; my Lord *North* and *Grey* did stand to represent the Pretender, and the Dutchess of *Ormond* to represent the Pretender's Wife, knowing they did so.

And he was asked by the Lords, who were in Company at the Christning? He said, only the Dutchess of *Ormond*, my Lord *North* and *Grey*, Mr. *Thompson* the Minister, himself, and his Wife, and another Woman, at whose House the Christning was performed: But he said, she was not present in the Room, tho' she assisted at the Christning.

Mr. *West*. Did he mention any Time when this Christning was?

Mr. *Stanyan*.

Mr. *Stanyan*. About the Spring: I can't say that Question was asked him by the Lords, and I can't ascertain the Time.

Mr. *West*. Did he say any thing relating to my Lord *North* and *Grey*?

Mr. *Stanyan*. He told them of my Lord *North* and *Grey*'s being at the Head of these Designs.

Prisoner. What doth he concern himself with the Lord *North* and *Grey* for?

Mr. *West*. Pray Sir be quiet.

Mr. *Stanyan*. He said he told my Lord *North* and *Grey* that he had acquainted *Lynch* with his Lordship's being at the Head of this Design, therefore Mr. *Lynch* had expressed a great Desire to wait upon his Lordship.

Mr. *Att. Gen.* Mr. *Delafaye*, pray give an Account what Mr. *Layer* said, when he was examined before the Lords of the Council, relating to his being at *Rome*.

Mr. *Delafaye*. Mr. *Layer* declared to the Lords of the Council that he had been at *Rome*, that he had had two Conferences with the Pretender, that he had acquainted the Pretender with the Disaffection of the Nation, with respect to the Losses that had been sustained by the *South-Sea*. He said, in general, the Nation was well-affected, and that he knew Persons of State, not Quality, that were in his Interest: Then he proposed to have Credentials or Tokens of the Pretender's Regard to him, which was not granted him: Then he desired the Pretender's Spouse should stand Godmother to his Child; the Pretender said he would consider of it; Col. *Hay* afterwards brought him Word, that she consented; then there were some Conferences who should represent her.

Mr. *Att. Gen.* Give the same Account that he gave before the Lords of the Council.

Mr. *Delafaye*. Col. *Hay* brought Word to Mr. *Layer*, that the Pretender's Spouse consented to stand Godmother to his Child; and it was agreed the Dutchess of *Ormond* should represent her; he desired a Credential or Token to the Dutchess of *Ormond*. *Hay* told him, without that she would stand, only, faith he, carry a Message, that the Duke is well, and gone to *Madrid*, that she would do it; and *Layer* desired to know who should stand as Godfather, why the King himself, that is, the Pretender; and *Layer* desired to know who was to represent him; he desired to be excused, but *Layer* would find out one upon his Return into *England*, that was proper for that Purpose; when he came into *England*, he was at a Loss for a Person to represent the Pretender; he went to Mr. *Thompson* to advise with him about it, who went to my Lord *Orrery*, to desire him to stand as Proxy for the Pretender, my Lord *Orrery* declined it, then he went to my Lord *North* and *Grey*, who accepted it; the Child was christned; it was at *Chelsea*, I take it, at a House, where there was a *China* Shop. It was in the Spring, what Day I can't tell. That he said there was his Wife, my Lord *North* and *Grey*, who stood for the Pretender, and Dutchess of *Ormond*, who stood for the Pretender's Wife, the Woman of the House, but she was not within the Room at the Christning.

Mr. *Att. Gen.* Do you remember any thing said by *Layer* about any Declaration, that was drawn?

Mr. *Delafaye*. Mr. *Layer* owned that he had

drawn Heads of a Declaration; and that, when he was going to my Lord *North* and *Grey*'s, he did shew it to Mr. *Lynch* at the *Green Man*, as he was on his Way thither.

Mr. *Serj. Pengelly*. What said he of his recommending Mr. *Lynch* in his Examination?

Mr. *Delafaye*. He spoke of his recommending *Lynch* twice; that Mr. *Lynch* having told him he would seize my Lord *Cadogan*, he did recommend him to my Lord *North* and *Grey*, as a proper Person for that Attempt. The second time that he recommended him, he had proposed carrying *Lynch* to my Lord *North* and *Grey*'s, he having told him that he was a very honest Man, fit to be concerned in an Insurrection; that *Layer* having told *Finch* his Lordship was to be at the Head of the Design, *Lynch* was impatient to wait upon him.

Mr. *Att. Gen.* We shall now prove there were Arms at the Prisoner's House when he was seized. Mr. *Stanyan*, were you at Mr. *Layer*'s House, when he was seized?

Mr. *Stanyan*. Yes.

Mr. *Att. Gen.* Do you know of any Arms there?

Mr. *Stanyan*. Yes.

Mr. *Att. Gen.* Give my Lord and the Jury an Account what Arms?

Mr. *Stanyan*. Just after Mr. *Layer* was seized I came in, he was just got out of his Bed. I observed in the Room, where he lay, there were a Pair of Pistols hung by his Bed-side, and between them a Horse-man's Sword, a riding Sword, and a pretty large Sword; on th' other Side of the Bed next the Chimney a little Case of Pistols, and another Sword hung in another Part of the Room. In the Closet of the same Room we look'd, and I saw two Carbines or Guns, and two Musquetoons or Blunderbusses; seeing so many Arms, I went to handle some of them, upon which he said, have a Care, they are loaded, don't meddle with them; upon that I asked him what he had to do with so many Arms? He answered, you must know my Clerk and I are great Shooters, when we are in the Country. In another Room, looking further, we observed several Moulds for the making of Bullets. There was also a Cartridge-box, and a Number of Cartridges ready made up, as near as I can guess (I did not count them) there were about forty or fifty of them. There was a Gentleman of the Army, and he said they were such Cartridges as were used in the Army.

Mr. *Att. Gen.* Was there any thing relating to these Arms confessed by Mr. *Layer* before the Lords of the Council?

Mr. *Stanyan*. He did not deny it I believe.

Mr. *Att. Gen.* I would ask you whether there was any thing said before the Lords relating to these Arms?

Mr. *Stanyan*. The Lords did ask Mr. *Layer*, what he did with forty or fifty Cartridges ready made up? He said they were made up by *Bowers* the Gunsmith, and that, if there was any Disturbance in the Nation, he should have Occasion for them.

Mr. *Att. Gen.* Mr. *Delafaye*, was you by, when he was asked the Question about these Arms?

Mr. *Delafaye*. Yes; he was asked what he did with so many Cartridges and Arms, and he said they were proper for his Use, if there should be any Disturbance in the Nation.

Col. *Huske* sworn.

Mr. *Att. Gen.* Was you by, when these Arms were seized in Mr. *Layer's* House?

Col. *Huske.* Yes; there were two Cases of Pistols, two Fuzees, and some other Arms, and a Blunderbuss, and two or three Swords; there were about 40 Cartridges ready made up in the usual Manner, as they are made up, when our Soldiers are to charge their Pieces for Expedition in Case of Action.

Mr. *Att. Gen.* How many were there?

Col. *Huske.* About forty.

Mr. *Att. Gen.* Did you see any Moulds for Bullets?

Col. *Huske.* There was a Mould for Musket-balls.

Prisoner. You say I had two Fuzees, will a Musket-ball go into a Fuzee?

Col. *Huske.* I can't tell but it may.

Prisoner. There were 40 Cartridges, which were ready made up, will those Cartridges go into a Fuzee?

Col. *Huske.* These very Cartridges were only fit for the Army.

Mr. *Ketelbey.* These Cartridges were not fit for the Musket?

Col. *Huske.* I did not try them.

Mr. *Ketelbey.* Would they go into a Fuzee?

Col. *Huske.* I don't know.

Mr. *Ketelbey.* According to my Notions, there is a Difference in Bigness between a Fuzee and a Musket, and a Cartridge fit for a Musket will not go into a Fuzee.

Col. *Huske.* A Cartridge, that is fit for a Fuzee, will go into a Musket.

Mr. *Ketelbey.* I believe that, and so it will into a Cannon; therefore I ask whether a Cartridge, that is fitted to a Musket, and proper for the Use of a Soldier going to Battle, whether that Cartridge will fit a Fuzee?

Col. *Huske.* The Bore of a Fuzee may be made as large as that of a Musket.

L. C. *Just.* Those Cartridges, that were there, would they have served for the Fuzee?

Col. *Huske.* I am satisfied that they would serve for the Fuzee, and the smallest Arms there, except the Pistols.

Mr. *Ketelbey.* You say there were two Swords?

Col. *Huske.* Yes, I saw two Swords.

Mr. *Ketelbey.* I believe you never are without two Swords.

Col. *Huske.* I believe I have a dozen, but they belong to my Company.

Prisoner. Were they Horse Swords, or Swords fit to walk with?

Col. *Huske.* I can't tell that.

Mr. *Hungerford.* I think you say, that those Bullets, made into Cartridges were, by the Size of them, intended for the small Arms.

Col. *Huske.* I do believe they would fit the two Fuzees that I saw.

Mr. *Ketelbey.* Did you open any of the Cartridges?

Col. *Huske.* I did, and there was a Ball made up at the End of each Cartridge.

Mr. *Smeybert* sworn.

Mr. *Soll. Gen.* Do you know the Prisoner at the Bar?

Mr. *Smeybert.* Yes, I do.

Mr. *Soll. Gen.* Recollect whether you have seen him at Rome?

Mr. *Smeybert.* Yes, I have.

Mr. *Soll. Gen.* When?

Mr. *Smeybert.* About a Year and half ago.

Mr. *Soll. Gen.* For how long Time was he there?

Mr. *Smeybert.* I think about a Week or a Fort-night.

Mr. *Soll. Gen.* Did you or the Prisoner leave Rome first?

Mr. *Smeybert.* I left Rome first.

Mrs. *Hay* sworn.

Mr. *Serj. Cheshire.* Did you ever see the Prisoner?

Mrs. *Hay.* Yes.

Mr. *Serj. Cheshire.* Where did you see him?

Mrs. *Hay.* I saw him at Rome.

Mr. *Serj. Cheshire.* When?

Mrs. *Hay.* Last Summer was Twelve-month.

Mr. *Serj. Cheshire.* What Time of the Year was it, as near as you can remember?

Mrs. *Hay.* I can't tell exactly what Time, but it was last Summer was Twelve-month.

Mr. *Serj. Cheshire.* You are sure you saw him there?

Mrs. *Hay.* Yes.

Mr. *Att. Gen.* My Lord, we shall now prove the Prisoner's Escape out of the Messenger's Custody as was open'd before. Call Mr. *Squire.*

Mr. *Squire* sworn.

Mr. *Att. Gen.* Look upon the Prisoner at the Bar, do you know him?

Mr. *Squire.* Yes, I do know him?

Mr. *Att. Gen.* Do you know any thing of his being taken up? Give an Account when it was that he was taken.

Mr. *Squire.* He was taken the Eighteenth Day of September last.

Mr. *Att. Gen.* Whose Custody was he in after he was taken?

Mr. *Squire.* He was in my Custody.

Mr. *Att. Gen.* What became of him afterwards? Did he continue in your Custody?

Mr. *Squire.* No, he made his Escape.

Mr. *Att. Gen.* How long after he had been taken was it that he made his Escape?

Mr. *Squire.* It was the next Day he got out of the Window.

Mr. *Att. Gen.* How high was the Room he got out of?

Mr. *Squire.* It was two Story high, he lifted up the Sash and so got out of the Window.

Mr. *Att. Gen.* Did you pursue him?

Mr. *Squire.* Yes.

Mr. *Att. Gen.* What Account can you give of his being taken again?

Mr. *Squire.* He had not been gone long before I found he had made his Escape, and understanding which Way he went, I immediately pursued him, and I took him in a Lane going towards St. George's Fields.

Mr. *Att. Gen.* What did he say?

Mr. *Squire.* He said he was very sorry to see me; I ask'd him how he could offer to go away from me; and he said, every body else would have done the same in his Condition, and that nobody could blame him for it; and that he believed my Lord *Carteret* would not blame him.

Mr. *Att. Gen.* But why?

Mr. *Squire.* Because he look'd upon himself in such a bad Condition, and so much Danger, he said, nobody could blame him because he was in that Condition.

Prisoner. What Condition? I desire to ask you one Question; Did not I ask you to shew me your Warrant?

Mr. Squire. No, you never ask'd me.

Prisoner. Did not I ask you at my own House?

Mr. Squire. No, you did not.

Prisoner. Did you shew me your Warrant?

Mr. Squire. You did not ask me for it.

Prisoner. Did not I tell you the Reason that I escaped was, because I did not know what Authority you had to detain me?

Mr. Squire. No, you did not.

James Peterfon sworn.

Mr. Att. Gen. *Mr. Peterfon*, do you know any thing of the Prisoner's Escape?

Peterfon. *Mr. Layer* was in Custody at my Father's House, in *Mr. Squire's* House, in a Room up two Pair of Stairs backwards.

Mr. Att. Gen. Do you know any thing of his getting away?

Peterfon. No, I was abroad then.

John Sweete sworn.

Mr. Att. Gen. Look upon the Prisoner at the Bar; do you remember you ever saw him before?

Sweete. Yes, I saw him just going into *St. George's* Fields.

Mr. Att. Gen. Did any body take him there?

Sweete. I was the first that took him.

Mr. Att. Gen. What did he say to you when you took him?

Sweete. He said, for God's Sake let me go; and said 'twas an Arrest: Why then, and please you, my Lord, my Partner came up, and ask'd him whether it was an Arrest, and he said it was; and then looking about me, I saw another Person coming after us, who was the Messenger: It seems he had broke out of the Messenger's House. And then he clapt his Hand into his Pocket, and pull'd out I believe about forty Guineas, and said, we should take what we would if we would let him go, but we would not.

Anthony Stephens sworn.

Mr. Att. Gen. What did *Layer* say when he was first taken?

Stephens. We asked him, is it for an Arrest? Yes, says he, it is an Arrest; and when he saw *Mr. Squire's* Son coming after us, he would give us whatever we pleased to let him go; and more than that, he said they had no Warrant, and he did not know that they could keep him without a Warrant.

Mr. Serj. Pengelly. My Lord, we have gone through our Evidence, and shall rest it here.

Mr. Hungerford. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for the Prisoner at the Bar; and after so long an Evidence as hath been given in this Cause, it will best become me to draw the Matter in debate to a single Point, if I can, and thereby to give Ease to your Lordship, the Jury, and the Counsel on both sides. My Lord, the Prisoner is indicted upon the Statute of the 25th of *Edward* the Third, commonly called the Statute *De Proditionib'*, the Things made, or rather, declared Treason by that Act, are, First, The compassing or imagining the Death of the King,

or of the Prince of *Wales*. Then the Statute goes on to declare other Things Treason which relate only to the Persons of some of the Royal Family; and then it declares likewise, That it is Treason to levy War against the King, &c. It is not said, That to Design or Contrive to levy War, but actually to levy War only shall be Treason.

This is the Text, this the Law upon which the Gentleman at the Bar must be either saved or condemned. The Treason laid to his Charge is compassing and imagining the Death of the King: The Overt-Acts laid to his Charge are, That he did consult and conspire to levy War:

That he did publish a certain Treasonable Libel, purporting among other Things, a Promise of Reward to his Majesty's faithful Subjects, to rise in Arms and levy War against the King.

That he consulted to put the Pretender upon the Throne.

That he listed Soldiers for him.

And the last Overt-Act is, That he consulted to seize and imprison the King.

My Lord, and you Gentlemen of the Jury, there is no Evidence of any of these Overt-Acts attempted to be given in Evidence against him in *Essex*, save only that of Publishing a Treasonable Libel, which the King's Counsel, in their Evidence, would insinuate to be the Pretender's Declaration. The Evidence of the other Overt-Acts are attempted to be proved in *Middlesex*. And in truth, the greatest Part of the whole Transaction was by the King's own Evidence, proved to be in that County, and I wonder the Indictment was not laid there; but, Gentlemen, the Indictment being laid in *Essex*, if an Act of High Treason is not proved to have been committed by the Prisoner in that County, he must be acquitted.

I might here, my Lord, insist, that an actual levying of War and not design to levy a War, being made Treason by the Statute of Treasons, the publishing a Paper which purports at the utmost but an Intention only to levy War or raise a Rebellion is not Treason, and consequently not a legal Overt-Act within that Statute. This Opinion is warranted by the express Words of the Act of Parliament itself, which is a better Authority than all the Commentators upon it; and it is likewise the Opinion of^a my Lord Chief Justice *Coke*, and my Lord Chief Justice *Hales*; and in Truth, if this be not the true meaning of the Act, one Paragraph, *viz.* That which declares actual levying of War Treason is superfluous and redundant; for what is the Use of making actual levying of War, or a Rebellion a distinct Species of Treason, when the Intention of doing it, according to some modern Doctrines, was High Treason within the first Clause of the Act, *viz.* Imagining the Death of the King. This Opinion likewise seems to be confirmed by two Acts of Parliament, one in^b Queen *Elizabeth's* Time, and one in King *Charles* the Second's, where consulting or intending to levy a War or raise a Rebellion, is made High Treason during the Lives of them two respective Princes, for which Temporary Provision there would be no Reason if the Law were so before. I know what

^a *Coke's* Instit. Ch. 1. p. 9, and 10. *Hale's* Pleas of the Crown, p. 13.

^b 1 *Eliz.* Ch. 1. 13 *Car.* II. Ch.

hath been said to some Part of this Matter, that the levying of War meant in the Statute of 25 of *Edward the Third*, was not meant of such a Rebellion as was levell'd against the King's Person, Crown, Title, or Government; but of such public Commotions as disturbed the Peace of the Kingdom, as the pulling down of Inclosures, which was the Case in *Queen Elizabeth's* Time, or of pulling down Bawdy-Houses, which was the Case in *Charles the Second's* Time: But to shew how unnatural a Construction of the Words *Lever le Guerre*, it is to say, that it relates only to such riotous Commotions as I have mention'd. Give me leave, my Lord, to make but one Observation. The Statute of Treasons is penned in the *French* of that Age, and the Words of the Statute *Lever le Guerre* against the King, I have here within the Reach, in Court, a Book of very great Note and good Authority, it is the History of *Froissart*, who writes the History of *England, France, and Spain*, from the Year 1326, to the Year 1340, and dedicates his Book to that very King, viz. *Edward the Third*, in whose Reign the Statute of Treasons was made, and in this whole Book, *Lever le Guerre*, is constantly mentioned to denote a public stated War; and in this Sense, it is likewise taken by *Du Fresne* in his *Glossary*, Vol. II. pag. 255. — I only hint this Matter to your Lordship, for I well know what Determinations, my Lords, the Judges have of late Years given upon this Objection; but I humbly hope that there will be no Occasion for an intire Dependence upon this Objection, in this Case, for that I hope it will appear both to your Lordship, and the Jury, that no such Overt-Act, as is said in the Indictment, that is, publishing the Pretender's Declaration at the *Green Man*, is at all proved.

The Evidence given touching that Matter is only by Mr. *Lynch*, and he gives an Account that the Prisoner and he met at *Aldgate*, in order to go to the House of my Lord *North* and *Grey* at or near *Epping*: In the Course of their Journey thither finding themselves too late to be at my Lord *North's* by Dinner; they called in at the *Green Man*, and there got a Beef-Stake: And before it was brought up the Prisoner gave Mr. *Lynch* a Paper, which Mr. *Lynch*, and not the Prisoner, calls the Pretender's Declaration; Mr. *Lynch* reads only one Paragraph in it, whereby, as he says, the Soldier's were tempted to be allured from his Majesty's Service; this is the whole Evidence given touching any Offence committed in the County of *Essex*: For as to any reasonable Discourse between *Aldgate*, and the *Green Man*; they cannot in Justice, and without a particular Proof to that Purpose, be charged upon the Prisoner to be done in *Essex*, a great Part of the Way, viz. from *Aldgate* to *Bow-Bridge*, being in *Middlesex*, and not in the County of *Essex*.

In the first Place therefore, Gentlemen of the Jury, we hope there is no Evidence to convince you that any such Declaration was published at all; and yet, *Secondly*, If there was a Paper read there, the Paper read was not an Act of High Treason. The Time that the Prisoner and Mr. *Lynch* staid at the *Green Man*, seems to be very short, their Stay was so short that there was no Evidence that their Horses were put up: The Beef-Stake was bespoke before they went into a Room. Mr. *Lynch* came down twice out of the Room; he himself admits once, besides his gaping at

some Persons in the Yard whom he knew, before the Beef-Stake was brought up; and yet, before the Beef-Stake was brought up, this Declaration is pretended to be published: For my part, considering how little Time there was for such a Transaction as this is, I cannot think, there could be any such Thing as that transacted at that Time, the Compass of Time would hardly allow it; whatever was done, is admitted on all Hands, to be done before the Beef-Stake was brought up, and the other Incidents may very well be supposed to take up all the Time betwixt the bespeaking and dishing up the Beef-Stake, so there could be no Time for so solemn an Act as publishing a Declaration to overturn Three Kingdoms. But in the *second* Place, if the Prisoner, which I don't admit, did give Mr. *Lynch* any Paper to read, a Paragraph whereof was to the Purpose Mr. *Lynch* relates; yet such Paper cannot be imputed to the Prisoner as an Act of High Treason, there was but a few Lines of the Paper read, and the rest were not read at all, either by Mr. *Lynch*, or the Prisoner; and I never knew that Part of a Deed or Writing was ever allowed to be given in Evidence, without producing or reading the whole. In the Case of my Lord *Russel*, where the Declaration for Rebellion was assigned as an Act of High-Treason, the whole Declaration was proved to be read, and not a Part only; and yet even that Evidence was upon the Revolution in the first Year of King *William* and *Queen Mary*, look'd upon so imperfect an Evidence of High Treason, that for that, and other Reasons, my Lord *Russel's* Attainder was revers'd; we have a Copy of the Act of Parliament for the Reversal here attested, and we are ready to produce it if your Lordship thinks fit. — Can it be said that the Prisoner giving Mr. *Lynch* a Paper, of which he reads only a few Lines, and then the Prisoner takes it up again, is a publishing of a Treasonable Paper, or in Truth, a publishing of any Paper at all? Declarations for Rebellions are commonly published in public Places, to captivate Multitudes, and not handed from one Man to another when they are expecting a Beef-Stake; there was no appointed or solemn Meeting at the *Green Man*; no Concourse of People there, neither in truth, by Mr. *Lynch's* own Evidence can it be taken to be a real Declaration; for he says, as I remember, in that Paper it was mentioned that the Lord *Cadogan* was in Custody; that Fact is utterly false, his Lordship neither was, nor is so.

I must submit to the Consideration of my Lords the Judges, and the Jury, of how dangerous a Consequence, Constructions of this Nature may prove to be. Before the Statute of Treasons, the People of *England* labour'd under vast Mischiefs by the great Incertainty there was of what was High Treason, and what was not; the Parliament thereupon, to ease the People of that Perplexity, in the 25th of *Edward the Third*, passed the Law of Treasons, for which the People then paid a great Sum of Money; and for which that Parliament was called Blessed (*Parliamentum beatum*) and now if every Act a Man doth, though perhaps tending to Sedition, shall be interpreted to be an Overt-Act of High Treason, the Subject will labour under the same Inconvenience, and under the same Perplexities, as they were before the Statutes of Treasons; this

this Practice may be so far improved, that if a Man delivers a Seditious Ballad to another to be read, that shall be interpreted an Overt-Act of High Treason, much more if People in their Cups should drink such Healths, as were said to be drunk at my Lord *North* and *Grey's* House; for no Man can deny but that *Bibere est agere*, whatever *Scribere* is: This, my Lord, is all that occurs to me at present concerning the Charge of High Treason upon the Prisoner within the County of *Essex*; and if there be no Charge made out against him there, the Evidence given against him, of what he did or said elsewhere must go for nothing.

Mr. *Ketelbey*. May it please your Lordship, and you Gentlemen of the Jury, I likewise appear here as Counsel for the Prisoner, who having pleaded Not Guilty to this Indictment, I must suppose him so 'till he be found otherwise; and 'tis my Duty (being assigned for him by the Court) to lay the Circumstances of his Case before you in as true and clear a Light as I can, and to offer to your Consideration what may occur proper for his Defence, and legally conduce to the clearing his Innocence.

The Charge laid to him is of the highest Nature that the Laws of *England* know; *Crimen læsæ Majestatis*; no less than the conspiring and compassing the Death of the King; and as it is an Offence, not capable of any Aggravation, not to be alleviated by any thing that we can offer, we humbly hope your Lordship, and the Gentlemen of the Jury, will expect the strongest Evidence the Nature of the Case admits, such as the Law requires, and is in some Measure proportionable to the Greatness of the Offence.

The Act of Parliament upon which the Prisoner stands indicted, is the 25th of *Edward III*. It is there said, to make him attainted there must be an Overt-Act, and that Overt-Act must be fully and clearly proved: *Et de ceo provablement soit atteint de Overt Fait*.

My Lord *Coke*, in his third Institutes, Fol. 12. in his Comment upon that Act, explains the Word (*Provablement*) by saying it must be upon direct and manifest Proof, not upon conjectural Presumption, or Inference, or Strains of Wit; It must not be *commune Argumentum*.

Since that Time, several other Statutes have been made in Favour of the Subject, and for regulating Trials in Cases of High-Treason: Particularly the late Statute 7mo *Gulielmi 3tii*, which enacts, that there must be two lawful Witnesses to the same Overt-Act; or one of them to one, and the other of them to another Overt-Act of the same Species of Treason: And that no Evidence shall be admitted or given of any Overt-Act that is not expressly laid in the Indictment.

I think we need not, at present, enter into the whole of the Case, or trouble the Court with a long Detail of Circumstances and many Witnesses; but rather chuse to leave that on the Foot Mr. *Hungerford* hath put it for your Lordship's Consideration.

It must be admitted to us, that if the Prisoner is not Guilty of an Overt-Act, legally proved to be committed in the County of *Essex*, where the Species of Treason and all the Overt-Acts in the Indictment are laid; though all the other Facts in *Middlesex*, or at *Rome*, or any where else, should be never so clearly made out, yet they do fail upon this Indictment, and the Prisoner must be acquitted.

What have they to charge him with such an Overt-Act? Nothing, but the single Evidence of *Lynch*! He is the only Person that speaks to this Point. — He says, that they set out from *Aldgate* in Order to ride to my Lord *North* and *Grey's*, and alighted at the *Green Man*; that what Discourse passed between them there was before Dinner: He owns he went down Stairs twice before Dinner, and spent some time in looking out of the Window, to see some Persons with whom he was acquainted; and when the Dinner (which was soon got ready) was brought up, Mr. *Layer's* Servant came and waited, and no Discourse pass'd there during that time; he tells you, that Mr. *Layer* pull'd a Paper out of his Pocket, and shew'd it to the Witness; who read Part of it, and that it contain'd treasonable Matter, as laid in the Indictment: This is the Substance of what *Lynch* swears, I took it, as well as I could, in Writing from his Mouth.

Now my Lord, Is this sufficient to convict this Gentleman of committing an Overt-Act of High-Treason in *Essex*? A bare pulling a Paper out of his Pocket, and giving it him to read, where such and such a thing is set forth, as by him is call'd a treasonable Declaration!

My Lord, if he had pull'd out of his Pocket the most treasonable Paper that ever was invented, is it any more than publishing a Libel? Is that an Overt-Act of Treason? I will suppose it a Copy of the Pretender's Declaration, or an Original, such a one as was burnt by the Sheriffs of *London* two Days ago: If a Man had that, and pull'd it out of his Pocket, and gave it to another to read, is this High Treason? I dare say, if any such Person falls into Mr. *Attorney's* Hands, he, that always does his Duty to the Crown as he ought, will go no higher than an Information for publishing a Libel; and all this, my Lord, is upon a Supposition that the Facts are true which have been sworn by *Lynch*: But on the other Hand, there are so many unaccountable Circumstances in the Relation, that an Affair of that Consequence should be transacted in such a Place; in so short a time; upon such an accidental Bait; when one of the Conspirators was either gazing at the Window, or running up or down Stairs the greatest Part of the while, and other Persons were continually going backwards and forwards into the Room, or within hearing of every Word that pass'd there, we think it carries with it such an Air of Improbability, that no reasonable Man can give Credit to it, much less, convict a Person of so great a Crime, upon such Evidence.

But suppose what pass'd at the *Green Man* (which I am very far from admitting) shou'd be adjudged an Overt-Act of High Treason: How is it prov'd? Only by one Witness; one single Witness to the Fact in this County! The Law requires two Witnesses to convict a Man of High Treason, and that the Jury shou'd be return'd out of that County where the Facts are laid; *De Vicineto*; Because the Law supposes them more conversant of the Circumstances of a Case which arises in their Neighbourhood: But if the Proof of one Overt-Act in the County where 'tis laid, by one Witness, should be sufficient to let them in to prove other Overt-Acts, in distant Countries, or in foreign Kingdoms, these fundamental Rules of Law would be totally subverted: How is it possible for a Man to provide or defend himself

himself against such an Attack? 'Tis springing a Mine upon him! Sudden and unexpected Ruin!

Mr. *Attorney* won't shew any Precedent, where it ever was allowed to be good, that one Witness might prove the Overt-Act in the County where it is laid, and that then they might give Evidence of Overt-Acts committed in any other County: If your Lordship is of Opinion against us in this Particular, then we must beg leave to go farther, and observe upon the rest of the Witnesses they have called; not only to take off their Credit, but to contradict them in a great measure.

There hath been a great deal of other Evidence given by them, but we must submit it to your Lordship, whether it is material his escaping from the Messenger's House, and his being taken in *St. George's Fields*; and the Evidence begins to run thin, or else, I believe they would not have troubled the Court to call those Persons to that which is no ways conducive to the Point now in Judgment; if your Lordship is of Opinion with us, that this is not an Overt-Act in *Effex*, and legally proved, being there is but one Witness, and attended with such Circumstances, then the Matter is at an End; but if your Lordship is of another Opinion, then we must beg leave to go on, and likewise to offer what we have from the Mouth of our Witnesses.

L. C. Just. You must go on, you have mixed your Discourse so that no body knows what to make of it; sometimes though the Facts are clear as to the Overt-Act, you have said as much against, as for, the Improbability and Nature of the thing, in Point of Law, as for the other. I don't see how we shall come at it, unless you go through the Cause.

Mr. *Soll. Gen.* My Lord, in the Observations they have hitherto made, they have mixed Objections as to the Fact, together with some Matters of Law, that seemed to be aimed at, and fixed upon no Point; to which we cannot give any particular Answer; therefore we desire they may go thro' their whole Case, before we reply to any Part of it.

Mr. *Hungerford.* Since it is your Lordship's Pleasure that we should now go on, I shall proceed to make some Observations upon the rest of the Evidence given against the Prisoner at the Bar out of the County of *Effex*. The Observations which I shall make will be in the general only, for I cannot descend to all the particular Instances of the Evidence given, having not taken proper Notes for that Purpose; for I depended upon the Insufficiency of the Evidence given touching any Act of High-Treason, being committed in *Effex*; and I hoped that from that very Circumstance the Prisoner would have been acquitted; but however I know the learned Gentleman who is joined with me, hath taken very exact Notes of the whole Evidence, and therefore what I omit, I am assured he will abundantly supply.

The second Witness produced against the Prisoner, is Mr. *Plunkett*, whose Evidence I think ought to weight but very little with any Judicature whatsoever; the Prisoner's meeting with this Man was very accidental in *Lincoln's-Inn-Fields*, when they did not know each other, and yet they immediately entered into a Discourse of raising a Rebellion, and overturning two Kingdoms, and that great Secret of knowing who was to be the General; though Mr. *Lynch*, after long Acquain-

tance with the Prisoner, could not get it out of him; yet it was communicated to the eminent Witness Mr. *Plunkett* at the first Interview, with an Addition of mentioning the Names of two very great Men more, the Earl of *Strafford*, and General *Webb*, as well-affected to the Undertaking: But that noble Earl's and Great General's Services to their Country are too well known to be blemished by such an incredible Evidence. After some Discourse betwixt the Prisoner and *Plunkett* about the Undertaking, in which there was an Incident of a Discourse of another Nature, whether the *Lutheran* Religion were not preferable to the *Papish*; and after (as *Plunkett* says) the Prisoner had communicated to him an Intention of invading the Kingdom by some Persons from abroad, the Prisoner, in a very great Fit of Bounty, presents Mr. *Plunkett* with the Sum of half a Crown. This Relation seems to be so improbable, and in Truth, is delivered (or rather stammered out) in so wretched and incoherent a Manner, that I believe that no one that heard it, believes a Word of it.

The Truth is, the Scheme itself seems rather to be a chimerical Plan of some crazy-pated Politicians, than a solid Project of any Men of Sense, or in their Wits. What Undertaking can there be so improbable, as that laid down by this Scheme, viz. Seizing the General of the Army, seizing the *Tower*, seizing the *Exchange*, and seizing the Bank of *England*; and all this with a Force which do not appear to consist of above three or four Men? And for Money, the Sinews of War, there seems to be no great Stock of that; *Plunkett* hath about half a Crown at one Time, and half a Guinea at another; for as to the Guinea *Jeffreys* gave him, it doth not affect the Prisoner. Mr. *Lynch* indeed, who seems to be a Man of greater Weight, upon his frequent repeating himself to be very uneasy, got about seven or eight Guineas. I mention these Things, Gentlemen of the Jury, to shew how improbable this Part of the Evidence is of it self, and we hope to make it appear to you to be the more so, by the Evidence we shall produce to the Reputation of the Witnesses.

As to the Papers of all Kinds produced as Evidence against the Prisoner, we hope he cannot be affected by them, none of them being proved to be of his Hand-Writing; as to the Arms found in the Prisoner's House, they are no more than what Gentlemen usually have for the Defence of their Family, or their Recreations; and as for his being at *Rome*, it is admitted that the Evidence is not given as a Fact of High-Treason; so ought not to be considered as any Ingredient in the Prisoner's Guilt: As to the Prisoner's endeavouring to escape, it is no Evidence of the Prisoner's Guilt; I do not enter into the Consideration, whether the Custody of a Messenger is a legal Prison, or no; but there is hardly a Man that is under any Confinement at all, but would willingly escape into Liberty: Besides, the Prisoner hath suffered already for that Offence, if it be one; he hath been put into Irons, and his attempting to escape is the only Reason that is assigned for it.

There was something spoke in the Introduction to this Accusation which was very remarkable, viz. That it was a Design, if it had took Effect, that would have engaged the whole Nation in Blood, and would have destroyed our civil and religious

religious Rights : We who are of Counsel for the Prisoner, have as great an Abhorrence of a thing of that Nature as any Men can have : But yet we hope, that Mankind is not to be led away with Shew and Colour, but to be guided by Reason and Matters of Fact. Is it possible that People could have been raised into a Rebellion by a Proclamation which was never published, but by Mr. *Lynch's* reading two or three Lines of it? And which, by Mr. *Lynch's* own Evidence (which I forgot to remark before) was imperfect; for he says, that the Prisoner told him, he intended to put it in the Pretender's Name, which it seems was not then done; and therefore what was produced, was at the utmost an imperfect Piece only—— Or that the Prisoner at the Bar, a Man of a Gentleman-like Family indeed, but of no great Figure or Estate in the World, and having no Dependants or numerous Acquaintance, having no Provision of Men, Arms, or Ammunition, should, with the Assistance only of a Bundle of Papers, and of Mr. *Lynch* and *Plunkett*, overturn and enslave this whole Kingdom. God be thanked, the Protestant *British* Government is not so easily to be brought to Destruction : They might much sooner (and yet I think that very difficult too) have borrowed 100,000*l.* of the Bank of *England*, upon the blind Notes which they have produced, sent by Sir *William Ellis*, than have brought about a Revolution, in this Kingdom, with such Materials as they seemed to be possessed of.

These things therefore, my Lord, I urge are Circumstances which render all, or the greatest Part of the Evidence given, very improbable.

I shall close the Whole with two Paragraphs of a Speech made by one of your Lordship's Predecessors, my Lord Chief Justice *Scroggs*, sitting in the same sacred Seat of Justice, where your Lordship now sits; the Words are these :

If once our Courts of Justice come to be aw'd or sway'd by vulgar Noise, and if Judges and Juries should manage themselves so as would best comply with the Humour of the Times, 'tis falsly said that Men are tried for their Lives or Fortunes; they live by Chance, and enjoy what they have as the Wind blows, and with the same Certainty.

Let us pursue the Plot a God's Name, and not baulk any thing where there is Danger or Suspicion upon reasonable Grounds; but not so over-do it, as to shew our Zeal, we will pretend to find what is not; nor stretch one thing beyond what it will bear, to reach another.

Mr. *Ketelbey*. I must beg leave to go on where I left off with *Lynch's* Evidence.

All *Plunkett's* faith was in *Middlesex*, but whether he is a credible Witness, you will hear by and by. I cannot but take Notice of one thing which is unaccountable in his Evidence, and renders it impossible to be true: He gives you an Account of a Letter which he receiv'd about ten Weeks ago; he's very positive as to the Words of the Letter, I asked him over and over again to it, he repeats it as such; when we examined him farther, it appears that he could neither write nor read; and how he came to remember so perfectly, when he could not write nor read himself, is very strange. Why, saith he, it was read over to me twice, and we have

heard him repeat it three Times; and I appeal to the Jury, if any one of them can take upon him to repeat it again with that Exactness the Witness pretends to do.

Is it not equally strange, my Lord, that *Jeffreys*, a Man of Letters, the first Time he saw him, an ignorant common Serjeant in the Army, should immediately fall into a Discourse with him about a Plot, and raising a Rebellion, as if he had before been intimate with him? So likewise he saith of *James Plunkett*, the same Day, the first Day he came to him, he came to his own House, and there talked to him about this Affair; as if they had nothing else to talk of but Rebellion against the Government. And I submit it to your Lordship and the Jury, whether it is likely or possible, that any Man of common Sense should subject himself in so dangerous an Affair to another that was an utter Stranger to him: But here he gives you an Account of two several Persons under the same Imprudence, the same Infatuation, *James Plunkett*, and the Nonjuring Parson. Besides, there is a manifest Contradiction in his Evidence; for, at first he said, that the Nonjuring Parson told him his Name was *Jeffreys* the first Time he saw him; and afterwards being cross examined, he said, the first time he knew his Name to be so was upon the Receipt of his Letter, and finding the Name so subscribed.

The next Witnesses gave an Account of the seizing the Papers, and then Mrs. *Mason*. We asked her if those Papers had been seen by any body since she had them, and whether she had shewn them, or any other Papers, to Sir *John Meeres*, or any of his Servants? She positively denies it and saith they were not.

I don't know whether these Papers were seen by any body, for we have not one Word of them in our Briefs, and the very producing them is a Surprize to us; but we shall prove, that this Woman shew'd some Papers to Sir *John Meeres*, or his Man, and that thereupon Notice was given, and the Papers soon after seized. But whether these are they or not, I cannot tell. I observed before upon the Evidence of Mr. *Delafaye*, Mr. *Stanyan* and Mr. *Doyley*; and tho' your Lordship was of Opinion, that it was sufficient to have the Paper called the Scheme read, yet we hope 'tis far from being a conclusive Evidence against the Prisoner, it not being found in his Custody; and we shall produce several who now are, and for many Years have been well acquainted with his Hand-Writing, who will give your Lordship their Thoughts of it. I believe Mr. *Attorney* would not have endeavoured to call Witnesses that it was sign'd by him, and was his own Hand-Writing, if he had not thought it material; yet we hope that when our Witnesses are heard, no Credit will be given by the Jury to it, as a Fact to charge the Prisoner. We shall give you an Account, if my Instructions are true, that *Plunkett*, *Lynch*, and Mrs. *Mason*, who are the Persons chiefly concerned in the Course of this Evidence, are of so scandalous and vile a Character, that no Regard at all is to be had to their Testimony. The most honest Men may mistake in their Evidence, as Mr. *Stanyan* is pleas'd to say; if he made any Mistakes, I am satisfied they proceeded from a Defect of Memory, and no

^a Lord Chief Justice *Scroggs* his Speech the first Day of *Michaëmas Term*, 1679. Printed that Year.

Design, and he is certainly excusable; but as for the other three, *Lynch*, *Plunkett*, and *Mason*, when you shall have heard half what we have against them, I dare say they will not have the least Credit, though they had given a much more probable Evidence than they have done. But surely as it is, their Evidence cannot have sufficient Weight with you, to prevail against the Life, Estate, and Family of the Gentleman here before you, and to fix a perpetual Stain upon him and his Posterity.

Mr. Hungerford. My Lord, we shall call our Witnesses, and begin with my Lord *North* and *Grey*.

Mr. Att. Gen. We desire to know what it is you call my Lord *North* and *Grey* to prove.

Mr. Hungerford. He is to give an Account of what passed at his House, what *Mr. Lynch* said when he was there.

L. C. Just. Then you do admit that he was at the *Green Man*, and he went to my Lord *North* and *Grey's* afterwards.

Mr. Ketelbey. There is their Sheet-Anchor.

Mr. Hungerford. We admit we were at the *Green Man*, but committed no High-Treason there; your Lordship hath set us right in the Point of timing our Evidence in the Nature of this Transaction; it is proper to begin with the Master of the *Green Man*.

Mr. Mackreth, sworn.

Mr. Hungerford. *Mr. Mackreth*, pray give my Lord and the Jury an Account, whether *Mr. Laver* or *Mr. Lynch* were at your House last Summer, or how long they were there.

Mr. Ketelbey. I think you are Master of the *Green Man*.

Mackreth. Yes, Sir, upon the Oath I have taken, I don't know that *Mr. Laver* was ever at my House.

Mr. Ketelbey. Do you remember any thing of the *Saturday* the 25th of *August*?

Mackreth. No, I can't.

Mr. Ketelbey. Do you remember whether you were at Home that Day?

Mackreth. I can't tell: If it was on a *Saturday*; on *Saturday* I often attend the Justices at *Ilford*.

Mr. Ketelbey. Do you know whether you was at Home that Day?

Mackreth. I cannot tell.

Mr. Ketelbey. Do you know *Mr. Laver*?

Mackreth. I never saw him before in my Life, as I know of.

Mr. Ketelbey. Was there never any Enquiry after him at your House?

Mackreth. No: There was the Duke of *Grafton* and my Lord *Hallifax* came to my House some time since. The Duke of *Grafton* intimated something of this Affair; the Duke of *Grafton* said to me, you are to be hang'd: Hang'd for what, said I. You and your Friend *Laver* are to be hang'd. Said I, I never saw him in my Life. They walked to and fro in the Hall. What, said they, do you know nothing of this *Laver*? No, I don't, as I hope to be saved, directly nor indirectly.

Mrs. Mackreth, sworn.

Mr. Hungerford. Pray do you remember any Travellers at your House upon the 25th of *August* last?

Mr. Ketelbey. Do you remember when *Mr. Laver* was at your House?

Mrs. Mackreth. I never saw the Gentleman in my Life, as I know of.

Mr. Ketelbey. Are you constantly at Home?

Mrs. Mackreth. Yes, I have hardly time to go to Church.

Mr. Ketelbey. Did you ever hear any thing of a Declaration read?

Mrs. Mackreth. I never heard any thing of it in my Days, my Lord.

Mr. Hungerford. Pray do you know the Room one Pair of Stairs forward in your House?

Mrs. Mackreth. They are all forward, my Lord.

Mr. Hungerford. How far is the Bar from the Room?

Mrs. Mackreth. My Bar is below Stairs even with the Stair-Cafe.

Mr. Hungerford. If any thing is read there aloud, in any of those Rooms one Pair of Stairs, could you have heard it?

Mrs. Mackreth. To be sure, my Lord.

John Paulfreeman, sworn.

Mr. Hungerford. Do you remember any thing of this Gentleman being at your Master's House on the 25th of *August* last?

Paulfreeman. I remember nothing at all of it?

Mr. Hungerford. You remember nothing of it?

Paulfreeman. No; to my Knowledge I never see him before in my Life.

Mr. Hungerford. Do you remember any thing of some People dining there on a Beef-Stake?

Paulfreeman. No; I don't remember any thing of it.

Mr. Hungerford. Do you remember this Gentleman's Face again?

Paulfreeman. No; I don't remember that ever I saw him before.

Mr. Hungerford. Is my Lord *North* and *Grey* there?

Mr. Hungerford. We shall examine my Lord *North* and *Grey* only as to some Passages at his Lordship's House, and chiefly as to the Character of this *Lynch*, and what a Character he gave of himself; generally, a Man will give a good Character of himself, but he did otherwise.

Lord North and *Grey*, sworn.

Mr. Hungerford. If your Lordship pleases to give my Lord and the Jury what Account you have of one *Lynch*.

Lord North and *Grey*. My Lord, that Gentleman that goes by the Name of *Lynch*, I saw twice; he came twice to my House in *Essex*: I little thought that my having seen him twice at my House, should be the Occasion of my coming here in such a manner. The Gentleman was wholly a Stranger to me, and I have never seen him since. As to my self, I cannot say I know any thing of him personally. The only thing I can say, is what he said of himself. It is a little hard for a Man of Honour to betray Conversation, what passed over a Bottle of Wine in Discourse; but since your Lordship requires it, I must submit.

The chief of our Discourse was—He was represented to me as a Stranger newly come to *England*, and had a Mind to see my House and Gardens. He was introduced, and brought there accordingly by *Mr. Laver*, and I received him civilly. In process of Time he told me the History of his Life thus; that he was not a *Spanish*, but an *Irishman*, and, my Lord, I think, educated in the Camp under an Uncle of his.

He

He told, that when he was a young Man, he had taken a great many Liberties.

Mr. Serj. *Pengelly*. My Lord, we humbly apprehend, this Evidence is not proper to be given: If they have any particular Questions to ask of my Lord, let the Counsel propose them, or ask my Lord *North* and *Grey* to the Character of Mr. *Lynch* in general: But thus to give an Account (by way of Repetition of a Discourse between Lord *North* and *Grey* and Mr. *Lynch*) where he was born, and where he was bred up, and to give a History of particular Facts, is what they ought not to do.

Lord *North* and *Grey*. I am glad to be interrupted by that worthy Gentleman. I only desire to know to what Points you would be pleased to ask me.

L. C. Just. Mr. *Hungerford*, you know what the Rule of Practice and Evidence is, when objections are made to the Credit and Reputation of the Witness; you can't charge him with particular Offences: For if that were to be allowed, it would be impossible for a Man to defend himself. You are not to examine to the particular Facts to charge the Reputation of any Witness; but only in general you are to ask what his Character and Reputation is.

Mr. *Hungerford*. My Lord *North* and *Grey* is an entire Stranger to him; but he was only going to tell you what Account *Lynch* gave of himself.

L. C. Just. That is very well. Consider, if that is not the same as if you were to charge him with particular Facts. You say, he himself, when he was with that noble Lord at his House, gave a Character of himself much to his Disadvantage. It is impossible for him in such a Case to give an Answer to it; therefore by the Rule of Evidence you cannot do it.

Mr. *Ketelbey*. If that noble Lord was going to give any Character of him which he heard from other Persons it might alter the Case. But surely when the Character he gives of him is grounded upon what he said of himself, is not that much stronger than the Hearsay of others, the Talk of Strangers? The Character he had of this Person is from himself; therefore we hope he shall give it in Evidence.

Mr. *Hungerford*. If they won't let this noble Lord enter into a Relation of what Character this *Lynch* gave of himself, we cannot help it.

L. C. Just. You know, if there be any Objections to him, to his general Character, he can answer them: But if Objections are grounded on particular Charges of his being a base, an infamous and an ill Man, not having any Notice of this, it is impossible for him to defend himself.

If you will ask my Lord *North* and *Grey* what general Character he gave of himself, you may.

Mr. *Hungerford*. If my Brief be true, the whole ten Commandments have been broken by him.

L. C. Just. Very well; and so you charge him with the Breach of the ten Commandments, and he must let it go for Fact, because he cannot have an Opportunity of defending himself.

Mr. *Ketelbey*. What Character in general did he give of himself to your Lordship?

Lord *North* and *Grey*. I don't know how to answer it, as to his giving a general Character of himself. Thus much I must say, I saw him twice. The first time he was brought down by the Gentleman at the Bar; the second time he came, he was ill received; and I ordered it should be told him, that

in case he designed to stay there, that I had no Room or any Lodging for him. As to particular Things, I don't care to speak of them. I should be very sorry to say it when it was said in my Company, and under my Roof.

Mr. *Hungerford*. We will not press it any farther.

Lord *North* and *Grey*. I must beg your Lordship's leave, if the Gentlemen have no farther to say to me, and your Lordship have no farther Commands, that I may return to my Prison.

Mr. *Hungerford*. I hope they will make way for my Lord *North* and *Grey* through the Crowd: And, if your Lordship pleases, we will go on with our Evidence.

George Talbot, sworn.

Mr. *Hungerford*. Pray give my Lord and the Jury an Account of what you know of Mr. *Lynch*.—— Mr. *Stephen Lynch*, what Character hath he?

Talbot. Why Sir, the Character I know of him is this, that he is a Man that hath been so extravagant, that he hath brought himself to Necessity by it; kept very infamous Company.

Mr. *Hungerford*. What Character hath he? Hath he the Character of an honest Man?

Talbot. He hath a very indifferent Sort of a Character.

Mr. *Hungerford*. Hath he got a good or a bad Character?

Talbot. The Character I can hear of him is a very bad Character.

Mr. *Ketelbey*. We don't ask you as to the Particulars of his Life and Conversation, but only the General Character he hath, and the Opinion the World hath of him; whether he hath the Character of an honest Man, and is a Person fit to be believed?

Talbot. The Character I have had of him, is, That he is not to be believed.

Mr. *Att. Gen.* How long have you known him?

Talbot. I have not seen him these six Years.

Mr. *Att. Gen.* What is your Employment?

Talbot. I am not able to follow any thing now.

Mr. *Att. Gen.* He says he hath not seen him these six Years: How long ago was your Acquaintance with him?

Talbot. I met him at the *Canaries*, when I was coming from thence, which is about six Years ago; I know nothing of him since, but what I have heard of him.

Mr. *Att. Gen.* Have you ever had any Dealings with him?

Talbot. I never had much Dealings with him, what I have had have been very little to my Advantage.

Mr. *Ketelbey*. If Mr. *Attorney* desires the Particulars——

Mr. *Hungerford*. We conform ourselves to your Lordship's Rule, to ask only to the general Character of the Man: But if Mr. *Attorney* will enter into Particulars, we will join Issue with him, and go into that Method too.

Mr. *Att. Gen.* I asked him how long he had known him, he says he had not seen him these six Years.

Mr. *Ketelbey*. Have you had a Character of him?

Talbot. The worst I could ever hear of any Person; I know nothing of my self, but what I have heard from others.

Mr. *Winckman*,

Mr. *Winchman* sworn.

Mr. *Hungerford*. Pray give my Lord and the Jury an Account of what you know of this *Stephen Lynch*?

Winchman. I knew this Gentleman fourteen Years ago, in the Island of the *Canaries*, there he kept an *Irish* Gentleman Company, one *Wilson*; he was then well-belov'd by every Body: The Gentleman took him into his Company, and afterwards he grew extravagant, and the Gentleman turn'd him out of his Company.

Mr. *Hungerford*. Is he accounted an honest Man or a Knavé?

Winchman. I will not trust him for any Thing.

Mr. *Hungerford*. You say you won't trust him for any Thing?

Winchman. No.

Mr. *Hungerford*. The wiser you.

Mr. *Ketelbey*. Is he a Man to be credited? can you believe what he says?

Winchman. I think I would not believe him.

Mr. *Ketelbey*. You are right.

James Darcy sworn.

Mr. *Ketelbey*. How long have you known Mr. *Stephen Lynch*?

Darcy. About a Twelve-month.

Mr. *Ketelbey*. I dont ask you as to his particular Life and Conversation, but in general what is his Character, is he a Man to be believed or credited?

Darcy. I don't take it that he is.

Mr. *Att. Gen*. Where did you know him?

Darcy. I first knew him last Winter in *London*?

Mr. *Hungerford*. Is Mr. *George Fitzgerald* there? My Lord, here is a Complaint made that the Witnesses can't be let in.

L. C. Just. They must be let in.

Mr. *Soll. Gen*. Who made the Complaint?

Mr. *Hungerford*. A Gentleman here in Court.

Mr. *Soll. Gen*. It is the Business of your Solicitors to take care that way be made for your Witnesses.

Mr. *Hungerford*. It is not the Business of your Witnesses to stop the Passage.

Mr. *Soll. Gen*. They don't stop the Passage.

Mr. *Hungerford*. No; what is your busy Colonel there [pointing to Col. *Huske*] a doing?

Mr. *Serj. Cheshire*. We must stay here half an Hour for every Witnesses.

Mr. *Fitzgerald* did not appear, then Mr. *John Blake* was sworn.

Mr. *Hungerford*. Mr. *Blake*, do you know *Stephen Lynch*?

Blake. Yes, Sir.

Mr. *Hungerford*. Pray give my Lord and the Jury an Account of him, whether he is a Person to be believ'd or not.

Blake. I heard a very ill Character of him about six Years ago. I have heard that he married two Wives.

Mr. *Hungerford*. Is he to be believed or no?

Blake. I know nothing but by hearsay, I believe he is not to be believed, because I have heard such a base Character of him.

Collins sworn.

Mr. *Hungerford*. Will you give my Lord and the Jury an Account of what you know of *Stephen Lynch*.

Collins. Sir I never exchanged a Word with him.

Mr. *Hungerford*. What Character hath he?

Collins. A very infamous Character. I know him by Eye-sight only, I have seen him upon the Exchange of *London*.

Prisoner. Is he a Person to be credited or not?

Collins. No, I believe not.

Mr. *French* sworn.

Mr. *Hungerford*. Do you know *Stephen Lynch*?

French. I know him by Eye-sight.

Mr. *Hungerford*. What Character hath he? is he a Person to be believ'd upon his Oath?

French. I don't think he is.

Mr. *Hungerford*. How long have you known him?

French. Six or eight Months.

Mr. *Kelly* and Mr. *Blake* sworn.

Mr. *Ketelbey*. Mr. *Kelley*, how long have you known *Stephen Lynch*?

Kelley. I believe I have known him since the beginning or middle of *April* last.

Mr. *Ketelbey*. What is his Character, is it an honourable Character?

Kelley. I never heard any give him a Character that was not very vile.

Mr. *Ketelbey*. Mr. *Blake*, how long have you known *Stephen Lynch*?

Blake. Sir, I never had any Acquaintance with him, but I have heard he hath a vile Character.

Mr. *Hungerford*. Have you had any Discourse about this Trial, have you heard any thing said by *Lynch* himself, about the Matter that is now in Judgment before this Court?

Blake. There was one Mr. *French*, a particular Acquaintance with *Lynch*; I met Mr. *French*, hearing he was of the same Inn with me, (I belong to the Middle Temple) and he told me he wanted Money.

Mr. *Soll. Gen*. You know what he told you is not Evidence.

Blake. Saith he; there is one Mr. *Lynch* owes me a good deal of Money, and I want to go and see him, and I have no mind to go there by myself. Next Day I consented to go along with him, as thinking there could be no Danger in that: When we came to him, I suspect, says Mr. *Lynch*, that you come for some Money that I owe you. Upon that, he desired him to sit down, and told the Gentleman he was sorry he had disappointed him. Then he begun to talk of my Lord *North* and *Grey*, and my Lord *Orrery*, and Mr. *Layer* I believe I shall hang him; but as to my Lord *North* and *Grey*, and my Lord *Orrery*, I know nothing of them: I know nothing more of Mr. *Layer*, but what I had from him himself. Some Words pass'd between him and me, and talking of my Lord *Townshend*, he said my Lord *Townshend* was of a morose Temper, but my Lord *Carteret* was of a better Temper.

Mr. *Ketelbey*. Speak to the Purpose; I desire to know what you can say of Mr. *Lynch*'s Character?

Blake. I don't know any thing of *Lynch*, but that he is of an infamous Character.

Mr. *Ketelbey*. What did he say of Mr. *Layer*?

Blake. He said he would hang him.

Mr. *Ketelbey*. Did he say any thing about the vileness of the Plot, or why or how far he thought it his Duty to discover such Villany?

Blake. No, I don't know of any such thing. I heard him say, my Circumstances are very

poor; and the Motive that induc'd him to do this, was to save the Lives of a thousand People.

Mr. *Hungerford*. Did he speak any thing of getting Money?

Blake. No, I can't say any such thing.

L. C. *Just*. That is not a fair Question.

Blake. I can inform your Lordship more: Saith he, I was forced to do this; but if I had got off from this Affair; I would fight any dozen People in *London* to come off from it.

Mr. *Soll. Gen*. Where do you live, Sir? Do you live in the Middle Temple?

Blake. No; I live at Mrs. *Ireland's* in *Portugal-Street*.

Mr. *Hungerford*. In the Conversation you had with *Lynch*, was there talk of any Money he was to have?

Mr. *Soll. Gen*. You ask'd him that Question before, and was told it was not a fair Question.

Mr. *Hungerford*. I think I did not. Mr. *Darcy*, what do you know more of Mr. *Lynch*?

Darcy. Sir, I went to see Mr. *Lynch* on Account of some Money which I lent him, and when he was taken up in *Manchester-Court* I went to see him; there he received me civilly, I took him aside and ask'd him for my Money. I told him so freely, and asked him how he got Money and several fine Clothes which he had; he told me a Lady us'd to come twice or thrice a Week to visit him, and this Lady was the Mistress or Daughter of one of the Chief Ministers of *England*; he said this Woman ———

L. C. *Just*. You must not put him in this way.

Mr. *Ketelbey*. Mr. *Blake*, have you given an Account of the Character of this *Lynch*? I only ask you the general Character.

Blake. I have told you already.

Prisoner. I have two or three more to the same Purpose.

Terry sworn.

Prisoner. How long have you known *Lynch*?

Terry. Seven Years.

Prisoner. Hath he the Character of an honest Man?

Terry. He hath the Character of being a loose young Fellow; that is all I know of him.

Prisoner. Is his Character good or bad?

Terry. His Character is loose.

Mr. *Hamilton* sworn.

Prisoner. Do you know this *Stephen Lynch*?

Hamilton. Yes.

Prisoner. What Character is he of; is he to be believed?

Hamilton. No, I believe not; I was cautious of keeping him Company; I believe him to be of a vile infamous Character, that will do or swear any thing.

Mr. *Hungerford*. We leave the Character of this *Lynch* here, with the Weight of the Blemishes charg'd upon him by our Witnesses, to the Consideration of the Jury.

There is another of the Witnesses, Mr. *Plunkett*, to whose Character we shall likewise examine. We shall call a Witness or two to that matter, and then we shall close.

Mr. *Thomas Brown* sworn.

Mr. *Ketelbey*. Do you know *Plunkett*?

Brown. Yes, I have known him these ten Years.

Mr. *Ketelbey*. What is his general Character?

Brown. He hath but an indifferent Character.

Mr. *Ketelbey*. Is he a Man to be believ'd?

Brown. No, my Lord, I don't believe he is.

Mr. *Keating* sworn.

Mr. *Ketelbey*. Have you known Mr. *Plunkett*, and how long?

Keating. I never had any Knowledge of him before the beginning of *July* last.

Mr. *Ketelbey*. What Character and Reputation hath he? Hath he a good or an ill Character?

Keating. I will tell you: About the Beginning of *July* last a Man that owed me some Money on a Note of his Hand ———

Mr. *Soll. Gen*. My Lord, we must oppose the going into Particulars; they know they are confined to examine as to his general Character only.

Mr. *Hungerford*. But if the Gentleman will follow some of your Examples, and introduce himself by Prefaces, we can't help it.

L. C. *Just*. To a general Question you must give a general Answer.

Keating. The Knowledge I have had of him, I never knew any thing tolerable in his favour; I never heard a good Character of him.

Mr. *Ketelbey*. Did you ever hear a bad one?

Keating. Yes, a very bad one, that he was a drunken idle Fellow, always kept Company with other Women.

Mr. *Ketelbey*. And from the Character you have had of him, do you think there is any credit to be given to him?

Keating. No, I don't think there is.

Mr. *Hungerford*. My Lord, here we produce a Man of Quality, Sir *Daniel O Carroll*.

Sir *Daniel O Carroll* sworn.

Mr. *Hungerford*. Do you know *Plunkett*?

Sir *Daniel*. Yes, Sir, I do.

Mr. *Hungerford*. Pray what is his general Character?

Sir *Daniel*. I can give no good one of him; for it is a mighty bad Character he hath; he caus'd his Colonel to be brought to Town to be examin'd ———

Mr. *Ketelbey*. I only ask you in general; don't enter into the Particulars: I only ask in general, from the Character he hath in the World, do you look upon him as a competent Witness to be believ'd against another Man.

Sir *Daniel*. I would not take his Evidence to hang a Dog.

Mr. *Hungerford*. And here he attempts to hang a Protestant!

Mr. *Thomas Spelman*.

Mr. *Ketelbey*. Do you know this *Plunkett*, and how long have you known him?

Spelman. I have known him seven or eight Years.

Mr. *Ketelbey*. What is his general Character in his Life and Conversation?

Spelman. I never knew any ill done by him.

Mr. *Ketelbey*. What is his Character?

Spelman. I can't give any Character of a Man I don't know. All I know of him, is about a Dispute between him and Sir *Daniel Carroll* about a Horse, and his desiring the Lawyer to sue Sir *Daniel*.

Mr. *Hungerford*. Did he not say something before that?

Spelman. He said, the Lawyer he employ'd would do him Justice.

Mr. *Att. Gen.* You say you don't know any ill Character of him.

Spelman. No, I don't.

Edward Barnwell sworn.

Mr. *Hungerford.* Do you know this *Plunkett*, what is his Character?

Barnwell. Pray let me tell you, I have been examin'd twice upon this Account. The first time that I brought *Plunkett* to be acquainted with Mr. *Layer*, Mr. *Layer's* Man brought me word and said, Mr. *Layer* had his Goods seized wrongfully; upon that I sent *Plunkett* to the *Savoy*, to have two Soldiers from thence; and I said, go to Mr. *Layer's* House, there are some Bailiffs that have wrongfully seized his Goods, you must go and turn them out. He did go with the Soldiers, and turned the Bailiffs out of the House; upon which Mr. *Layer* gave him half a Crown: After this Mr. *Plunkett* had no Friend but me; and he came and press'd me, and desired me to apply to Sir *Daniel Carroll*, for some Money he said he owed him for a Horse. I told him I thought it was wrong to press Sir *Daniel* upon that Account.

Then about eight Months ago he came to me, and said he had met Mr. *Layer* in *Lincoln's-Inn-Fields*, and that Mr. *Layer* did not know him; I told him, says he, I am one of those that serv'd him at such a time, and that he had given me half a Crown, and that then Mr. *Layer* remember'd him. This is all I know; I'm sworn, and will tell the Truth.

Mr. *Hungerford.* Is he a Man as may be believ'd, even upon his Oath, or not?

Barnwell. I must tell you, that I found him in so many Mistakes about his own Wife, that, by God, I would not take his Word for a Half-penny.

Mr. *Hungerford.* This contradicts what Mr. *Plunkett* says pass'd between him and Mr. *Layer* in *Lincoln's-Inn-Fields*, with respect to the giving him Half a Crown, it seems to be for former Service.

L. C. Just. How doth it? I'm to learn again. *Plunkett* swore, that he came with him under a Gate-way, and there, after he had talk'd with him, he gave him Half a Crown. This Gentleman owns he gave it to him for the Service he had done at some distance of Time before.

Mr. *Hungerford.* Go on, but don't swear by God any more.

Barnwell. I am a Soldier, a Man of Honour, of eighty Years of Age, and would not do an ill thing for the World.

Gentlemen, as I have been sent for by the Ministry, and examin'd in the Council, it hath been said, Mr. *Plunkett* hath made me write a Letter to his own Captain; and these Men were obliged to give in Bail, and he would pay for the Charges.

Mr. *Ketelbey.* What did Mr. *Plunkett* say to you, in relation to what pass'd between you and Mr. *Layer*?

Barnwell. He told me Mr. *Layer* gave him Half a Crown, in kindness for the Service he had formerly done him, in turning the Officers out of his House.

Mr. *Matthew Phylips* sworn.

Prisoner. Do you know *Plunkett*?

Phylips. Yes.

Prisoner. What Character hath he?

Phylips. I think, by what I have known by him, he is not to be believ'd.

Prisoner. Is that his general Character?

Phylips. It is, that every body gives him that knows him.

Alexander Phylips sworn.

Mr. *Ketelbey.* Do you know *Plunkett*?

Al. Phylips. Yes.

Mr. *Ketelbey.* How long have you known him?

Al. Phylips. I have known him about eleven Weeks.

Mr. *Ketelbey.* What Character hath he?

L. C. Just. I never heard the like; when you give the Character of a Man, you give that Character by Men that have not known him above eleven or twelve Weeks.

Mr. *Hungerford.* Have you ever had any Dealings with him?

Phylips. No, not I, but my Uncle hath.

L. C. Just. Most of your Witnesses have known him but a little time, seven Weeks, eight Weeks, eleven Weeks, &c. It would almost make a Man suspect, that some People have been set up on purpose to give an ill Character of these People on this Occasion. To talk of seven or eight Weeks Acquaintance?

Mr. *Hungerford.* That Man is crouded in I don't know how, but Sir *Daniel Carroll* is tumbled about and cannot get out; Sir *Daniel* is a Gentleman of Merit, and as such hath been distinguish'd by the Government, and ought to be treated a little better.

Patrick Mabone sworn.

Mr. *Ketelbey.* What Character hath Mr. *Plunkett*?

Mabone. I have known Mr. *Plunkett* several Years, and that he was an idle broken Man, and a great Liar, and not to be believ'd.

Mr. *Hungerford.* He would lye before and behind, I think you say?

Mabone. Yes, he did.

Mr. *Ketelbey.* Do you think he is to be credited, if he comes to give Testimony against a Person?

Mabone. Upon my Word I think he is not, by what he told me; because I have found him to lye backwards and forwards.

Mrs. *Cbild* sworn.

Mr. *Ketelbey.* Mrs. *Cbild*, pray have you had any Discourse lately with Mr. *Plunkett* the Sergeant?

Mrs. *Cbild.* I never had any Discourse with him but that Day my Husband was confin'd, when I run to look for Mr. *Plunkett's* Wife, and *Plunkett's* Wife was not at home, but was gone to see her Husband at the Messenger's; I went thither; Mr. *Plunkett* hearing I was at the Door, he desired that I should come in. Saith he, Mrs. *Cbild*, how comes it that your Husband doth not come to see me? You know, says I, upon what Account my Husband absents himself. Why, he is not taken up yet? Yes, says I, he is, and confin'd upon your Account. He takes me by the Hand, he takes me into the Coal-Hole, and take notice what I say to you, and get to your Husband and tell him quickly. And he told me, that he took my Husband to a Lawyer that was going to pay off the 18 l. that Sir *Daniel Carroll* owed him, and the Lawyer would not see him, and so they came away together.

Mr. *Att.*

Mr. *Att. Gen.* She speaks much to the Purpose: For she confirms what Mr. *Plunkett* swore.

Mr. *Ketelbey.* What did *Plunkett* say?

Mrs. *Child.* He said, he was going to get a Settlement for Life.

Mr. *Ketelbey.* What was he to get a Settlement for?

Mrs. *Child.* For what he said of Mr. *Layer*; a Story he had told me of my Husband.

L. C. *Just.* You have called a great many Witnesses to the Disreputation of *Lynch* and *Plunkett*, to say they have generally ill Characters, and are vile infamous Fellows, and not to be believ'd; and there is the Substance of all your Evidence if you stay here till to-morrow morning.

Alice Dunn sworn.

Mr. *Ketelbey.* Do you know what Character *Plunkett* hath?

Alice Dunn. His Character I had from himself, that he liv'd with another Man's Wife.

Mr. *Ketelbey.* Hath he a good or bad Character?

Alice Dunn. He hath a bad Character.

Mr. *Ketelbey.* Is he to be believ'd?

Alice Dunn. No, he is not to be believ'd.

John Richmond sworn.

Mr. *Ketelbey.* Here, *Richmond*, have you seen *Plunkett* lately?

Richmond. No.

Mr. *Ketelbey.* How long is it ago since you saw him?

Richmond. About three Weeks ago and more.

Mr. *Ketelbey.* What Discourse had you with *Plunkett* at that time when you saw him?

Richmond. *Plunkett* ask'd me if I was a Servant of Mr. *Layer's*? I said, I was; and in discourse I ask'd him if he had ever receiv'd any Money of Mr. *Layer* for the Use of the Pretender? He kneeled down upon his Knees, and struck himself upon his Breast, and said, he never had receiv'd any Money of Mr. *Layer* for the Use of the Pretender in his Life-time.

Mr. *Ketelbey.* How long is this? Is it three Weeks?

Richmond. I believe 'tis about six Weeks ago.

Mr. *Ketelbey.* Who was present besides you?

Richmond. There was no body else in the Room.

L. C. *Just.* I would be glad to know, that he never receiv'd any Money for the Use of the Pretender, What do you mean by that?

Richmond. He kneeled down upon his Knees, and said, he wish'd he might be damn'd if ever he received any Money for the Use of the Pretender.

Mr. *Hungerford.* Your Lordship may remember *Plunkett* swore, that *Layer* gave him Half a Crown at one time, and other Money at several other times; and now he solemnly swears upon his bended Knees that he never received any Money for the Use of the Pretender, that is, upon his Account.

L. C. *Just.* When you are drawing Consequences from the Expressions, consider what those Expressions are: He solemnly protested that he never received any Money for the Use of the Pretender. It doth not appear that he did; nor did he say that he did. Well, go on.

Mr. *Ketelbey.* My Lord, we will leave it here as to *Plunkett*: We will beg leave to call some Witnesses as to Mrs. *Mason's* Character.

Mrs. *Clayton* sworn.

Mr. *Ketelbey.* Do you know Mrs. *Mason*, or Mrs. *Buda*, or Mrs. *Herbert*, or what do you call her?

Mrs. *Clayton.* I know her by all those Names: *Buda* is the Name she always used to go by; she hath gone by the Name of *Mason*, and *Bevan*, and *Herbert*.

Mr. *Ketelbey.* What is her Character and Reputation?

Mrs. *Clayton.* Very indifferent.

Mr. *Ketelbey.* Is it bad or good?

Mrs. *Clayton.* Very bad.

Mr. *Ketelbey.* Have you had any talk with her at any time about Sir *John Meers* and his Man *Thomas*?

Mrs. *Clayton.* I have heard her say that —

Mr. *Soll. Gen.* They are asking what the Witness hath heard Mrs. *Mason* say at any time about Sir *John Meers* and his Man, which being to a particular Fact, surely is not a proper Question.

Mr. *Hungerford.* What have you heard her say about any Papers?

Mrs. *Clayton.* I see her have a printed Book; I used to go often where Mrs. *Mason* lodged; and going one Day there, I saw a Gentleman sitting, which was Mr. *Layer*: He had sent a Porter for Mrs. *Mason*. When she came, says he, the Parliament Man I was speaking of is not provided of the 300 *l.* I have a good Mind to lend it him.

Mr. *Hungerford.* Pray how does Mrs. *Mason* get her living?

Mrs. *Clayton.* By deluding young Women, and carrying them about for Money.

Mr. *Hungerford.* That is to say a Bawd; is it not?

Mrs. *Clayton.* Yes.

Mr. *Ketelbey.* Did you hear of any Rewards she was to have by coming here?

Mrs. *Clayton.* She said she was to be paid, or else she would not do it.

L. C. *Just.* What do you mean? You have been so often admonish'd by the Court; but it signifies nothing. You are charging Mrs. *Mason* with being a Bawd, when you ought only to enquire as to her general Character.

Mr. *Ketelbey.* I ask'd you generally the Question, whether she had a good or a bad Character?

Mrs. *Clayton.* I did answer that Question.

L. C. *Just.* At this rate the most innocent Persons may be branded as the most infamous Villains; and it is impossible for them to defend themselves.

Mrs. *Peirce* sworn.

Mr. *Hungerford.* What do you know of this Mrs. *Mason*?

Mrs. *Peirce.* I know I lodg'd in the House where she did lodge.

Mr. *Hungerford.* What Character hath she? a good one or a bad one?

Mrs. *Peirce.* A very indifferent one.

Prisoner. Is she to be believ'd or credited?

Mrs. *Peirce.* No, she is not to be credited.

Mr. *Hungerford.* Had she a good Reputation or an infamous one?

Mrs.

Mrs. Peirce. She hath a bad Reputation.

Mr. Serj. Pengelly. You have seen Mr. Layer there ?

Mrs. Peirce. Yes.

Mrs. Wilkinson sworn.

Mr. Ketelbey. Do you know this Mrs. Mason ?

Mrs. Wilkinson. I don't know Mrs. Mason ; but I know Mrs. Bevan.

Mr. Ketelbey. What Character hath she ?

Mrs. Wilkinson. I know her to be a vile Woman, and doth not care what she says, or what she doth.

Mr. Ketelbey. Is that her general Character ?

Mrs. Wilkinson. Always since I have known her.

Mr. Ketelbey. How long is that ?

Mrs. Wilkinson. About two Years.

Mr. Dyer sworn.

Mr. Ketelbey. Mr. Dyer, do you know Mrs. Mason ?

Dyer. I know one Bevan.

Mr. Ketelbey. How long have you known her ?

Dyer. She lived with me thirteen or fourteen Years ago.

Mr. Ketelbey. What was her Character then ?

Dyer. She robbed my Shop, and I sent her to Bridewell.

Mr. Ketelbey. What is her Character and Reputation now ?

L. C. Just. I desire you to forbear this irregular Practice.

Mr. Hungerford. Is this Woman to be credited or not ?

Dyer. I know nothing of that.

Mrs. Baskett sworn.

Prisoner. Had you any Discourse with Mrs. Mason ?

Mrs. Baskett. No, Sir, I don't know her.

Prisoner. Had you any Discourse with her ?

Mrs. Baskett. I don't know her.

Prisoner. Nor Mrs. Buda ?

Mrs. Baskett. No, I don't know her.

Prisoner. Nor Mrs. Bevan ?

Mrs. Baskett. I don't know her at all.

Prisoner. Do you know Mr. Lynch ? Have you seen him lately ?

Mrs. Baskett. I saw him last Night.

Prisoner. Did you hear him say what Reward he was to have for swearing against me ?

L. C. Just. That must not be.

Prisoner. Did you not hear him say he was to have 500 l. for swearing against me ?

L. C. Just. We have a Compassion for you, and therefore bear this from you, which we would not from any body else.

Mr. Soll. Gen. My Lord, this is not to be endured. The Prisoner turns about to the Jury, and tells them that Lynch said he was to have 500 l. a Year.

Mr. Hungerford. I believe the Gentleman that sat next to him did not hear him.

Mr. Wearg. My Lord, I did hear him say to the Jury that Lynch said he was to have 500 l. a Year.

L. C. Just. I must tell you, if you did but consider of what little Consequence it would be

to you, you would not do it: When you thought fit to make him your Confident, carry him to the Green Man with you, and to my Lord North and Grey's ; and there he was entertained courteously by him ; and do you come now to brand him with being an ill Man ?

Prisoner. Lynch says himself that he did not know me till June last ; and how could I have so much Friendship for him on so short an Acquaintance ?

L. C. Just. Then for this Woman, if you would do Service to yourself, prove the Packets are not under your Seal, and that you did not deliver them to her with your own Hand ; prove something of that, and these Proofs will be of more Service to you than ten thousand of these Witnesses.

Prisoner. My Lord, if I was admitted to prove, I can make it appear it is all a Sham and a Forgery.

Mr. Hungerford. It was never proved to be his Seal.

L. C. Just. You are mistaken : The Woman swore it was his Seal, and the Officers swore they were under the Seals when they seized them ; and it is proved now to be his Seal, for the Seal is visible.

Prisoner. How do they prove it to be my Seal ? My Lord, it is not my Seal. I desire Major Barnwell may be asked as to this Woman's Character.

Maj. Barnwell. I know her : She is a vile Woman ; she had like to have cheated me of 1500 l.

Prisoner. You are only asked as to her Character in general. Is she a Woman to be credited, or not ?

Maj. Barnwell. No, she is not.

Mr. Ketelbey. I hope you are satisfied with this general Answer.

Mr. Hungerford. They won't let us go into Particulars ; that the Course of Practice won't allow.

Mr. Ketelbey. It is impossible for us to direct the Answers to the Questions.

Mr. Lebatt sworn.

Prisoner. Mr. Lebatt, pray give my Lord and the Jury a general Account of this Mrs. Buda, or Mrs. Mason, whether she ought to be credited or not, or gain Credit.

Lebatt. No: She would take any body's Life away for the Value of a Farthing.

Mr. Hungerford. Now, my Lord, we will close our Evidence as to the Character of these Witnesses against the Prisoner at the Bar : We hope we have proved their Characters to be so infamous, as no Jury upon Earth will believe them. Here is this to be observed——

Prisoner. I beg Pardon ; here is a mighty Talk of my Arms : I am so fortunate as to have a Person here that will give you an Account of them, and how they came to be brought thither.

Mr. Bowers sworn.

Mr. Ketelbey. What Trade are you of ?

Bowers. A Gunsmith.

Mr. Ketelbey. Did you make any Fuzees ?

Prisoner. No ; pray let me ask him : Pray give my Lord and the Jury an Account of a Blunderbus, a Fuzee, a Carbine, and Pistols ; what

what you know of them. Did not you owe me six Pound on a Note under your Hand?

Bowers. My Lord, about five or six Months ago, Mr. *Layer* had a Law Suit for me: I sold him a Pair of Pistols, and a little after I sold him another Pair. Mr. *Layer* had them for a Debt: He had in his House two Guns. I promised Mr. *Bennet* a Gun when the Cause was over, instead of Money. I gave him one of those Guns: There is another Gun, and a Musket which Mr. *Layer* had of me.

Mr. *Layer* had a Note of mine for six Pound, which I owed him: I importuned him to take a Carbine for a Man to ride with, and a Blunderbuss for his House, in order to set off this Debt; and I brought him them when he was going into the Country: I brought him some Powder, and I brought him three Dozen and a half of Cartridges.

Prisoner. Did I order you to bring them, or did you bring them of your own Head?

Bowers. You bid me bring a dozen and a half, or two dozen; and I brought three dozen and a half: The Reason was, that I might shorten my own Debt.

Mr. *Raynbam*, sworn.

Prisoner. Pray will you give my Lord and the Jury an Account of the Piece of Arms I had of you, and for what Reason?

Raynbam. I went with him to one Mr. *Pritchard's* in *Friday-Street*, there was a Musket in his Compting-House; he said he would dispose of it: Mr. *Layer* asked him his Price; he said he would have fifty Shillings for it. Mr. *Layer* said that was too much; says he, you shall have a Trial of it, and if your Sister carries her Cause against Mr. *Watson*, you shall give me fifty Shillings for it.

Prisoner. Did he put it on me, or did I desire it?

Raynbam. You asked him what it was worth, and whether he would dispose of it?

Prisoner. Did not he say several times that he wanted to dispose of it, and desired me to take it on those Terms?

Raynbam. Yes: He said on that Condition that your Sister got her Cause you should have it, and gave him fifty Shillings for it.

Mr. *Samuel Steward*, sworn.

Prisoner. Mr. *Steward*, only give my Lord and the Jury an Account whether or no I was not intrusted with Things of great Value, and what Occasion I might have for a few Arms; whether you don't know of Money put out on Mortgages?

Steward. Yes, to the Value of thirty or forty thousand Pounds within these two Years.

Prisoner. Don't you think it reasonable as to these Arms, that I should have them in my House to guard my House?

Steward. I thought it very reasonable.

Mr. *Hungerford.* My Lord, we have done with examining of Witnesses, to the Credit of the Witnesses produced against the Prisoner; and leave that Matter to the Consideration of the Jury.

Mr. *Ketelbey.* Pray Mr. *Steward*, do you look upon that Paper they call a Scheme, with a *French* Motto upon it. Before you look upon that Paper,

I ask you if you are acquainted with the Hand-writing of Mr. *Layer*?

Steward. Yes, very well.

Mr. *Ketelbey.* How long have you been acquainted with his Hand-writing?

Steward. Two Years and an half.

Mr. *Ketelbey.* Have you at any time seen him write?

Steward. Yes, a thousand times.

Mr. *Ketelbey.* Do you believe that to be his Hand?

Steward. I do not believe it to be his Hand.

Prisoner. Is it like the Character I write?

Steward. Not at all: You write a shorter Character; this is a long one.

Mr. *Bennet*, sworn.

Mr. *Ketelbey.* Have you been acquainted with the Hand-writing of Mr. *Layer*?

Bennet. I have been very well acquainted with the Hand-writing of Mr. *Layer*.

Mr. *Ketelbey.* You have seen him write?

Bennet. Very often, a thousand and a thousand times.

Mr. *Ketelbey.* Look upon that Paper: See if you believe that to be his Hand-writing?

Bennet. No, my Lord, I do not believe that to be his Hand-writing: I never saw him write a Hand like it in my Life. I don't think it to be his own Hand-writing at all; I never saw him write such a Hand as this.

Mr. *Att. Gen.* Shew him that Paper: [*which was a Paper seized among the Prisoner's Papers in the great Bundle.*] Look on that Paper, and give my Lord and the Jury an Account if you know whose Hand-writing it is.

Bennet. I believe it is my own Hand-writing.

Mr. *Att. Gen.* By whose Direction did you write it?

Bennet. By Mr. *Layer's* Direction.

Mr. *Att. Gen.* For what Purpose was it writ?

Bennet. I can't remember.

Mr. *Att. Gen.* Did you write this for Mr. *Layer*?

Bennet. I believe I did; but I can't tell what particular Reason I writ it for.

Mr. *Att. Gen.* Now, my Lord, here is one of the Papers that were found in the Bundle, in which the Lists were found, proved to be writ by Mr. *Layer's* Clerk by his Direction.

Mr. *Serj. Cheshire.* He is positive as to its not being his Master's Hand-writing; yet as to his own, he owns it.

Cl. of the Cr. It is a List of Names.

Mr. *Ketelbey.* Before you read it, what did he say?

Mr. *Att. Gen.* My Lord, he said it was his Hand.

Cl. of the Cr. It is part of a Jury between *Layer* and one *Watson*.

Mr. *Att. Gen.* This was found amongst his Papers that were sealed up. It was taken in that Bundle where the Lists were.

Mr. *Ketelbey.* We submit it to your Lordship and the Jury: We apprehend we have proved this Scheme not to belong to Mr. *Layer*; We have called two Witnesses that have known him many Years, and have seen him write a great

great many times, and that they verily believe it not to be his Hand-writing. We don't know how it is possible to leave it on a better Foot. Therefore, my Lord, we shall leave it to your Lordship's Direction, and the Consideration of the Jury.

Mr. *Hungerford*. My Lord, all that I would now observe is, that this Gentleman is indicted for High-Treason. The main of the Charge against him is, that he was concerned in designing to raise an Insurrection. How that appears to be proved, I have spoke to already; but this must be allowed, that whatsoever Desolation and ill Consequences might now have ensu'd, there hath been no Blood shed, no Armies raised, or Invasions attempted: And I think upon such an Evidence that comes not up to the Charge in the Indictment, the Blood of this Gentleman ought not to be reached: At least we humbly hope it shall not.

Prisoner. My Lord, as to *Lynch*, it appears our going down into *Essex* was merely accidental: When we came to the *Green Man*, we did not stay there three Quarters of an Hour; and he says we went down twice in the Time. All this mighty Business, this publishing a Declaration, talking of an Insurrection, which is the Treason, and laid as an Overt-Act in *Essex*; all this was done before Dinner by his own owning. It was not three Quarters of an Hour from the Time we went in, till the Time we came out. We went on to my Lord *North* and *Grey's*; and when he was there, he is asked, if there was any Discourse there about any such Design? He says there was nothing said of it there. Is it possible when such a Design was on foot, he and I alone should go together to the *Green Man*, and thoroughly recapitulate the Affair; which when we came to my Lord *North* and *Grey's* nothing should be said of it?

When we come to *Plunkett*, he saith that he became acquainted with me first of all, by reason of some Goods that were seized in a House in *Queen-street*; that he never saw me till five Years after this in *Lincoln's-Inn-Fields*. *Plunkett* did not at first know me: We looking upon one another, then he renewed his Acquaintance with me, and told me of the former Service he had done me; and thereupon I gave him half a Crown, which he said was given him by me to lift Men into the Pretender's Service. He confessed, as I proved by Major *Barnewell*, that I gave it him for former Service. As to the thirteen Shillings, he was asked whether he did not come to borrow such a Sum of Money of me; he said he did; it was in order to release Major *Barnewell* out of the *Marshalsea*. Being asked whether he was not acquainted with Sir *Daniel Carroll*, and whether there was not some Difference about a Horse in *Spain* between them, he said there was, and that he came to advise with me whether he could recover the Money of *Daniel Carroll*. Is it not natural that the Guinea he talks of might be another Man's Money, that was told him by one *Jefferys* was sent to him by me: He talks to him as to that Guinea, when he comes to be asked whether it was not purely out of Kindness and Charity that I did lend him that Guinea, he doth not deny it, and now would insinuate that it was given him to lift Men for the Pretender. From

the Improbability of the Thing, from his own owning, no Person could believe him. I believe there are ninety-nine out of a hundred that cannot believe one Word that either *Lynch* or *Plunkett* swore.

Then the next Matter they talk of, the produce a Scheme: How hard and difficult was it to give any Evidence that so it should be read; and I humbly apprehend it did not strictly amount to legal Evidence. Mr. *Doyley* he said he knew my Hand fourteen or fifteen Years ago, and that he hath received Letters from me about five Years ago, and hath compared this Scheme with those Letters; and therefore he believes it to be my Hand. When he comes to be asked whether he hath those Letters here with which he compared this Scheme? No, I have them not here: Yet chiefly his Belief was that it was my Hand-writing, by comparing these Letters and this Scheme together. This amounts to nothing more, when it comes strictly to be considered, than only a Similitude of Hands, and surely Similitude of Hand with Submission, is not Proof in criminal Cases: And when it amounts to no more, it ought not to be receiv'd.

Here is, say they, a Circumstance that what *Lynch* and *Plunkett* swore must be true, because here was a Scheme for an Insurrection. In this very Scheme or Paper, as I took Notice of, not one Man is mentioned by Name in it; only Soldiers to be had here, the *Tower* to be seized, the *Bank* and the *Exchange* to be seized, and the World to be turned upside down; but by whom? There is no Time mentioned, there is no Date to it. This Thing if it be such a Scheme, if it had been written by me, which I absolutely deny that it was writ by me, it doth not appear but that it was written several Years ago. When they come to ask those Gentlemen the Under-Secretaries, if this be so remarkable that they lay the whole stress upon this Paper, whether I acknowledged it to be mine, they could not say I owned it to be mine. One of the Lords lays his Finger on a Paper, and saith, Don't you say this about Arms? Which I deny to be so. How comes it that none of those Lords directly offered the Paper to me, and asked me, Is this your Hand-writing? There was my Lord Chancellor, my Lord *Harcourt*, and several other Lords present, that very likely would have asked that Question; but either they did not think it material, or they had not the Paper there, or they did not think it of that Consequence, or they knew I would deny it.

When we come to call Witnesses to this Woman, this vile, this infamous Woman, I could shew you she hath been privy to Forgeries. If it was not to take up your Lordship's Time, I could shew that this is a Contrivance between a Gentleman and her; I am very loth to name him, to carry on such a Paper as this to get Money of the Government.

Here have been five or six Witnesses, whose Credit stands unimpeached, who tell you her Word is not to be taken for a Groat. Another says, he would not hang a Dog on her Evidence. This Scheme must come from her: She says, she had two Bundles of Papers that were delivered by me to her sealed up; and she says this Scheme was amongst them; and she can the better swear it, because she hath set her Mark upon

upon it. One of the Messengers doth not know whether she was in the Room or no. If this Woman is not to be believed, then all the other Evidence relating to this Paper falls to the Ground. It is a Maxim in Reason as well as Law; take away the Foundation, and the Work must fall.

Gentlemen of the Jury, I would have you to take Notice of this Evidence, and not go away with a mistaken Notion, because here is a vast deal of Talk about the Pretender, going to *Rome*, lifting of Soldiers for the Pretender's Service, &c. Your Lordship will tell them all that is nothing, unless they believe an Overt-Act to be done in *Effex*: That is the true State of the Case with humble Submission. Therefore I hope such Evidence as this Evidence of *Lynch* and *Plunkett* (but only to confine it to that of Mr. *Lynch*) hath proved nothing at all against me; and if what he hath sworn doth not affect me, then all the other stands for nothing; that's the true State of the Case. I would not have the Jury think a Man is to be hunted out of his Life by fine Speeches, far-fetched Innuendoes, and the like. You will consider the Character of this Man, that he is not to be believed. I'll leave it to you, and I hope God Almighty will direct you: I ask you no more than Justice. If a Man's Life is to be taken away by such scandalous Evidence as hath appeared against me, there is an End of all your Liberties, your Wives may be taken from you, your Children made Slaves, and all that is valuable to you, your Lives and Estates will be but very precarious.

Mr. *Soll. Gen.* May it please your Lordship and you Gentlemen of the Jury, you have heard a very long Evidence, and it is my Part, as exactly and faithfully as I can, to sum up to you the Substance of it, and to reply to the Objections which have been made on the Behalf of the Prisoner; as well to such Objections as have been made by the Prisoner himself, and by his Counsel for him, as to those which arise from the Evidence that has come out of the Mouths of his Witnesses: And after I have done this, I doubt not but it will appear to your Satisfaction, that the Evidence which has been given for the King stands unanswered, and is a strong Proof of High-Treason against the Prisoner at the Bar.

Gentlemen, the Treason with which the Prisoner stands charged is compassing and imagining the Death of the King. This high Crime consists in the Imagination of the Heart; but it must be proved and made out against the Offender by Acts which he hath done. The Overt-Acts of this Treason alledged to be done by the Prisoner, are, in the first place, consulting and conspiring to levy War against his Majesty: In the next place, publishing a treasonable Declaration, containing Exhortations, Encouragements, and Promises of Rewards, to stir up the King's Subjects to take Arms, and rise in Rebellion against his Majesty; consulting and conspiring to exalt the Pretender to the Crown of this Realm, and put him in Possession of the Government by armed Force, and Troops to be levied for that Purpose; the actual inlisting and retaining of Men to serve in this Rebellion; and, finally, a Conspiracy to seize and imprison

the sacred Person of the King himself.

Gentlemen, the heinous Nature and destructive Tendency of these Facts were fully explained to you in the Opening of the Cause. If they had met with Success, the Event could undoubtedly have been no less than the entire Subversion of our present happy Establishment; and, in consequence of that, the loss of every thing that is dear and valuable to us. For this Reason it was rightly admitted by one of the Counsel for the Prisoner, that the Crime, if proved, is incapable of Aggravation; and being so, although it is impossible to say too much concerning it, yet to say a great deal to you must be unnecessary, because it is equally impossible for the Hearts of *Englishmen* and Protestants to suggest too little to themselves on so important, so moving an Occasion.

The Evidence which has been given consists of several Parts and different Kinds, every one of which conduces to support and corroborate the other, and taken together, they make up the fullest and most convincing Testimony that can be expected in any Case. In the first Place, living Witnesses were produced to you who were privy to the treasonable Acts and Consultations; in the next Place, several Papers have been read to you, some of them written with the Prisoner's own Hand, but all of them belonging to him; and last of all, you have the Confession of the Prisoner himself proved by two Witnesses.

The first Witness was Mr. *Stephen Lynch*, who gives you an Account in what manner he was first introduced to the Prisoner at the Bar. He tells you he came into *England* about *April* last, and had several Meetings with one Dr. *Murphey*, who was his old Acquaintance. At these Meetings they had a Discourse relating to the Pretender, and an Attempt to be made for a general Rising in his Favour; and Dr. *Murphey* having thus disclosed the Secret, told *Lynch* that if he would be of the Party, he would recommend him to a Gentleman who had a considerable Share in the Management of the Affair. *Lynch* took Time to deliberate upon it, and in two or three Days after told *Murphey* he was resolved to be of the Party.

Afterwards in *June* last, Dr. *Murphey* carries *Lynch* to the Prisoner's House, who proposed to them to go to the *Griffin-Tavern* in *Holborne*. Thither they went, and the Prisoner soon came to them; and you have heard in what manner *Murphey* presented *Lynch* to the Prisoner, as being the Gentleman he had before spoke to him of, and what Proposals were made at that Meeting by the Prisoner to *Lynch*. That there was to be an Insurrection in the Kingdom in Favour of the Pretender, in which they should be supported by a great many of the Army and the Guards, as well as by several of the Nobility and Gentry; and that he wanted a fit Person to take one of the first Steps in it by seizing the Person of some General, or other great Man.

It may be proper here to take Notice of an Objection which was made to this, which is the very beginning of our Evidence: That *Lynch* being an absolute Stranger to the Prisoner, it is very extraordinary that the Prisoner should make a Proposal of so dangerous a Nature to him at first Sight. But this is plainly accounted for by

by the Witness who, tells you he was intimately acquainted with Dr. *Murphey*, and *Murphey* was very intimate with and introduced him to the Prisoner, as a Friend, who might be confided in. Agreeably to this you observe that the first thing the Prisoner accosted *Lynch* with, was that he had had such strong Recommendations of *Lynch*, that he was fully satisfied in him.

This Witness goes on to give you an Account that in a Day or two after, in Pursuance of the Directions he had received from the Prisoner, he went to the same Tavern, and sent for the Prisoner. They had some further Conversation about a Rising, and the Inclination which appear'd in the Nation for a Revolution. And now it was that the Prisoner inform'd *Lynch* that there was a great Man at the Head of this Affair, who neither wanted Wit, Courage, or Resolution, and would at a proper time give *Lynch* Orders to effect something considerable. At this Meeting the Prisoner particularly engaged *Lynch* to seize the Earl of *Cadogan*. The Reason of this Attempt the Witness gives you, that it was in order to discourage the King's Party, and animate the Pretender's. And, Gentlemen, the meaning of this is plain and obvious; for if an Insurrection was begun, what could be more likely to create a Confusion in the Army, and dispose the Soldiers to revolt, which appears to have been a main Part of this Design, than the seizing of their General?

There were several other Meetings both before and after the Prisoner's going into the Country, where the Witness told you he had staid sixteen or seventeen Days. At those Meetings they discours'd concerning the Conspiracy; and at one of them it is remarkable the Prisoner told *Lynch*, that if they once made a Beginning here, they shou'd want no Assistance from Abroad. And at last *Lynch* tells you, that he being under Necessities, expressing great Uneasiness at the Delay of the Project, and, as I remember, talking of going beyond Sea, the Prisoner actually advanc'd to him a Sum of Money, no less than eight or ten Guineas at different Times, in order to engage him to stay in *England*, and to assist in the intended Design of a Revolution. This is one Proof of the Overt-Act laid in the Indictment of lifting Men.

As they had consider'd how to dispose of the General, so it appears they did not neglect the Army; for *Lynch* acquaints you, that upon Discourse about that, he ask'd what Encouragement they had from the Army; upon which the Prisoner answer'd, that they had great Encouragement from thence, and several Serjeants and common Soldiers had given them Reason to believe they would join them. *Lynch* being ask'd as to the Time when this Design was to be put in Execution, he told you there was no certain Time fix'd, but the Prisoner inform'd him it was to be at the breaking up of the Camp; and at the same time gave a Reason for it, which is by no Means to be pass'd over, *That they could not have so good Opportunities to talk with the Soldiers* (that is, to seduce them from their Duty and Allegiance) *whilst they were encamped, as in their Quarters*. Pursuant to these Consultations, Mr. *Layer* afterwards told him 'twould be necessary to take a proper time to view my Lord *Cadogan's* House. The Pretence for go-

ing thither was that *Layer* had a Particular of an Estate which was to be sold to lay before his Lordship. He tells you that in Fact they went to the House, survey'd it, talk'd of the Feasibility of the Attempt, and at that time they also discours'd of seizing the *Tower*; and the Prisoner told the Witness that the *Tower* would be immediately surrender'd to the Party on the Day the Plot should be put in Execution; for a certain Officer would take upon him to mount the Guard there that Day, who would facilitate the Delivery of it to them. And the People of the *Mint* were at the same time to have Arms put into their Hands.

This is a very remarkable Passage, and falls in with the Scheme which was afterwards produced to you in the Prisoner's Hand-Writing.

The next Meeting where any thing pass'd worth repeating to you, was at the *Queen's-Head-Tavern* in *Great Queen-street*; and when the Witness came to the Prisoner there, he found one *Wilson* in Company with him, and another Man, who seem'd by his Cloaths to be a Serjeant of the Guards. The Use to be made of that Fact is, that it is a Circumstance which falls in with the written Scheme; for you observ'd that one *George Wilson* is there mention'd as the Person who was to manage the Serjeants, and receive Orders from the principal Officer.

At this Meeting *Lynch* tells you they talk'd over the Business, and drank good Success to the Enterprize. When they parted, he complain'd to the Prisoner of the long Delay. Upon which Mr. *Layer* told him there was a Nobleman at the Head of the Design, who had full Power and Authority from the Pretender (whom he called King) who would lose no fit Opportunity to put it in Execution. He did not name this Nobleman, but told *Lynch* that he should be presented to him in due time, and also receive Orders from him to seize my Lord *Cadogan*.

Gentlemen, it will be very material for you to fix this Circumstance in your Memories, and to connect it with the Evidence which comes afterwards, and what was done in consequence of this Meeting.

For after *Layer* had thus declared that there was a Nobleman at the Head of the Conspiracy, and *Lynch* should be presented to him in due Time, then it follows that upon the twenty-fourth of *August*, the Day the Bishop of *Rocheſter* was committed to the *Tower*, which appears by the Evidence to be the Time of their next Meeting, Mr. *Layer* propos'd to *Lynch* to ride out to take the Air, which was agreed upon for the next Day.

In that Journey the Prisoner persuaded *Lynch* to carry Arms, because as he then declared *he had that about him which he wou'd not lose for all the World*. Upon the Road *Layer* told *Lynch* they were to go to my Lord *North* and *Grey's*, and when they were got pretty near the *Green Man* at *Layton-Stone* in *Essex*, it was thought to be too late to go on to dine at Lord *North* and *Grey's*; and therefore the Prisoner propos'd to stop at the *Green Man* to take a Dinner.

At this Place the Overt-Acts of High Treason committed in *Essex*, which we were so much call'd upon to make out do arise. During their stay here the Witness gives you an Account that they dis-

coursed of the whole Project of the Insurrection, the Means of effecting it; the Uneasiness that was in the Nation, and in General all the several matters they had consulted of before; and after they had done this he tells you Mr. *Layer* the Prisoner propos'd to him that detestable and shocking Design of seizing the sacred Person of the King, which he sometimes call'd *sending a strong Guard to take Care of* — at other times *to secure the King's Person*.

He tells you farther, that Mr. *Layer* pull'd out of his Pocket a Manuscript Paper, and deliver'd it to the Witness in part folded down; and he read that Part of it which was left open. That this Paper contain'd a Declaration; with a Recital, that my Lord *Cadogan* was then actually in their Custody: That there were in it Invitations to the People to Rise in Arms and repair to their Party: Encouragements to the Soldiers to Revolt, with an Offer of *Three Guineas* to every Horseman and Serjeant, *Two Guineas* to every Corporal, and *One Guinea* to every Common Soldier, to be paid immediately on their joining the Party; and a Promise of further Rewards. *Lynch* acquaints you that the Prisoner talk'd of this Declaration being of his own Composing, and that from the Discourse which pass'd between them, and the Appearance of the Paper, he apprehended it to be of the Prisoner's Hand-Writing.

My Lord, after this Declaration had been thus produced, the Prisoner took it back again, put it into his Pocket, and kept it; and therefore the Paper itself being in his Custody, we were properly admitted to prove the Contents of it by Parol Evidence; and I apprehend if we had no further Proof of these Overt-Acts which were done in *Essex*, this alone is fully sufficient to maintain the Indictment to be regularly and properly found in that County.

From the *Green Man* they went on to *Epping*, to my Lord *North* and *Grey's*, with whom it is admitted the Witness was not at all acquainted, and consequently could not of himself have any particular Reason for going thither, but it appears to have been upon the Motion of the Prisoner. When they came to the Lord *North* and *Grey's* House, *Lynch* tells you that the Prisoner introduced him to his Lordship; and this brings back to one's Memory, and makes it impossible not to recollect what the Prisoner had told *Lynch* at their last Meeting, in time next preceding this Journey, that there was a great Man at the Head of this Design, to whom he should be presented in due time.

Gentlemen, after this *Lynch* went a second time to my Lord *North* and *Grey's* at *Epping*, and there he found the Prisoner at the Bar; indeed he does not own to you that any thing pass'd between them relating to this Conspiracy in the Presence of my Lord *North*; but at that Place *Lynch*, in Conversation with Mr. *Layer*, express'd an Uneasiness that the Affair was delay'd, but *Layer* bid him be easy, for it might be done sooner than he expected.

Gentlemen, this is the Substance of the Evidence of what pass'd in *Essex*. But the Witness tells you he had afterwards several Conversations with Mr. *Layer*, and when he express'd his Concernment at the Delay of putting the Design in Execution, *Layer* told him he was so bent upon

the Success of it, that rather than it should fail, he would be a second *Maffinello*: This was represented as a ridiculous Expression by one of the Council for the Prisoner: But we have all heard what Confusions were rais'd by that profligate Fellow in the Kingdom of *Naples*; and it is plain, that was the Example the Prisoner referr'd to by this Expression.

Mr. *Lynch* was cross-examin'd by the Counsel for the Prisoner, with as much liberty as they thought fit to use; but I did not observe that his Evidence was at all weaken'd, I think I may say, it was rather confirm'd by it; since it was upon their own Questions he gave his Reasons how *Layer* came to deal so openly and unguardedly with him at first Sight. And those Reasons were strong; for it is not improbable, if *Murphey* and *Layer* were engag'd in a Treasonable Design, that one of them should have confidence in a third Person on so strong a Recommendation from the other.

The next Witness is *Matthew Plunkett*, and I apprehend, notwithstanding every Thing that hath been said against his Testimony, that it is rather strengthened; as to the Facts sworn by him; than weakened by the Evidence for the Prisoner. He tells you, his first Acquaintance with Mr. *Layer* was about five Years since, and had its Rise upon this Occasion: The Goods in the House where the Prisoner then lodg'd, being taken in Execution, (whether his own Goods or not, is not at all material) one Major *Barnwell*, who has been examined for the Prisoner, was employed to procure Persons to rescue those Goods; *Barnwell* apply'd to this Witness, who got two Grenadiers, that were let in at a private Door by Mr. *Layer's* Clerk. They did their Work, drove out the Officers, and rescued the Goods; and for this Service Mr. *Layer* rewards them with a Crown and some Brandy. Since that, it appears he has been employed on other Messages between Major *Barnwell* and the Prisoner; and in what manner *Plunkett* is supported in these Circumstances, and by Consequence in the rest of his Testimony, by Major *Barnwell* himself, who has been produced to discredit him, I shall observe when I come to consider the Evidence for the Prisoner.

But the Witness having given you this Account of the Introduction to the Correspondence, tells you, that in *July* last, *James Plunkett* came to him from the Prisoner, enquir'd privately what Acquaintance he had amongst the Soldiers, and desired him to meet the Prisoner at the *Italian Coffee-house* in *Russel-Court*; but he did not meet him there, not having Money nor Inclination to go to a Coffee-house. He gives you an Account, that on the *Sunday* following, returning from *St. Andrew's Church*, as he was going over *Lincoln's-Inn-Fields*, Mr. *Layer* met him. *Plunkett* had forgotten *Layer's* Face, by *Layer* remembred him, and ask'd him if he knew him; to which *Plunkett* answering that he did not, the Prisoner told him his Name, which made him recollect. *Layer* then enquired if *James Plunkett* had not been with the Witness, to desire him to come to the *Italian Coffee-House*, a few Nights before; and having made himself known by these Circumstances, took *Plunkett* into a private Place. There they had a long Conversation, in which *Layer* began with declaring how well assur'd he

was of *Plunkett's* good Affections to the *Pretender*, and said, he wanted some old Soldiers, such as *Plunkett* was, that would head and discipline a Mob, for they had other Men enough. *Plunkett* said he did know several old Soldiers; but he hesitated a little about the *Pretender's* being a *Papist*. The Prisoner to take off the Force of that Scruple, answered, *We had as good have a Papist for our King as a Lutheran, I don't know what Difference there is between them* (that is) between a *Papist* King and a *Protestant* one ——— An important Difference! Which I wish with all my Soul, were not too much forgotten, or perhaps, too little valued, by many amongst us, who are not so frank in declaring as the Prisoner.

Mr. *Layer* proceeded to excite the Witnesses to join in his *Treason*, by a false Representation of the State of the Nation, and particularly of the Injustice, as he call'd it, which was done to old Soldiers who had served abroad; a Topic most likely to captivate an old Serjeant. After this Preface, he inform'd the Witnesses there was to be an Insurrection, and *Plunkett* asking who was the Promoter of the Design, told him it was my Lord *North* and *Grey*, whom he commended as a fine General; and then he went through a Sort of List of several other Persons of Consideration. The Witnesses have declared that he knew several Soldiers, said, he could procure five and twenty, whereupon Mr. *Layer* desired he would make a List of their Names, and the Places of their Lodgings, that they might be in Readiness upon Call; and at parting, gave him half a Crown.

After they had thus talk'd of the Conspiracy, there followed a very observable Passage; for the Prisoner declared that the Design had been put in Execution some time ago, if some Person had not discovered it to the *French* Ambassador, who writ of it to the Regent, and so it was notified to the King. However, even this Apprehension of a Discovery did not terrify them; for the Project was to go on. The late Duke of *Ormond* was to come in a single Ship, and General *Dillon* in another, and they were to bring others with them; which you take Notice falls in with the Evidence of *Lynch*, that *Layer* declared to him that they should not want Encouragement or Assistance from abroad, when once they had made a Beginning here.

The next Intercourse between the Prisoner and *Plunkett* was not personal, but by the means of one *Jeffreys*, a Nonjuring Clergyman.

Gentlemen, you observed that the Prisoner told *Plunkett* at parting, that he would send a Messenger to him with Money; and afterwards, at his own House, on the Morning he went out of Town for *Norfolk*, that he had left a Guinea with a Nonjuring Clergyman to give him to do Service with; ——— And says *Layer*, whilst I am abroad, you may be sure I shall not be idle. Accordingly Mr. *Jeffreys* came within a few Days after, and appears to be that Clergyman, for he said, he came from Mr. *Layer*. He tells you, they discoursed on the old Subject, and *Jeffreys* desired he would get Men in readiness, and said he had several other Places to go to on the same Errand. *Jeffreys* gave the Witness no Money at that Time, but came a second Time, and gave him only half a Guinea, which he said *Layer* had sent him for

his Encouragement. Besides this, he tells you *Layer* gave him a Crown at the *Castle-Tavern* in *Drury-Lane*, expressly to encourage him to list Men for the *Pretender*. Upon the Prisoner's Return to Town, a Letter was sent by *Jeffreys* to the Witness, to desire him to go to the Prisoner's House; and when he came there, the Prisoner gave him a Guinea with his own Hand. There were several other Conversations, several things said to keep *Plunkett* firm to the Design, and many groundless and malicious Slanders cast by the Prisoner upon his Majesty's Government; and in all those Conversations *Plunkett* tells you, the Prisoner always stil'd the *Pretender* King. 'Twould be tedious particularly to repeat all these things to you; but there is one thing I can't help observing before I go off from this Part of our Evidence, I mean, that *Plunkett* told you more than once, that he was to procure five and twenty old Soldiers for the Service. Now that happens to be exactly the Number, which is assign'd to each of the eight Serjeants in the Prisoner's own Scheme, which was produc'd to you, and is a strong Circumstance in support of this Witness's Testimony.

Gentlemen, I have gone through the Evidence of these Witnesses, and I beg leave to say they are, within the Meaning and Intention of the Law, two Witnesses to prove the High-Treason charg'd upon the Prisoner; and it happens in this Case, that they make out all the particular Overt-Acts alledg'd in the Indictment. Both *Lynch* and *Plunkett* prove repeated Consultations to levy War, to bring in the *Pretender*, and the actual liking of Men; and *Lynch* alone proves the publishing the treasonable Declaration, and that Part of the Design, which no Body can hear without the utmost Indignation, the seizing his Majesty's Person. From henceforth I apprehend I may take it, that the Charge is proved; though in Truth we have gone a great deal farther in order to put the Testimony of these Witnesses beyond all doubt, to deliver them from all possible Objections, and to demonstrate to you the Nature and Extensiveness of this black Conspiracy.

The next Head of Evidence, is that of the Papers; and notwithstanding the little Cavils, which have been urged against them, those Papers are fully proved to be the Prisoner's, and by him deliver'd to Mrs. *Mason*. It stands thus; Mrs. *Mason* swears, that the Prisoner deliver'd these Papers to her in two Pacquets, as things of great Consequence, seal'd up with his own Seal, which Seal is now remaining, and appears on the Covers. That she lock'd them up safe in her Trunk till they were seiz'd by the Messengers, and out of that Trunk the Messengers took them. That she set her Mark upon each particular Paper, which appears to be the same Mark which by way of Experiment they would have her to make in Court; and she swears, that these are the very same Papers which the Prisoner deliver'd to her with his own Hands. The two Messengers give you an Account, That they seized these Papers at Mrs. *Mason's* Lodgings, on the twenty ninth Day of *September* last; that they took the two Pacquets out of the Trunk, the same Seal being then upon the Covers,
and

and that Mrs. *Mason* was by, and mark'd them in their Presence; that they likewise put their Marks upon, and never deliver'd them out of their Custody till they had so done. Indeed, *Turner* says he left them in the Hands of his Fellow Messenger, *Spear*, during the little Time he went for Mr. *Stanyan*, but *Spear* swears they received no Manner of Alteration during that Space, and upon the whole, they swear them to be the same Papers which they took out of the Trunk.

Upon this Evidence, we apprehend we were intitled to have read the Papers, without giving any farther Account of them.

I did mention to your Lordship the Case of my Lord *Preston*, which was not so strong; for he lying together with *Ashton* in the Hold of the Ship, upon the Ballast, a Bundle of Papers lay between them; *Ashton* took them up, and put them in his Bosom, and there they were seiz'd; but being found together with my Lord *Preston*, those Papers, though the very Overt-Acts of the Treason laid in the Indictment, were read against him upon that Proof only. Indeed, after they had been read, the King's Counsel, in order to give a farther Strength to one or two particular Papers, entered into a Proof of their being my Lord *Preston's* own Hand-Writing.

The first Paper we call'd for was the Scheme, a regular Plan of this Conspiracy; and, Gentlemen, in order to prevent any Pretence of Hardship, before we read it, we call'd a Witness to prove this Scheme to be the Prisoner's Hand-Writing: It was Mr. *Doyley*, who swears he verily believes it to be his Hand. He gives you the Reasons of his Belief: That the Prisoner liv'd with him as a Clerk two or three Years, not whilst he was a Boy, but after he had serv'd some Time with another Master, had been us'd to Business, and gain'd a settl'd Hand; and during that Time he frequently saw him write. To support this farther, he tells you, that he had transacted Business for Mr. *Layer*, as his Agent, until about four or five Years ago, and had received several Letters from him, which he was sure were his, because he (Mr. *Doyley*) had done the Business requir'd to be done by those Letters, and Mr. *Layer* had paid him for it; that he had compar'd his Paper call'd *The Scheme*, with those Letters; that the Character of the Letters agreed with what the Prisoner wrote when he was Clerk to him; and the Character of the Scheme with that of the Letters.

But, Gentlemen, this Scheme is an Evidence so considerable in it self, and of that general Consequence to this whole Cause, that we went farther yet, and, not out of any Necessity, but in order to give you abundant Satisfaction, we proved it to be written by the Prisoner from his own Confession. Mr. *Stanyan* told you, That the Prisoner upon his Examination before the Lords of the Committee of Council, where he was present, and took Notes, confess'd this Scheme to be of his Hand-Writing. The Counsel for the Prisoner objected, This Question was not directly ask'd him (*Is this your Hand?*) and consequently he did not say, *It is my Hand*. 'Tis true, that does not appear; can there be no other Evidence of a Confession, but such direct

Questions and Answers. Upon the Examination, the Prisoner was ask'd whether he knew of any Arms lodg'd in *Westminster*? He told the Lords he knew of no Arms being lodg'd. Thereupon this Paper was shew'd him, and he was ask'd, *How came you to write in this Scheme of your own Hand-Writing, that there were Arms lodg'd?* To this he made Answer it was a Mistake, I should have writ Arms that should be lodg'd. Can any Thing be more plain than this? It was so evident that the Paper was written by him, that it was taken for granted, and call'd his Hand-Writing in the very Terms of the Question; probably he had confess'd it before the Clerks were call'd in. If it had not been his Hand, would not the natural Answer have been, why do you ask me about what is written in that Paper? I know nothing of it, it is not my Hand-Writing; but instead of that he admits it without the least Difficulty, and takes upon him to tell the Lords what he intended to have written.

The Gentlemen on the other Side, endeavour'd to avoid the Force of this Evidence, by this ingenious Turn — *I should have written Arms that should be lodg'd* (that is) *If I had writ it, I should have written Arms that should be lodg'd*. But I desire to be inform'd, if he did not write it, how came he to know any thing about it? How could he take upon him to say it was a Mistake? Whose Mistake? He admits it to be his own. So that this Observation comes to nothing, and this Scheme, after all their Objections stands confess'd, as well as prov'd, to be Mr. *Layer's* Hand-Writing.

Upon the Foundation of all this Proof, which I beg leave to observe does support all the other Papers found in the two Pacquets, the Scheme was read, and when it was read, it required your strictest Attention; for in that Paper appears a regular Design, form'd for the total Destruction of this Government, to be executed in the City of *London*, the Capital of the Kingdom. This, if there was no more, shews a just Foundation for what was lately declared to us in a solemn Manner, That if this Conspiracy had not been happily detected, we should before now have seen that City involv'd in Blood and Confusion, such appears to be the plain Intent of it. The most profligate of the People were to have Arms put into their Hands, in order to subdue and pillage the better Sort.

In the first Place, the *Tower* was to be seiz'd, and a certain Officer expected to be upon the Guard that Day, who should be their Friend, and let in the Party who were to make themselves of that Garrison. The *Royal-Exchange*, being in the Heart of the City, was to be the Head-Quarters of the General; and another Party was to plunder the *Bank*. So that to give us a Taste of the Views of these Conspirators, Spoil and Rapine were not, in the Execution of their Design, to have been accidental, proceeding from the Fury of Action, the common Excuse for such Outrages, but a premeditated avowed Part of the Measures concerted beforehand.

The Artillery was next to have been seiz'd, and a Stratagem is contriv'd to effect it: And

And to crown all, his Majesty himself was to be made their Prisoner: Horrid Resolution! Colour'd indeed with the Name of Securing his Royal Person from the Insults of the Mob; but how thin a Pretence this is, I need not spend Time to explain to you, since the Writer of the Scheme himself has called it but a Pretence.

The Scheme goes on, and the Conspirators being sensible how much our future Hopes, as well as our present Happiness depend on the Protestant Succession in his Majesty's Family, the next Step to be taken, is to get his Royal Highness the Prince into their Power——A Prince at *Richmond*, described under a Cant Name, but the meaning of it is plain. When all this appears, how can the Counsel for the Prisoner object, that there is not sufficient Foundation to accuse their Client directly of compassing the Death of the King? Could this have ended in any thing else? Or can any one dream, that either of those precious Lives, I have now mentioned, could have been preserved in the Hands of such Miscreants?

Gentlemen, having observed thus much, in short, upon the Nature of the Scheme, it will be proper to take Notice to you, that as this Paper, thus fully proved, is of it self a strong Evidence, so it greatly corroborates and supports the Testimony of the two Witnesses, as to every one of the Overt-Acts charged in the Indictment, and tallies with it throughout.

This is true, as to the general Design, but appears most remarkably in some of the particular Facts. The Project laid down in the Scheme for seizing the *Tower* is exactly the same with what *Lynch* told you the Prisoner communicated to him whilst they were viewing my Lord *Cadogan's* House: *That the Officer who should be upon Duty there that Day might be their Friend, and favour the Design.* In like manner, the Circumstance of eight Serjeants being to have in Readiness twenty five Men a-piece, falls in with what *Plunkett* the Serjeant swore, that he was to procure that Number of old Soldiers to engage in the Enterprize.

But there is one Observation arising from a Circumstance of time, which is extremely strong, in Confirmation of the Testimony of the Witnesses, and shews manifestly, that the Account they give, must arise only from their Knowledge of the Truth of the Fact, and could not possibly be fram'd and modell'd to answer these Papers; it is this, that Mr. *Layer*, who was taken up on the Information of *Lynch* and *Plunkett*, was actually in the Custody of a Messenger, and made his Escape on the 19th Day of *September last*; but these Papers, which thus fall in with and support the Facts they swear, were not seized, as the two Messengers acquaint you, till the 29th of that Month; which is near ten Days after.

Gentlemen, one would have thought there had been no Occasion to go any farther——

My Lord, I desire that the Prisoner may not talk to the Jury, whilst I am observing upon the Evidence.

L. C. Just. Sir, you must not do it.

Prisoner. My Lord, I did not speak to the Jury.

Mr. *Hungerford* offers to speak.

L. C. Just. I tell you, Mr. *Hungerford*, it is not right; Mr. *Layer* hath made his Observations to the Jury, and made his Nods, and sometimes I have seen his Lips move.

Prisoner. You can't tell what I said.

Mr. *Soll. Gen.* I saw you turn about to the Jury, and saw your Lips move at the same Time.

My Lord, I desire he may stand up, and look towards the Court, which is his proper Posture.

Gentlemen, I was saying, that after this Scheme had been produced, one would have thought the King's Counsel might safely have rested it here. Can any body doubt of this Treason, and of the Prisoner's Part in it, when he himself hath thought fit to record the Conspiracy with his own Hand. However, we did not leave it here: But in order to give you entire Satisfaction how deeply this Gentleman was engaged, what a large Share he had taken upon him, and how dangerous and extensive this Conspiracy was, we read several other Papers. They consist of Lists of the Names of several Persons, many of them Officers of the Guards, and of the Army; some of them general Lists, others particular: For what Purpose these must have been made up or procured, by a Person engaged in such a Design, is extremely plain.

My Lord, it hath been said with great Justice, That this is not to be so understood, as to bring any Imputation on the Gentlemen named in these Lists. I dare say, that by far the greater Number, if not all of them, are Persons of the utmost Fidelity to his Majesty, and Zeal for his Service. But Men engaged in such Designs, who are plotting to overturn a Government, must weigh and calculate the Strength of that Government, as well as their own. They must know who is to be relied upon, on one Side as well as the other, and consider who are fit to be applied to, and who not; therefore they must take an Account of Persons, concerning whom they have no Hopes, as well as those of whom they have Hopes. Thus it was in my Lord *Preston's* Case; he had got Lists of Ships, and of the King's Officers and Troops: The meaning of it was well understood upon his Trial; the Court understood it, and the Jury understood it, that he had procured them, in order to the better Information of himself and his Accomplices in the Conduct of that Plot.

Gentlemen, in the next Place, several Letters were read to you, which were also found amongst the Papers deposited by the Prisoner with Mrs. *Mason*. You will remember on this Occasion, what Mrs. *Mason* swore, that the Prisoner hath some time gone by the Name of *Fountaine*, and gave Directions to her, that if any Letters came directed to Mr. *Fountaine*, she should take them in, and deliver them to him. She tells you, a Letter did come directed to Mr. *Fountaine*; that she delivered it to the Prisoner, who opened it, read it, and kept it as a Letter for him; which was an express owning of that Name, and several of the Letters now produced are directed by the Name of *Fountaine*.

There was found together with the Letters, a Cypher, that is, a List of feigned Names for Persons and Things, which has been in Part read; and in this Cypher the Cant Expressions made use of in the Letters are contained, and the Persons and Things signified by them decyphered in plain Words. Sir *William Ellis* (a Follower of the *Pretender*, with whom it appears the Prisoner had settled a Correspondence) is there described by the Name of *Eustace*, and the first Letter that was read, is subscribed with that Name and directed to *James Fountaine, Esq;* In that Letter Sir *William Ellis* tells him *he is entirely of his Opinion as to the Method of carrying on the Manufactory, and the procuring of good Workmen is the first Step to be made. Manufactory* wanted some Explanation, but it is fully cleared up by the Word——*Workmen*, which follows. For look into the Cypher, and *Workmen* stands for *Soldiers*; so that the *Manufactory* must be such as it was fit for *Soldiers* to work in. He goes on and advises him particularly *to get some of the ablest of Mrs. Barbara Smith's. Barbara* in the Cypher means the *Army*; so the Advice amounts to this, That in order to raise a Rebellion, he should seduce some of the ablest Soldiers of the King's Army. A Counsel, which is now made very plain, the Prisoner has endeavoured punctually to follow. To encourage him in this, he tells him, *that it will be very agreeable to all concerned——particularly to Mr. Atkins.* Now according to the Prisoner's own Explanation in this Cypher, *Atkins* is one of the feigned Names for the *Pretender*.

The next Letter is dated the 11th of *July* last, subscribed *N. C.* and acknowledges the Receipt of a Letter dated the 8th of *May*, with another Letter inclosed, which the Writer says *was presently delivered to Mr. St. John, who took it extreme kindly*: Look into the Cypher, and it appears that *Mr. St. John* is one of the fictitious Names for the *Pretender*; so that this Letter shews, that the Person to whom it was written, correspond immediately with the *Pretender* himself. But it seems *Mr. St. John did not well understand what related to Mr. Burford, which* the Letter-Writer *hopes may be soon cleared by an Answer.* What this was which wanted Explanation, is in the Dark; but so much we know, that in the Prisoner's Cypher, *Burford* stands for the Earl of *Orrery*.

There is another Letter dated the 27th of *May*, in which the Writer tells *Mr. Layer*, that *their Friend had his Letter of the 22d of March, and took very kindly the Care he had taken of his little Concerns.* Who is meant by that Friend, whose Concerns were the Prisoner's Care, does not certainly appear; but it is very natural to think, it is the same Person before called *Atkins* and *St. John*. However, it seems their Friend was again at a Loss about certain Names——*Burford*, ——*Steel*, ——*Digby*, ——*the little Soldier*, and *Simons*, which were not in his *Rental*.

The Word *Rental* in *Mr. Layer's* Cypher, is the Cant Term for a *Cypher*; and in that likewise are to be found the other Words, which his Friend did not then understand; particularly *Simons*, which is put there for the Lord *North* and *Grey*. But if that did not appear by the Cypher, yet the Description which follows, would

be enough to convince every Man in his private Judgment who was meant by it——*He is of the North, a Grey hair'd ancient Man, Cant Expressions plainly, which take in both the Titles of that Noble Lord. The Letter-Writer adds, that their Friend (the same whose Concerns were taken Care of) very well remembers this Person, and hath a very particular Esteem and Value for him, and that he is (in their Phrase) a very good Tenant, and a very honest Man.*

Gentlemen, Some of the Papers were read to you of a more extraordinary Nature than even these Letters; I mean the Notes signed *James R.* with the *Pretender's* own Hand. These are not only one Evidence of the Plot, but a Part of the means by which it was to be effected; for they appear to be Receipts framed with Blanks, to be filled up with Sums of Money as Occasion offered, with a Promise of Repayment with Interest. These were some of the Ways and Means for raising Supplies out of the Pockets of such People, as should be found weak and silly, as well as wicked enough, to advance Money on such a Shadow of a Security, for so flagitious a Purpose. But they ask us who proves the Subscription to be the *Pretender's* Hand? I Answer, It is certain that is not material; but if it were, we have it sufficiently from the Prisoner himself. The Account he hath thought fit to give of them, you have heard from *Mr. Delafaye*; that he had written to his Correspondent *Sir William Ellis*, that if *Sir William* could send him over some blank Receipts under the King's own Hand (so he called the *Pretender*) he believed they might be made use of for the carrying on his Cause: That his Intention was to have tried his Friends, and to have raised Money on these Receipts. This shews the Prisoner received them as being signed with the *Pretender's* own Hand; and shews likewise the Use intended to be made of them; and it appears he had the Confidence to justify himself in this Practice, by the like Method having been taken by King *Charles* the Second, just before his Restoration.

My Lord, this is the Substance of our Proof as to the Papers and the Observations which have occurred to me upon them; and I will presume to say, with great Submission to your Lordship's better Judgment and Observation, that upon this Evidence, taken together with the Testimony of the two Witnesses, we might safely have trusted our Cause to your Lordship's Direction, and the Consciences of the Jury. But we went farther still, not because we wanted it to convict the Prisoner, for we had already done sufficient for that Purpose, but in order to give abundant Satisfaction, not only to the Gentlemen of the Jury, but to the whole World, of the Reality of this Conspiracy in general, as well as of this Man's Part in it; that they may see and be convinced of the just Grounds there were for this Prosecution, and for the Treatment the Prisoner has met with. For this Reason it was, we call'd *Mr. Stanyan*, and *Mr. Delafaye* to give an Account of his Confession, upon his Examination before the Lords of the Committee of Council; and I apprehend, we were properly and agreeably to the Rules of Law, let into that Evidence. We have had the Judgment of the Court upon that Point, therefore I
won't

won't trouble your Lordship with any Authorities for it, but rely upon that as the best Authority.

Gentlemen, the Relation Mr. *Delafaye* and Mr. *Stanyan* gave, was, that the Prisoner declared to the Lords of the Council, that he had been at *Rome* in the Year 1721, and stay'd there some Time, and had several Conferences with the Pretender in Person: That in one of those Conferences, he asked for some Token or Credential, in order to give him a Credit with the Party when he returned to *England*; that it was not at first granted, but afterwards he put his Request into this Shape, that the Pretender's Wife (the Queen he called her) would be pleased to stand Godmother to the Prisoner's Child. Some Time was taken to consider of this Proposition, and then Word was brought by Colonel *Hay* to the Prisoner, that she would stand Godmother to the Child; and it was agreed, that the late Dutchess of *Ormond* should represent her. Afterwards the Pretender consented to be the Godfather, but *Layer* was to procure some Person to be his Proxy.

What was then agreed upon, was followed by the Fact. When the Prisoner returned Home, and the Child was to be Christen'd, he applied to my Lord *Orrery* to represent the Pretender, and to the late Dutchess of *Ormond*, to represent the Princess *Sobiefski*. The latter complied, but my Lord *Orrery* declined the Service; and thereupon the Prisoner made Application to my Lord *North* and *Gray*, who was pleased to accept it. The Child was christen'd at *Chelsea*, and my Lord *North* and *Grey* stood as Proxy for the Pretender, and the late Dutchess of *Ormond* for the Princess *Sobiefski*; and the Prisoner said, they both were privy that they represented those Persons.

The Prisoner's Confession likewise verifies every material Circumstance of *Lynch's* Evidence, as to what passed in the County of *Essex*. That he was at the *Green Man* with one *Lynch*, and there shewed him the Heads of a Declaration which he had drawn: That they went from thence to my Lord *North* and *Grey's*, and there the Prisoner presented the Witness to his Lordship as a very honest Man, and a Person fit to be employed in seizing my Lord *Cadogan*; and afterwards he said, as a Person fit to be employed in an Infurrection. That the Prisoner and *Lynch* lay at my Lord's House that Night, dined with him at his own Table the next Day; and that the Healths of the Pretender, his Wife, and Child, were drank by them after Dinner, and the same Healths were drank, and (if I understood it right) begun by that noble Lord himself.

There was a farther Circumstance sworn by Mr. *Stanyan*, in which he is confirmed by Colonel *Huske*, that at the Time Mr. *Layer* was apprehended, a considerable Quantity of Arms, and about fifty Cartridges, made up with Ball, and fitted for the Use of Soldiers, were found in his House: And the Prisoner being asked, upon his Examination, what he did with them? He said, they were for his Use, in case there should happen any Disturbance in the Nation.

The Prisoner entered into an Examination of the Gunsmith, how he came by these Arms; but that is not at all material: In his House they were found, and he has confessed they were intended for his Use in Case of a Disturbance in the Nation. What Disturbance was there likely to happen, but from himself and his Accomplices?

Gentlemen, The Prisoner's Escape out of the Messenger's Custody, is another strong Circumstance. In order to fly from Justice, he ventured to get out of a Window two Stories high, and had the Fortune to meet with a Sculler, which carried him cross the Water into *Southwark*. When the Witness first endeavoured to stop him, it appears he was in the utmost Concern; begged of him for God's Sake to let him go, pretending it was an Arrest; and then he pulled out of his Pocket a great many Guineas, and bid the Witness take what he pleased, so he would but let him go; but the Messenger pursued him pretty close, and he was retaken.

Gentlemen, this is a very material piece of Evidence to shew the Guilt of the Prisoner. The Law of *England* supposeth Guilt from Flight, and though it was said, that any Man in Mr. *Layer's* Condition would have done the same thing, if he could; that can be true only in this Sense, that any Man in his Condition, as to the Consciousness of his own Guilt, would have done it; but an innocent Person would never have brought that Imputation upon himself, by endeavouring to escape.

This is the Substance of the whole Evidence which has been given for the King against the Prisoner at the Bar, as well as I can recollect it; and, Gentlemen, I persuade my self, when you have considered it seriously, you will be satisfied that it makes good every part of the Indictment. But be that never so strong, the Prisoner ought to be heard against it, and have a full Opportunity of making his Defence: For if he hath a good Defence, either in point of Law or Fact, to take off the Force of this Evidence, God forbid that he should suffer by it.

The Prisoner entered upon his Defence, and his Counsel were pleased to set out with making some Observations upon the Case, as we had left it.

My Lord, they first made an Objection in Point of Law, that the Treason, for which the Prisoner is indicted, is compassing the Death of the King, and one of the Overt-Acts laid is only a Consultation to levy War, which they insist is not an Overt-Act of that Species of Treason, nor indeed any Treason at all, because the Words of the Statute, 25 *Edw. III.* import a War actually levy'd; and for the Sense of those Words, which no body ever doubted of, some ancient *French* Writers were quoted.

My Lord, I apprehend this Objection, if it be one, is rather to the Indictment than to the Evidence, of which they know they may properly take Advantage in Arrest of Judgment. But with great Submission to your Lordship, there is no Weight in it either way. One can't help being a little surprized to hear it mentioned, after that Point has been established by so many Resolutions, which at the same time they tell us they are aware of; and in the very last Case of High-Treason, which was in this Court, I mean that of *Ker, Dorrel, and Gordon*, it was solemnly determined by the unanimous Opinion of all the Judges, that a Consultation to levy War, in order to destroy or depose the King, is an Overt-Act of High-Treason, in compassing his Death. This was the receiv'd Doctrine before the Revolution, and it has been adhered to ever since; and though the Act of Reversal of my Lord *Russel's* Attainder has been mentioned, yet if that were looked into, I dare say, no Declaration will

be found in it, contrary to this Determination. But they go farther and object, that here is no Overt-Act at all proved to be done in the County of *Essex*; and if so, then whatsoever Proof there may be of Facts done in *Middlesex*, that will go for nothing, and the Prisoner must be acquitted upon this Indictment. And, my Lord, so far I agree with them, that unless we have proved one Overt-Act at least to be done in *Essex*, we cannot maintain this Indictment.

In support of this Objection they would have it, that the only Transaction in *Essex*, is what passed at the *Green Man*, and the Whole of that is reduced singly to the Publishing the Declaration; and that, say they, is not legally proved, and if well proved, yet it is no Overt-Act of Treason. As to the Proof, they object that the Paper itself is not produced, and Parole Evidence of the Contents of a Writing is not to be admitted.

But, my Lord, I have given this an Answer already, by observing that the Prisoner took back the Paper, and kept it; so that the Writing itself being proved to be in the Custody of the Party, we were entitled within the ordinary Rule, to give Parole Evidence of the Contents. But, my Lord, this Declaration was a Part of the treasonable Consultation then had; and sure I am, it would be the finest Invention to secure certain Impunity to Plotters that ever was thought of, if, instead of discoursing, the Consultation shall be carried on by Papers handed from one to another, and no body can be convicted, because the Paper is not to be found. As to that Part of their Objection, that it is no Overt-Act of Treason, one of the Gentlemen thought fit to treat it in a ludicrous Manner. 'Twas only *reading a Piece of Paper, suppose they had sung a Ballad*. That Gentleman will pardon me, if I say, those Expressions did not become this Occasion. An Accusation of High-Treason, which highly concerns the King and his Government, is an Affair of a serious Nature; and if he does but reflect upon the Contents of that Declaration, which the Witness related, he cannot think it a Matter to be sported with.

Mr. *Ketelbey* was pleased to say, that this could be no Overt-Act of Treason, because it was but publishing a Libel. But surely, that is very extraordinary. Publishing of a Paper may amount to one Crime or another, according to the Subject-Matter of that Paper; and can it be a Question at this Time of Day, whether the publishing a Declaration or a Book containing Arguments, or offering Rewards directly to stir up the King's Subjects to rise in Rebellion against him, be High-Treason? The treasonable Intent in this Case cannot be doubted, and 'tis as certain that the Publication is an Act; what is there then wanting to make it Treason? But, my Lord, this has also been adjudged, and therefore I won't argue it.

My Lord, I have said thus much about the Declaration for the sake of following the Gentlemen, who are Counsel for the Prisoner, in their Arguments; but after all, their Foundation, which is a Supposition that there are no other Overt-Acts proved in *Essex*, besides this of the Declaration, entirely fails them; for your Lordship will inform the Jury, that *Lynch* deposed that whilst they staid at the *Green Man* they did more than *talk a little Politics*, they consulted about the Project of an Insurrection, and the Prisoner there actually pro-

posed to him (besides what was contained in the Paper) the Design of seizing the King's Person, which are two other Overt-Acts laid in the Indictment.

Upon this, another Objection was raised by Mr. *Ketelbey*, which, if it holds, will go to the Whole; and that is, that we have but one Witness, *Lynch* alone, to the Facts in *Essex*; and this Indictment must fail, unless there are two Witnesses to some or other of the Overt-Acts in the County where the Indictment is laid.

But, my Lord, that is not now to be disputed. The Law is clearly settled, that on an Indictment for High-Treason, in compassing the King's Death, if several Overt-Acts are laid, and some of those Overt-Acts are proved by one Witness to be done in the County where the Party is indicted, and others of them are proved by another Witness to have been committed in a different County, that Evidence is sufficient to maintain the Indictment; they are two Witnesses of the same Species of Treason within the Meaning of the Law. So it was expressly resolved by all the Judges of the *King's-Bench*, in the Case of Sir *Henry Vane*, which is reported in *Kelyng* 15, and that has been since followed by a Current of Authorities; the Case of the five Jesuits, the Opinion of the Judges delivered to the Lords, upon the Trial of my Lord *Stafford*, 32 *Car. II.* and other Cases.

My Lord, as this is established by Authorities, so the Reason and Necessity of the Thing is strong; because otherwise treasonable Consultations might easily be carried on in such a Manner, that no body could be convicted of them. It would be but to lay the Scene upon the Confines of several Counties, and take Care not to consult with any two Persons in the same County; then there could not be two Witnesses, and all would be safe.

I have done with their Objections in Point of Law, and shall now endeavour to give some Answer to their Observations upon the Fact. And, Gentlemen, I think the Whole of those Observations may be reduced to one Head, which is, that it is highly improbable, that what the Witnesses have sworn should be true. But upon that, before I give particular Answers to what they have offered, I beg leave to say in general, that though in a doubtful Case, where there is any Balancing in the Proof, the Improbability of the Thing is a Consideration of great Weight, yet where there is plain and positive Evidence on one Side, not weakened by any Counter-Evidence on the other Side, the Objection of Improbability can be of little Force.

But to consider this Improbability. They say 'tis very strange, that Mr. *Layer* should be engaged in so dangerous an Undertaking, with such Persons as have sworn themselves to be his Accomplices. To this, I say, 'tis always strange, that Men should venture to trust one another with such dangerous Secrets; but certain it is, they often do; and as to the Witnesses in this Case, they are proved by the Prisoner's own Evidence, to be Persons with whom he thought fit to hold a Correspondence. How this great Confidence was at last created between them, has been accounted for by the Witnesses themselves, in a very natural and probable Way, of which I have already taken Notice.

Mr. *Ketelbey* insisted much upon the Improbability of *Plunkett's* Evidence, in those Parts of it which concern *James Plunkett* and *Jefferys* the Nonjuring-Parson. That it is not credible, that those two Men, whom *Plunkett* admits to be absolute Strangers to him, should at first Sight open themselves with so great Freedom, to a Fellow of his Degree on a Subject of Treason. But that will receive this Answer. *James Plunkett* and *Jefferys* were, as appears clearly from the Circumstances, in the Confidence of *Layer*. *Layer* had a Confidence in *Matthew Plunkett* the Witness, on the Recommendation of Major *Barnwell*, and by Means of *Layer*, both *James Plunkett* and *Jefferys* might be induced to trust him. And thus the Chain of the Correspondence is made compleat.

Another Objection was made to *Plunkett*, that he had been guilty of a flat Contradiction in his Evidence. That he first swore, *Jefferys* told him his Name upon his first coming to him, and afterwards that he did not know his Name till he received the Letter from him about the Prisoner's being come to Town. But that Observation was grounded upon a Mistake; for what *Plunkett* said, was, that *Jefferys* did tell him his Surname at first, but that he did not know his Christian Name till he received the Letter, which is very consistent.

But the Counsel for the Prisoner were well aware, that their Observations upon the Witnesses could be of little Effect, if the Paper called the Scheme found Credit; and therefore in the next Place they attacked that as being incredible; they represent it as *ridiculous and foolish* ——— *The Scheme of a Madman, which could never have taken Place.*

Gentlemen, as to this Observation, the Scheme is indeed such an one, as I hope in God could never take Place any where, but in the Heads of those that framed it. But with great Submission, that is no Objection to the Credibility of it, provided it be proved. For the Consideration is not, how it now appears to you or to me, who look upon it in a different Light, and on contrary Principles from theirs; but the proper Consideration is, what the Conspirators themselves, with regard to the Views and Principles they went upon, might think of it. And, Gentlemen, in that Light examine it, go through the several Articles of it, compare them together, and you will find them consistent and coincident; all the Parts answering to one another. Every Quarter of the Town is provided for Dispositions made of certain Numbers of Men; and Care taken to preserve the Communication between them by Watch-Words agreed upon for that Purpose. These Things make it plain, that it was fully considered by those who drew it, and framed not at random, but upon Computation of a Force of which they thought themselves assured. And what, though it should be admitted to be extravagant, and not likely to succeed? If that should be given way to, as a certain Objection against a Plot's finding Credit after it is detected, I am afraid it would be a sure Method to make such Plots succeed, or at least to secure the Authors of them from Punishment. Do but intermix some absurd extravagant Parts in the Plan of the Conspiracy, and then according to this Reasoning it is below Notice, and must be suffered to go on, or if a Stop be put to its Progress,

yet it is incredible, and no body must be believed to be guilty of it.

But, Gentlemen, whatever Difficulties may be raised against particular Parts of the written Scheme, yet upon the Grounds and Suppositions which the Prisoner and his Accomplices proceeded on, their general Design might appear very feasible to themselves. For it is plain they had a Dependence, however ill-founded, upon Discontents raised in the Minds of the People, and on corrupting great Numbers of the Army, which would have diminished the Strength of the Government, and added to their own; and after they had made a Beginning here, it is proved that they expected Assistance from Abroad.

The next Thing to be considered, is the Testimony of the Prisoner's Witnesses: And, Gentlemen, you observe that they have scarce called any Witnesses to contradict the Facts contained in our Evidence, for the People of the House at the *Green Man* say nothing to the Purpose; but all their Evidence is applied to the Character and Credit of the Witnesses produced for the King.

As to that, I must observe to you, that it is not to be expected that Conspiracies and traitorous Machinations of this Kind should be proved by Persons of the best Characters. 'Tis necessary from the Nature of the Thing, that they should be proved by those who have been privy to them, and such Persons cannot possibly be of Characters absolutely unblemished. Therefore, to say that such Witnesses are not to be believed, is in effect to say that no Evidence of a Plot is ever to be believed, which surely is an Argument that proves too much.

The first Witness they called on this Head, was my Lord *North* and *Grey*. I am heartily sorry to see his Lordship here in his present Condition upon this Occasion; the rather, because it obliges me to observe, that here are Circumstances proved, which affect him; I will carry it no farther, but some Circumstances are proved in this Cause which do affect him. But what is his Evidence? His Lordship was called to impeach the Character of *Lynch*; and however he may impeach his Character, I am sure he supports his Credit as to the Facts sworn by him. The Account his Lordship gave, was, that the Prisoner brought *Lynch* to his House at *Epping*, introduced *Lynch* to him, that he was never acquainted with him before; but upon Mr. *Layer's* Introduction, received him civilly; and that *Lynch* came thither a second Time.

Now, these are the very Facts *Lynch* swore to, and consequently so far my Lord supports him. But then, as to his Character, his Lordship is pleased to say, that the first Time *Lynch* was there, he gave him a History of his Life; and in that gave so vile an Account of himself, that when he came a second Time, his Lordship would not give him a Lodging in his House. This, I think, was the Whole of my Lord's Testimony; and I can't help remarking upon it, that his Lordship gave no Account at all of any Business, which either the Prisoner or *Lynch* had with him, nor of any particular Occasion upon which the former introduced the latter to him. That was a Matter within his Lordship's own Knowledge.

There is a another Thing which is little surprizing ; and that is, that Mr. *Lynch* being an absolute Stranger, as is confessed, to this noble Lord, having the Honour to be introduced by a Friend to a Person of his great Quality, should have so little Regard to his Friend, or to the Opinion that Noble Lord was to conceive of him, as at the first Interview to take so odd a Way of being recommended, and give a most vile, infamous Character of himself. This is somewhat out of the ordinary Course ; but you are told, that so it was.

As to the other Witnesses to *Lynch's* Credit, notwithstanding their Number, I apprehend their Evidence, when duly considered, will have little Weight. They were most of them going to enter into particular Facts ; but the Court agreeably to the constant Course of Evidence, over-ruled them in it ; and that you, Gentlemen of the Jury, may be satisfied no Hardship was done by this to the Prisoner, I will mention the Reason of it. The Reason why particular Facts are not to be given in Evidence to impeach the Character of a Witness, is, that if it were permitted, it would be impossible for that Witness, having no Notice of what will be sworn against him, to come prepared to give an Answer to it ; and thus the Characters of Witnesses might be vilified, without having any Opportunity of being vindicated.

As to the Witnesses themselves, some of them say, they know no Ill of *Lynch* ; many of them have known him but a little while ; some of them give an Account of Declarations made since this Prosecution began, and how fairly they were drawn from him don't appear ; and for some others of them, I submit it to the View and Consideration of the Jury, from their Habit, and the Appearance they made, whether they ought not themselves to have brought Witnesses to support their own Credit.

One appears plainly to be mistaken, and that is, *Darcy* ; he was asked how long he had known *Lynch* ? and, I think, he said he knew him in *London* last Winter ; now it appears that *Lynch* came into *England* but in *April* last.

Gentlemen, in the next Place they called Witnesses to *Plunkett's* Credit, and there the same Thing befell them as in the Case of *Lynch* ; for Major *Barmwell* their first Witness on that Head, though he is willing enough to give him an ill Character, yet he confirms several of the Facts which the other swore, and gives exactly the same Account of the Rescuing the Goods, and the Circumstances of *Plunkett's* becoming acquainted with *Layer*, which he gave.

Mrs. *Child* likewise supports *Plunkett* as to the Circumstance of his carrying her Husband to the Prisoner's House, and the Prisoner's refusing to see him.

As to Mrs. *Mason*, they have taken a great deal of Pains to prove her a very ill Woman. What she is, or what those Persons are, whom they have called to her Credit, we can't tell ; but so much appears even from their own Witnesses, that she is one with whom Mr. *Layer* thought fit to converse, and therefore 'tis not improbable that she might be entrusted by him ; and it is from such only as he thought fit to converse with and entrust, that we can have any Discovery. The Prisoner has, indeed brought two

or three Women, who talk very fast, and seem very angry with her ; and one of them tells the Jury in a Scolding Way, that *she don't care what she says or does* ; another, that *she would take away any Man's Life for the Value of a Farthing* ; and such Kind of vehement Expressions. It is sufficient to say this, that People who talk thus loosely and passionately upon their Oaths, rather bring a Suspicion upon their own Credit, than upon the Credit of those against whom they swear.

But Gentlemen, if they had brought a much stronger Evidence against the Characters of the King's Witnesses than they have done, what would it have availed them ? Does this Case depend upon the Characters of these three Witnesses ? It cannot be pretended that it does. Let their Characters be what they will, their Credit in this Cause is undeniably supported ; supported as to several material Facts, by the Evidence for the Prisoner, but most strongly by the Papers ; against which, I apprehend nothing has been said to take off their Force. If those Papers are not genuine, how should the Notes signed with the Pretender's Hand, which the Prisoner received from Sir *William Ellis*, come to be amongst them ? How should this Scheme, proved to be of Mr. *Layer's* own Hand-Writing, have been there ? The Prisoner, I must own, did call one Witness, *Bennet*, who was his Clerk, and is now his Solicitor, to swear he believed the Scheme not to be the Prisoner's Hand. But it happened with *Bennet*, as it did with several others of their Witnesses, that though he is willing to carry his Belief as far as he can, that this is not his Master's Hand ; yet he is forced to acknowledge another Matter, which still verifies the Papers contained in these Pacquets to be his Master's Papers : For being asked of whose Hand-Writing one of them was, he swears it was written by himself for the Prisoner, and by his Direction. This comes out of the Mouth of his own Witness, and confirms Mrs. *Mason's* Testimony, that these Papers came from Mr. *Layer*.

But over and above all this, you have the Prisoner's own Confession, proved by two Gentlemen whose Credit is beyond all Dispute ; and certainly the Prisoner must be allowed to be a good Witness against himself.

However, we shall not leave the Credit of our Witnesses singly upon these Observations, though I think we might safely do it ; but shall endeavour to take off any ill Impressions their Evidence may have left upon you, and vindicate their Characters ; and that, not by such Witnesses as some of those produced for the Prisoner were, who, I observed before, might stand in need of Witnesses to support their own Credit, but by Persons of undoubted Reputation, who will satisfy you that their general Character is such, that they very well deserve to be believed by you.

I have now done with repeating and observing upon the Evidence on both Sides ; and I beg leave to insist upon it, that we have fully made good what was opened to you in the Beginning of this Cause, that in general there has been a horrid Conspiracy carried on, in order to over-throw our happy Constitution, and to deprive us of all the Blessings we enjoy, and promise ourselves, under Establishment, in his Majesty and his Protestant Royal Family. The Part the Prisoner hath acted in this fully appears to you, and it appears to be a very considerable one.

It has been said, indeed, that he is but an inconsiderable Man, of no Rank or Fortune fit to sustain such an Undertaking. That Observation may be true; but since it's plain he did undertake it, that, joined with the other Circumstances proved in this Cause, serves only to demonstrate, that he was set on work, and supported, by Persons of greater Abilities for such an Enterprize. And, Gentlemen, this is the most affecting Consideration of all.—But I would not, even in this Cause of your King and of your Country, say any thing to excite your Passions; I choose rather to appeal to your Judgments; and to those I submit the Strength and Consequence of the Evidence you have heard.

My Lord, I beg Pardon for having taken up so much of your Time; I have but one Thing to add, and that is, humbly to beg of your Lordship, for the Sake of the King, for the Sake of Myself, and for the Sake of the Prisoner at the Bar, that if I, through Mistake or Inadvertency, have omitted or misrepeated any thing, or laid a greater Weight upon any Part of the Evidence, than it will properly bear, your Lordship will be pleased to take Notice of it, and set it right, that this whole Case may come before the Jury in its true and just Light.

Mr. Serj. *Cheshire*. It is so late, that it will be inexcusable in me to trouble your Lordship with any thing by Way of Reply, especially since Mr. Solicitor General hath done it so fully. We shall only beg leave to call a few Witnesses to the Credit of the King's Witnesses.

Mr. *Ketelbey*. I shall not take up much of your Lordship's Time, especially since your Lordship and the Court have been entertained so well and so long by Mr. Solicitor General, at least two Hours, as I have observed by my Watch; but 'twas impossible for me to think him tedious, though so late at Night, and especially since his Conclusion is exactly agreeable to the Conclusion of a late celebrated Solicitor General* on a like Occasion.

Mr. *Att. Gen.* We must beg leave to call some Witnesses we have, who will support the Credit of Mr. *Lynch* and *Matthew Plunkett*.

Mr. *Vernon* sworn.

Mr. Serj. *Cheshire*. Do you know Mr. *Lynch*?

Vernon. Yes.

Mr. Serj. *Cheshire*. What Account do you give of him?

Vernon. I keep a Tavern at the *Swan* and *Rummer* in *Finch-lane*, this Gentleman hath frequented my House these four Months every Day, till he was in Custody; he hath been a very good Customer, and paid me honestly.

Mr. Serj. *Cheshire*. Do you know the Prisoner at the Bar? Have you seen Mr. *Lynch* and him in Company together at your House?

Vernon. Yes; I have seen them twice in Company together at my House.

Mr. *Ketelbey*. How long hath he been your Customer?

Vernon. From the Beginning, about four Months.

Mr. *Ketelbey*. About four Months; Did he spend his Money plentifully and freely?

Vernon. Yes; some Part of it I have had since he hath been in Custody.

Mr. *Ketelbey*. How much was he in your Debt before he was in Custody?

Vernon. Ten or eleven Shillings.

Mr. *Ketelbey*. How long had he been in Custody before he paid you?

Vernon. Not long.

Mr. *Hungerford*. He had the First-Fruits of his being in Custody; he had some Money, and so he paid you your Reckoning.

Mr. Serj. *Pengelly*. We take it, that Mr. *Vernon* proves, that *Lay* and *Lynch* were conversant together.

Capt. *Malthus* sworn.

Mr. Serj. *Cheshire*. Do you know *Stephen Lynch*?

Malthus. Yes.

Mr. Serj. *Cheshire*. How long have you known him?

Malthus. About Nine Years. I knew him first, when he was a Merchant at the *Canaries*. I traded with him several Times, several Times I was consigned to him, and I have seen him at Home.

Mr. Serj. *Cheshire*. What Account can you give of his Behaviour?

Malthus. He always behav'd himself very well, I think.

Mr. *Att. Gen.* Do you think he would swear falsely to take away a Man's Life?

Malthus. No, I don't think he would.

Mr. *Ketelbey*. How long is it since you have been acquainted with him?

Malthus. Nine or ten Years.

Mr. *Ketelbey*. How long is it since your last Acquaintance?

Malthus. About four Months.

Mr. *Ketelbey*. What Distance of Time did there use to be between your seeing of him?

Malthus. Two or three Years, every Time I came home.

Mr. *Ketelbey*. Doth he owe you any Money?

Malthus. No.

Mr. *Ketelbey*. Would you trust him with Money?

Malthus. He never askt me.

Mr. *Ketelbey*. Your Witness we may ask as to Particulars, Did you know his Aunt there, at that Time?

Malthus. No.

Mr. *Ketelbey*. Did you know any thing of his Behaviour?

Malthus. I never knew an ill Character of him in my Life.

Capt. *Arnold* sworn.

Mr. Serj. *Cheshire*. Do you know *Stephen Lynch*?

Arnold. Yes.

Mr. Serj. *Cheshire*. How long have you known him?

Arnold. 'Tis fourteen Years ago.

Mr. Serj. *Cheshire*. You have been acquainted with him since. What Account do you give of his Character? Do you think he would forswear himself?

Arnold. No.

Mr. Serj. *Cheshire*. Do you take him to be a Man of Credit?

Arnold. I never had any Dealings with him.

* Mr. *Finch*, at Col. *Sidney's* Trial.

Mr. *Serj. Cheshire*. Would you have trusted him with five hundred Pounds ?

Mr. *Ketelbey*. Would you trust him with five Shillings ?

Arnold. Five Shillings is a small Sum.

Col. *Manning* sworn.

Mr. *Serj. Cheshire*. Do you know *Matthew Plunkett* ?

Col. *Manning*. Yes.

Mr. *Serj. Cheshire*. How long have you known him ?

Col. *Manning*. Upwards of ten Years.

Mr. *Serj. Cheshire*. What Credit hath he ? Do you take him to be an honest Man ?

Col. *Manning*. He behaved himself well, and like an honest Man.

Mr. *Serj. Cheshire*. Do you think he would forswear himself ?

Col. *Manning*. No, I believe not.

Prisoner. Have you and I had any Discourse about this very *Plunkett* ? And did not you tell me he was a Scoundrel ?

Col. *Manning*. No, I did not.

Mr. *Hungerford*. Did not you give him a bad Character to Mr. *Layer* ?

Col. *Manning*. No, I did not.

Prisoner. Do you mean thus, that he behaved himself very well, as a Soldier ? What is that as to his Character in general ?

Col. *Manning*. I know no ill Character of him while he was with me.

Mr. *Ketelbey*. Did you never hear any thing in relation to Sir *Daniel Carroll*, that he made a wrong Demand upon him ?

L. C. Just. If he made an unjust Demand, will he therefore be perjurd ?

Mr. *Ketelbey*. What have you heard about that Affair between Mr. *Plunkett* and Sir *Daniel Carroll* ?

Col. *Manning*. I have heard Mr. *Layer* say—

Mr. *Ketelbey*. Did you never hear any Body else speak of him ? I ask you about making this Demand upon Sir *Daniel Carroll*, what you know of it ?

L. C. Just. I never heard any thing like it.

Mr. *Ketelbey*. My Lord, we apprehend we may cross examine, as to Particulars, a Person whom the other Side produces as a Witness to Character.

Prisoner. Did not you afterwards, in Discourse with Mr. *White*, mention it again with relation to this of Sir *Daniel Carroll* ?

Col. *Manning*. I deny it.

Prisoner. Did you desire me not to examine you ?

Col. *Manning*. No, I told you I had nothing to say in relation to *Plunkett's* Character.

Mr. *Hungerford*. Let him alone, I would not ask him any more Questions.

Col. *Manning*. Why, let him alone ?

Mr. *Hungerford*. I would not have him examine you any further.

Col. *Manning*. You are very civil.

Mr. *Hungerford*. So I am, to give you no further Trouble.

Major *Hamel* sworn.

Mr. *Serj. Cheshire*. Do you know *Matthew Plunkett* ?

Maj. *Hamel*. I have known him these seventeen Years.

Mr. *Serj. Cheshire*. What Character hath he ?

Maj. *Hamel*. He was then a Drummer in the Regiment, and always did his Duty well ; I never heard him complained of ; he always had a good Character ; he went from *Ireland* to *Spain*.

Mr. *Hungerford*. You speak to his military Conduct.

Maj. *Hamel*. I know of no other.

Mr. *Serj. Cheshire*. You say he always had a good Character.

Maj. *Hamel*. Yes, he always had.

Captain *Crosby* sworn.

Mr. *Serj. Cheshire*. Do you know *Serjeant Plunkett* ?

Cap. *Crosby*. Yes.

Mr. *Serj. Cheshire*. How long have you known him ?

Cap. *Crosby*. Three Years.

Mr. *Serj. Cheshire*. What Character had he for that Time ?

Cap. *Crosby*. Whilst I knew him, he bore a good Character.

Mr. *Serj. Cheshire*. Did you hear any Ill of him ?

Cap. *Crosby*. Not during the Time that I knew him.

Mr. *Ketelbey*. Where was the Regiment at that Time ?

Cap. *Crosby*. It was in Town, about half a Year ago.

Mr. *Ketelbey*. Were you not of the same Regiment ?

Cap. *Crosby*. We were.

Mr. *Serj. Cheshire*. We won't give your Lordship any further Trouble.

Mr. *Ketelbey*. And we apprehend we have no Occasion to give your Lordship any further Trouble, by way of Reply.

Mr. *Att. Gen*. My Lord, as to my Lord *North* and *Grey*, we can prove he attempted to get away, and was endeavouring to go to *France*, and was taken in the *Isle of Wight* ; and that when the *Prisoner* was seized, he sent a Messenger to give my Lord *North* Notice of it. This last was confessed on his Examination, and we can prove it.

Mr. *Ketelbey*. I must submit it to your Lordship, whether his Examination can be admitted as Testimony, so as to affect a Third Person.

L. C. Just. It is not worth disputing.

Gentlemen of the Jury, This is an Indictment against Mr. *Layer*, the *Prisoner* at the Bar, for High-Treason. The Treason with which he stands charged, is the compassing and imagining the Death of the King : The Overt-Acts that are laid in this Indictment, as Evidence of this Treason, are several ; first of all, that he did meet and consult, advise and agree, to levy War against the King ; the second is, that he did publish a seditious and traitorous Writing, exciting and encouraging the People to an Insurrection, and offering Rewards for that Purpose ; the third is, that he did engage in a Design to set the Pretender on the Throne ; the fourth, that he lifted Soldiers against the King ; and the last, that he did consult and agree, to take, seize imprison the King : These are the several Overt-Acts that are laid in the Indictment of the Treason, that is, the compassing and imagining the Death of the King. Gentlemen, I must tell you, before I go on to lay before you, and observe on the

the Evidence, what the Law is ; and I must tell you, that the Law is undoubtedly so, if a Man is charged with Treason, in compassing and imagining the Death of the King, there must be an Overt-Act of that Treason proved in the County where he is indicted ; and in the next Place, if there be such Overt-Act in that County, he may be charged with any Overt-Act of the same Species of Treason in any other County whatsoever. This hath been frequently resolved and agreed, and was hardly ever made a Question. I observed in the Hands of one of the Counsel, and he took Notice of it, that he had the Trial of Sir *William Perkins* ; he could not but observe there laid down by my Lord Chief Justice *Holt*, if Evidence be given of Treason in one County where the Indictment is laid, he may be charged with any Overt-Acts of the same Species of Treason in any other County whatsoever. The Law being so, I will, in the best manner I can, set out the Matters that have been given in Evidence, on this long Evidence, in the clearest Light that I can state the Examination, the Objections that have been made, and the Observations that are proper to be made upon it.

To maintain this Indictment, the King's Counsel have produced several Witnesses. The first Witness is Mr. *Lynch* ; the second Witness is Mr. *Plunkett* ; all the other Evidence hath been offered to confirm the Evidence given by these two Witnesses. As to Mr. *Lynch*, he tells you how he came to the Acquaintance of Mr. *Layer* ; that he was an intimate Acquaintance of Dr. *Murphey*, and Dr. *Murphey* recommended him to Mr. *Layer* ; being so recommended, he had several Meetings with Mr. *Layer* in *Middlesex*, at the *Griffin-Tavern*, and in *Holbourn*, at the *Castle-Tavern*, and I think, at *Southampton-Buildings*.

He tells you, at these several Meetings it was declared, that there was to be a Rising, and it was thought necessary, to make this Rising the more effectual, that my Lord *Cadogan*, the Commander in chief of the King's Forces should be seized.

Mr. *Layer* said to Mr. *Lynch*, he was looked upon as a Person proper for the Undertaking, and he declared that he was willing, and said, if that was the Opinion of those concerned in the Affair, he would undertake to do it : After this, they went to my Lord *Cadogan's* House, to view the House, and the several Avenues about the House ; and after they had taken this View, *Lynch* declares his Opinion, that it was feasible, and he would undertake to do it.

After he had given you an Account of what happened at the several Meetings in *Middlesex*, then he comes to what was done in the County of *Essex* : He tells you Mr. *Layer* came to him, and asked him whether he would ride out with him to take the Air ; he agreed to it ; they both went out of Town together ; he said, that as they were going along, Mr. *Layer* told him his Intention was to go to my Lord *North* and *Grey's* ; he says, they went forward with that Intention, but before they came to the *Green-Man* at *Layton-Stone*, they thought it would be too late before they got to my Lord *North* and *Grey's* for Dinner, therefore they thought proper to halt at the *Green-Man*, and take a Refreshment there. He tells you, they did stop there at the *Green-Man*, and at that Time Mr. *Layer* did repeat

the Discourse of the Rising that was intended to be ; he said, my Lord *Townshend*, and my Lord *Carteret* and Mr. *Walpole* were to be seized, a Party were to be sent to seize the King ; and that a Scheme was laid for seizing my Lord *Cadogan*, and that it was proposed as a proper Time to put this in Execution at the Breaking up of the Camp. He said, when he was mentioned, at first he made some little doubt, whether that was a proper Opportunity ; with that Mr. *Layer* told him, pray consider with your self, if you do not think this practicable, will you propose something else, and we will alter our Scheme ?

He saith, at this same Time Mr. *Layer* pulled out of his Pocket a Declaration, purporting an Exhortation and Excitation for People to rise, and take up Arms against the King, and Rewards offered for that Purpose.

Afterwards they went to my Lord *North* and *Grey's*, and that Mr. *Layer* introduced him to his Lordship, as his Friend ; that they were civilly and kindly received, supped there, lay there that Night, and dined there the Day after. This is the Evidence given with relation to what was done in the County of *Essex* ; and if this Relation be true, no doubt there is a good Overt-Act proved upon him in the County of *Essex*, and consequently the Indictment is well laid in *Essex*, and then the Evidence in the County of *Middlesex* will be a proper Evidence against the Prisoner. But as to this Evidence of Mr. *Lynch*, they say for the Prisoner, Mr. *Lynch* is not to be believed, that he is a vile profligate Wretch, and no Credit is to be given to him, though upon his Oath ; and it must be admitted the Evidence that hath been given for that Purpose, by a great Number of Witnesses, will be proper for your Consideration : But you will consider, in a Case of this Nature, if you are to expect Witnesses without Exception, it is impossible to have any Evidence to convict a Man of High-Treason ; no body will engage in such an Affair, that is of a nice Credit and Reputation, and therefore it is not to be expected ; for if it be, it is and will be impossible to convict any Person of Treason.

But then you will consider, although Credit is not entirely to be given to a Man of ill Repute, yet if he is supported in his Evidence that he gives by other Evidences, you will consider whether that will not remove all Sort of Objections as to his Character.

As to the Overt-Act of publishing the Declaration, that is supported beyond Contradiction ; for it appears in his Examination before the Lords of the Council, when he is asked, whether he ever saw the Declaration ? He says, he never saw any but one, and that was drawn by himself.

Prisoner. My Lord, what Mr. *Stanyan* says, I believe, he did not say that I confessed that it was drawn by me.

L. C. Just. You must not interrupt me while I am directing the Jury. You have behaved your self intemperately hitherto, but you must not interrupt me, I can't bear it. The Substance of what Mr. *Stanyan* said is, that when it was demanded of you, whether you had seen the Declaration, you said, you had seen none but a rough Draught that was drawn by your self.

Prisoner. I beg your Lordship's Pardon, Mr. *Stanyan* is here in Court.

L. C. Just. Is he in Court? Let him be asked the Question again.

Mr. Stanyan. My Lord, I believe I did say, that *Mr. Layer* did confess, that it was the Heads of a Declaration which he had drawn himself.

L. C. Just. Now, Sir, after this, I expect not to be interrupted by you any more.

This being the Matter, he doth at the same Time confess, that That was the Declaration which he had shewn to *Mr. Lynch* at the *Green Man*, on the Way as they were going to my Lord *North* and *Grey's*. So that Part of this Evidence is supported by *Mr. Layer's* own Confession. As to the other Part, that he did consult and agree to levy War, consider, that he confessed before the Council, that he did go to the *Green Man*, and there shewed the Declaration to *Mr. Lynch*; whether that doth not give Credit to what the other saith, That he went to the *Green Man*, and that there they talked of the Insurrection, and the levying of War; and then went to my Lord *North* and *Grey's*, with this, that he recommended *Mr. Lynch* to my Lord *North* and *Grey*, as a fit Person to seize my Lord *Cadogan*, and to be concerned in the Insurrection.

Gentlemen, This is not the only Matter by which he is supported in this Evidence, that the Prisoner designed an Insurrection, and to levy War against the King; but he confessed before the Council, that he went to *Rome*, had two several Conferences with the *Pretender*, and was very kindly received by him: He said he asked the *Pretender*, if he would give him any Credentials that might recommend him to his Friends in *England*; that was objected to, and not complied with; but then he asked a particular Favour, that the *Pretender's* Spouse would stand Godmother to his Child; that is granted; and the *Pretender* himself is willing to stand Godfather.

Afterwards, when he returns into *England*, he considered of proper Proxies to represent the *Pretender* and his Spouse; and asking my Lord *Ortery*, he refused him; then he asked my Lord *North* and *Grey*, who consented: My Lord *North* and *Grey* stood as Proxy for the *Pretender*, and the Dutchess of *Ormond* as Proxy for the *Pretender's* Wife.

He tells you, at this Time when he was at *Rome*, he had told Sir *William Ellis*, it would be of great Service if he could have a Fund of Credit to raise Money with. How must that be? Why, saith he, let me have blank Receipts signed by the *Pretender* himself; and accordingly he had.

This, he tells you, is what happened at that Time. Now the Evidence given by *Mr. Lynch*, being of an Insurrection in Favour, and for the Service of the *Pretender*, when *Mr. Layer* owns he had two Conferences with the *Pretender*, and was receiv'd so kindly by him, and had such particular Marks of his Favour; consider whether this doth not support the Evidence which is given by *Mr. Lynch*.

The next Evidence is *Mr. Plunkett*; he tells you how he came recommended to *Mr. Layer* by one Major *Barnwell*, on this Occasion. He tells you, *Mr. Layer's* Goods were in Execution, and he was employed by Major *Barnwell* to rescue them; accordingly he went and fetched a Couple of Soldiers, got into the House, drove out the Officers, and rescued the Goods. By

this it appears, that *Mr. Plunkett* was a bold daring Man, fit to be employed on such an Occasion, and they assign that as a Reason, which answers the Objection made. Saith *Mr. Layer*, how came it to pass, that when I had never seen this Man, that I of a sudden should have such a Confidence as to trust him in an Affair of this Nature? In answer to that, it is said, he had done him a singular Service before, he had done a bold Act, he had got some Grenadiers and rescued his Goods when they were taken in Execution; and likewise *James Plunkett* had given a Character of him, that he looked upon him as an honest Man, and therefore recommended him to *Mr. Layer*:

Then he tells you, that *Mr. Layer* said they wanted a Man to serve on this Occasion; that *James Plunkett* talked of Officers, but we don't want Officers so much as we do brave Serjeants, old Soldiers, such as will be ready and qualified to support the Mob, and to discipline and head them; these are the Men we want, can you get such as these? Such as you are, that will be able to discipline the Mob and put them in Order. I told him (says the Witness *Plunkett*) I would do my Endeavours, and accordingly I advised him; that I had procured twenty five ready for the Service; he desired to have Lists of their Names, and the Places of their Abode, that so he might know where to send to them upon Occasion.

Now the Objection to this Evidence being only, how comes it to pass that a Man should be trusted with such a Secret, and this on the first Sight or Acquaintance? Why, saith he, I had been employed before, and had shewn myself faithful on another Occasion, and did serve him in rescuing his Goods, when they were seized upon in Execution, and *James Plunkett* recommended me. This is the Evidence of *Matthew Plunkett*, and if *Plunkett* swears true, if he was desired by *Mr. Layer* to procure and list Men for the Service of the *Pretender*, and he says and declares he did do it, then, if this Evidence is to be credited, the Prisoner at the Bar is guilty of the Treason wherewith he stands charged: But still they rely upon it, and hope you will not give Credit to the Witnesses. You hear what hath been answered by the Counsel for the King, and I observe to you now, that though here was such a Charge against the Witnesses, the King's Counsel have produced several Persons that had good Aspects, and seemed to be Men of Reputation, who say, they know them, and believe them to be Men of Reputation.

Then, Gentlemen, the next Thing insisted on is, that the Evidence given by *Lynch* and *Plunkett* is supported by the Papers that were seized in *Mrs. Mason's* Custody. Consider how that Matter stands; *Mrs. Mason* tells you, that *Mr. Layer* brought two Pacquets of Papers sealed up to her, and told her, they were Love-Letters; she says, she was desired to keep them by the Prisoner; and accordingly she did keep them for him; and you have it afterwards from the Witnesses, who have been produced, and against whose Credit there is no Exception, that having a Warrant against *Mrs. Cook* and *Mrs. Mason*, they came to *Mrs. Cook's* House to search for Papers, and in *Mrs. Mason's* Room there was a Trunk which was locked; they ordered it to be opened, which *Mrs. Mason* did, and they took out of the Trunk two Bundles of Papers sealed up

up as you have heard ; they tell you the Bundles of Papers were opened, that they set their Marks upon each Paper ; and one of them did not immediately set his Mark, but afterwards 'tis proved that he kept them from the Time they were delivered to him till the other came back again, and then upon his Return he delivered them back again to him ; then he set his Mark upon them, both set their Marks upon them, and therefore they can swear that they are the same Papers that were taken out of Mrs. *Mason's* Trunk : Then, if Mrs. *Mason* swears true, they are the Papers of Mr. *Layer*, which were delivered to her by him ; and so tracing it from Hand to Hand, these are the same Papers that were found in Mrs. *Mason's* Custody. Mrs. *Mason* swears the same, and she also set her Mark upon them.

But, saith Mr. *Layer*, there is no Credit to be given to Mrs. *Mason*, she is an ill Woman, an infamous Woman, therefore her Evidence is not to be regarded.

Gentlemen, consider how this Matter stands ; in one of these Pacquets of Papers were found the *Pretender's* Receipts, which Mr. *Layer* before the Council said, he had desired Sir *William Ellis* to procure for him from the *Pretender*, and which he had accordingly procured, and that he had received them ; and these Receipts being in the Pacquet found upon Mrs. *Mason*, how came they there, if they had not been delivered to her by Mr. *Layer* ? Therefore these Receipts being in this Pacquet, plainly demonstrate that these Papers are the Papers of Mr. *Layer*, and were by him delivered to Mrs. *Mason* : And if they were his Papers, these Papers, and what is contained in them, will be a strong Evidence against Mr. *Layer*. Notwithstanding all this, says Mr. *Layer*, these were never my Papers ; it is Forgery or Perjury. Whether or no you will believe these Papers to be Mr. *Layer's*, when it appears those Receipts were found amongst them ; besides that, here is a Paper amongst them, that the Witness that is produced by Mr. *Layer*, one that was his Clerk, swears that it is his own Hand-Writing ; how came that there, if this be not the Bundle and Pacquet of Mr. *Layer* ? And on this they turn the Strength of their Case.

If this be so, consider, first here is a Scheme ; whose Hand-Writing it is, here hath been Variety of Evidence as to that. It is insisted on by the King's Counsel, that the Scheme is of Mr. *Layer's* Hand-Writing ; and if so, this is a stronger Evidence against Mr. *Layer*, than if the Papers had been only found in his Custody. How stands that ? Here is one that was Mr. *Layer's* Master formerly, who saith, he verily believes this to be the Hand-Writing of Mr. *Layer* ; if that be so, then all is well, and it ought to be read, not only as a Paper that was in his Possession, but as a Paper that was writ by him : But they dispute, and say, 'tis not his Hand-writing ; they ask this Witness how long it is since the Prisoner lived with him as his Clerk ? about fourteen or fifteen Years ago, says the Witness : A Man's Hand, say they, may be changed in that Time : But, saith the Witness, I verily believe it to be his Hand-Writing, for I have within these five Years received several Letters from him about Business, there being a Correspondence between him and me, I being his Agent in Town, and these Letters are of the same Character he used fourteen or fifteen

Years ago, therefore I believe it to be his Hand-Writing.

But, say the Counsel for the King, we won't only prove this by these Gentlemen, but the Prisoner himself hath confessed it. Well, how stands that : He confessed, when he was asked at the Council-Table, what he knew of Arms that were provided ; he said, he knew of none. To which when it was said, how came you to mention it in this Scheme of your own Hand-Writing, there you take Notice of Arms that were provided ? Doth Mr. *Layer* disown it ? No, saith he, 'tis a Mistake, I should have writ, which *should be* provided.

Gentlemen, take this together, consider with your selves, what the Import of it is. He saith, when he is asked about these Arms, I should have writ, which *should be* provided. Whether this doth not amount to a Confession of this Matter, must be left to your Consideration, as a confirming Evidence of what the other Witnesses swear. But, saith Mr. *Layer*, let me call a Witness to prove that it is not my Hand-Writing : He calls a Gentleman, and he says it is not his Hand-Writing ; he calls his Clerk, and his Clerk saith it is not his Master's Hand. Here are two Witnesses : Then there is an additional Witness on the other Side, and that is, his own Confession. Whether it amounts to a Confession must be left to your Consideration ; but if this Scheme be not of his own Hand-Writing, it was a Scheme which he had in his Custody, and that alone had been a considerable Evidence against him. How came he by this Scheme ? What had he to do with it ?

The Scheme hath been read to you, which tells you the several Methods to be proceeded in. In the first Place, the *Tower* is to be seized, an Officer is to mount the Guard that would be in their Interest, and at nine a-Clock at Night they are to seize the *Tower* : Then they are to go to the *Bank*, and set a Guard there, after they have taken out Money from thence : After this he tells you of several other Guards that are to be set in other Places, and then a Party is to be sent to seize the King ; then he tells you, another Party is to be sent over the Water to seize his Royal Highness the Prince ; he calls him by a Cant Name, but 'tis plain he is meant.

If this be all his own Hand-Writing, it is a strong Evidence that he was in this Conspiracy ; but if he had only a Scheme of this Nature in his Custody, that will be an Evidence against him, though he did not write it.

Now whether every Body is not satisfied that these Bundles were his, when in these Bundles these Receipts signed by the *Pretender* himself, and the Paper that was of his Clerk's own Hand-Writing, were found ; it goes a great Way to confirm the Evidence of Mrs. *Mason*, who swears the Bundles to be his Papers.

These are Matters of Evidence, and must be left to your Consideration.

Then they go on and examine the treasonable Papers, the Notes, the Lists, &c.

To raise an Insurrection Money would be wanting ; saith Mr. *Layer*, I told Sir *William Ellis* this. Upon that there are Receipts signed by the *Pretender*, by which the Prisoner said they might take up Money on that Occasion. Sir *William Ellis* agrees with me, saith Mr. *Layer*, and accordingly sends me Receipts, and I had them

them, and they were found in this Bundle of Papers; and how came they there, if they were not Mr. *Layer's* Papers?

Consider the other Papers; the Design being for an Insurrection, they are to engage the Guards in their Service; you see that several Papers are found in these Bundles that contain an Account of the Number of Men that were in such a Troop of Guards, the Number in such a Troop of Grenadiers, and tells you what the Numbers were; what was the meaning of all this? How came this Gentleman to be so solicitous in examining into the Number of Guards and Officers, but only to get a true State of this Matter, that he might know who were the Persons that were most likely to be corrupted, and what a Number of Enemies he might meet with on this Occasion.

These are very strong Circumstances against Mr. *Layer*, unless Mr. *Layer* can give any Account why he kept these Papers so carefully.

To go a little back, as to the Business of Mr. *Lynch*; it appears he did not know Mr. *Lynch* before this Affair was set on Foot; he rode out with him, goes to the *Green Man* with him, there they talked over this Affair, there he publishes that traitorous Declaration, and afterwards presented *Lynch* to my Lord *North* and *Grey*. How came they so intimately acquainted unless on this Occasion?

Then, Gentlemen, they go on and tell you, when this Gentleman was committed into the Custody of a Messenger he made his Escape, and this we look upon as an Evidence of Guilt, not a conclusive Evidence; a Man may escape tho' he is innocent, yet 'tis an Evidence that is material to be left to the Jury, and is proper for their Consideration; he is pursued and retaken; when he is retaken he is under great Consternation; he begs for the Lord's Sake they would let him go, and said it was an Arrest; he took out of his Pocket a great Number of Guineas, and said, they should have what Number they pleased, if they would let him go; this is a material Circumstance, and doth shew that this Gentleman was more than ordinary concerned in this Affair.

You will lay these Things together, and consider how far they satisfy you, that this Gentleman is guilty of the Treason.

Then they give you an Account how he did confess before the Lords of the Council every Thing that hath been sworn by the Witnesses: That he went to the *Green Man* in your County, and there consulted and agreed to carry on this Affair; that he did take out and read the Declaration; this is a strong Evidence, especially if compared with what he confessed, that he had Two Conferences with the *Pretender* at *Rome*; was kindly received by him, and had particular Marks of his Favour: He is desired to stand Godfather, and his Wife to stand Godmother to his Child; and accordingly they stood; he desires my Lord *North* and *Grey* to stand as Proxy for the *Pretender*, and the Dutchess of *Ormond* to be Proxy for the *Pretender's* Spouse; and they were Proxies at the Christening of his Child. These are the Circumstances that have been laid before you on Behalf of the King against the Prisoner at the Bar. But 'tis said on the Behalf of the Prisoner, that he stands at the Bar upon

his Life and Death, which will depend upon your Verdict.

I think you ought to consider of that, and that I hope will induce you to consider and weigh well the Evidence, and not to find the Prisoner Guilty, unless you are satisfied he is so.

It is true, here is the Life of a Man in the Case, but then you must consider likewise the Misery and Desolation, the Blood and Confusion, that must have happened if this had taken Effect, and put one against the other; and I believe that Consideration, which is on the Behalf of the King, will be much the strongest.

These Things are proper to be considered, in Order to prepare you to be careful in examining and weighing the Evidence well; but in giving your Verdict I hope you will lay them all aside; you will consider the Weight of the Evidence on either Side, and the Credit of the two Witnesses, and how far they are supported by a Writing under his own Hand, a Confession at the Council-Table; consider how far that will support their Evidence, though not Men of the clearest Reputation.

A Cypher hath been taken Notice of, by which were explained several Names that such and such Persons and Things were to be called by; there was the Name of *Atkins*, which was to signify the *Pretender*; there was another Name for the *Pretender*, and that was *St. John*; and conformable to these Names they have read several Letters, by which it appears that a treasonable Correspondence was carried on by Mr. *Layer*. This is the Circumstance of the Evidence that hath been laid before you. Consider this Evidence, and the Objections that have been made to it, and how far those Objections have been answered.

Discharge the Part of Honest Men, consider and weigh well the Evidence.

Upon the whole Matter, if you do believe that there was an Overt-Act of Treason in the County of *Essex*, and that it was proved by Mr. *Lynch*, and confirmed by the Confession of Mr. *Layer*; and if there be any Overt-Act in another County, as his lifting or employing any to lift or engage Men in the Service of the *Pretender*, then you will find the Prisoner guilty.

If you are not satisfied these Things are true, then you'll acquit him.

The Jury withdrew for about half an Hour, to consider of their Verdict, and when they returned into Court, were called over by the Clerk of the Crown and answered to their Names.

Cl. of the Cr. Gentlemen of the Jury, are you agreed on your Verdict?

Jury. Yes.

Cl. of the Cr. Who shall say for you?

Jury. Our Foreman.

Cl. of the Cr. *Christopher Layer*, hold up your Hand. (Which he did.)

You of the Jury look upon the Prisoner.

How say you? Is *Christopher Layer* guilty of the High-Treason whereof he stands indicted, or not guilty;

Jury. Guilty.

Cl. of the Cr. What Goods and Chattels, Lands and Tenements had he at the Time of the said High-Treason committed, or at any Time since, to your Knowledge?

Jury. None.

Cl. of the Cr.

Cl. of the Cr. Hearken to your Verdict as the Court has recorded it. You say that *Christopher Layer* is guilty of the High-Treason whereof he stands indicted; and you say he had no Goods nor Chattels, Lands nor Tenements at the Time of the said High-Treason committed, or at any Time since, to your Knowledge, and so you say all.

Mr. Att. Gen. We pray a Rule may be made to bring up the Prisoner to receive Sentence.

Mr. Just. Eyre. He must have four Days to move in Arrest of Judgment. Let there be a Rule to bring him again upon *Thursday* next.

Then the Prisoner was remanded back to the Tower.

Die Martis 27 die Novembris, 1722.

Christopher Layer, Esq; was brought to the Bar of the Court of King's Bench, in order to receive Sentence.

Mr. Att. Gen. MY Lord, the Prisoner at the Bar stands convicted of High-Treason; I pray your Lordship's Judgment against him for the King.

Cl. of the Cr. *Christopher Layer*, hold up thy Hand, (which he did) Thou hast been indicted for High Treason, for compassing and imagining the Death of the King, and thereupon been arraigned; and thereunto hast pleaded not Guilty, and for thy Trial put thy self upon God and thy Country, which Country hath found thee Guilty; what can't thou now say for thy self why the Court should not give Judgment of Death against thee according to Law?

Mr. Hungerford. Is it your Lordship's Pleasure to give any Directions touching the Matter of the Prisoner's being in Irons? I hope your Lordship will order them to be taken off, at least during his Attendance here.

L. C. Just. I don't know, there is none of the Cases that have been, which go further than during the Time of his Trial; his Trial is over, if he hath any thing to offer to the Court, and thinks he may not be able to do it so well while he is under these Irons, I would recommend it to Mr. Attorney, not to make a Precedent of it, that his Irons may be taken off.

Prisoner. Yes my Lord, I have a great deal to say, which I shall offer in Arrest of Judgment.

Mr. Hungerford. He hath complain'd since he hath been here, that he is in great Pain, in the Position he stands with his Irons.

L. C. Just. Come, Brother *Pengelly*, have you any thing to object against his Irons being taken off, or do you consent to it?

Mr. Serj. Pengelly. My Lord, we don't oppose it.

Then the Irons were taken off.

Mr. Serj. Pengelly. My Lord, the Prisoner at the Bar, *Mr. Layer*, after a long and a fair Trial, hath been found guilty of High-Treason; and on Behalf of the King, we pray the Judgment of the Court against the Prisoner.

Mr. Hungerford. By your Lordship's Indulgence, I am Counsel for the Prisoner at the Bar, I have, and I hope shall continue to do him what Service I can: The Prisoner's Life is at Stake, and I hope, I shall not be supposed to be troublesome, if I desire a Record to be read, which hath not been yet read in Court; it is the *Venire*, and that

being part of the Record, we think we are proper to have it read.

Mr. Serj. Pengelly. We apprehend it is such a Request as has never been made: If they have any Objections to any Part of the Proceedings, or any Exceptions to take, they are at Liberty to take them, and to state their Objections, that the Court, if necessary, may refer to the Record to see whether they are just or no; but to come and desire the Process to be laid before the Court for the Information of the Prisoner and his Counsel, it never hath been done: They are entitled now to offer any Thing, if they can, in Arrest of Judgment.

Mr. Att. Gen. If what they desire should be granted, it would be a Precedent which might be of very ill Consequence, and I apprehend what they desire, is directly contrary to Law; there are no Authorities that the Prisoner should either have Copies of the Process, or that the Process should be read to him, only to enable him to find a Fault. I believe no Instance can be given whatsoever, that it was ever allowed in a Case of this Nature, if it be done now, it will be a Precedent for the future.

The Act of Parliament went as far as was thought proper, Copies of the Indictment and Copies of the Names of the Jury, are directed to be delivered to the Prisoner; but as to any of the Process, the Act gives no Direction, and therefore as what they desire is neither founded on Law, nor Precedent, we hope it shall not be granted.

Mr. Soll. Gen. My Lord, *Mr. Hungerford* has been pleased, in the Course of this Case, frequently to put us in mind, as he does now, that what he has insisted on, was in favour of Life. That is a moving Argument, but it proves nothing, save that the Prisoner ought to have all the Indulgence which the Law and the settled Forms of Proceeding do allow; but I apprehend it is a Reason for no more. What is asked, is of more Consequence than appears in this particular Case; and whatsoever your Lordship doth now, will be made a Precedent for the future.

My Lord, before the Act of Parliament, which allows the Prisoner to have a Copy of his Indictment, and of the Pannel of the Jury, it is most certain, he was not entitled to have such Copies. Before that Law was made, he was informed of nothing but by having the Indictment read to him in Court upon his Arraignment, and that not barely to give him an Opportunity of taking Exceptions to it, but from the Necessity of the Thing, because it was the Charge to which he was to answer. Then comes the Act of Parliament, the 7th Year of King *William*, and allows the Prisoner a Copy of his Indictment, and of the Pannel of his Jury. But the Legislature, when they had these Matters under their Consideration, and seem to have intended to give at least all the Indulgence, consistent with Reason, to Prisoners in Cases of High-Treason, even at that Time they went no further, and did not think fit to direct that to be done, which is now desired on the Behalf of this Gentleman. Therefore this Motion of *Mr. Hungerford's* must be understood to be made at Common Law; but I must beg leave to rely upon it, until some Precedent is produced on the other Side, that there is no Instance whatsoever, either before or since the Act of Parliament, wherein any Record

cord of the Proceedings hath been read to the Prisoner besides the Indictment. This is a Consideration merely of Practice and Regularity; and in a Point of that kind, where there is no Precedent, I hope your Lordship will not make one.

Mr. Serj. *Cheshire*. My Lord, the Carriage and Behaviour of the King's Council towards the Prisoner, hath been so fair and candid, that it deserves Thanks from him, rather than Complaint; and I believe this Temper will hold on to the last: But my Lord, we have no Authority to give up the Right of the Crown, or to fix that on the Crown to grant, which the Prisoner hath no Right to demand.

My Lord, it must be admitted, that this is a Demand made at Common Law, and if it be a Demand of Right, I don't know but it may go to every Thing in an equal Degree; that he hath the same Right to demand a sight of the Commission; *Certiorari*, &c. I don't know but he hath the same Right to enquire into every Step that is upon Record in this Case. The Officers concerned, I dare say, have done their Duty. There is nothing of Law, but what comes in upon the Statute of King *William*; that he hath had the Benefit of to the full extent of it; he hath had a Copy of the Pannel of the Jury; he hath had a Copy of the Indictment, and in such Time as was proper for him to make due use of it; and this they ask now, we apprehend is only to lengthen out Time, and to introduce that which may be greatly inconvenient. We have very little Reason of apprehending that it can be of any Profit to him; but for Example sake, and as he hath no Right to it, we cannot come into a Consent to it.

Therefore we submit it to your Lordship's Consideration, from the Inconvenience that may ensue from the Precedent, whether the Prisoner hath any Right to make this Demand.

Mr. *Hungerford*. I acknowledge that before the 7th of King *William*, the Prisoner was not entitled to have a Copy of his Indictment, and therefore I so far concur with the Gentlemen of the other Side, that we are not entitled to a Copy of the Record of the *Venire Facias*. But what I humbly pray now, is, what I apprehend we were entitled to before the Act of Parliament for regulating Trials in Cases of High Treason. The Instances are several, where in the Course of a Trial for High Treason, before that Act which gave the Prisoner several new Advantages, the Prisoner hath desired his Indictment to be read, and the Court never denied it; to have any other Part of the Record to be read, seems to be as reasonable as the Indictment. The Objection had been stronger, if we had desired for the Prisoner at the Bar, the Copy of the *Venire*; there we should have been justly told that we had been entitled to nothing but what the Act of Parliament had directed, *viz.* the Copy of the Indictment. We pray a Copy of nothing, but only pray that a small Part of the Record that makes up the whole Record of this Gentleman's Conviction, may be read. And this, with Submission, we hope we are entitled to have for the same Reason as the Indictment was read before the Act. Coll. *Sidney* desired, that his Indictment should be read, and it was so. And can any Reason be assigned, why the *Venire*, which is but a Part of the Record, should not be read as well as the Indictment? no

one Part of the Record of Conviction is more sacred than the other; and why therefore should not one Part be read as well as the other?

Mr. Serj. *Pengelly*. Can you shew any Case where the Indictment was read, upon the Prayer of the Prisoner, after Conviction, and before some Exception taken?

L. C. Just. We would be far from refusing any Indulgence to the Prisoner that by Law we are warranted to grant him; what you ask now, you must own is without any Precedent whatsoever. You know, that before the Act of Parliament you were not entitled to, nor could demand a Copy of the Indictment: It is very true what you say before the Act of Parliament; when it hath been desired by the Prisoner the Indictment hath been read, and that Method of proceeding having been allowed, gave him a Right to demand it; but you cannot produce any one Instance that ever he demanded this that now you offer; that ever he demanded the *Venire* should be produced and read to him.

Consider how strict the Law was in Cases of High-Treason; see the Act of Rights: The Course of the Court is the Law; this which you now desire was never so much as ask'd for, nor did this Court ever grant it; and if so, how can the Court be warranted to grant that which was never granted, nor was ever desired to be granted? The Reason of it is, that every Body was satisfy'd by Law it could not be granted.

You have instanced in Cases of great Persons, Colonel *Sidney*, Lord *Ruffel*, and others that have been attainted of High-Treason, who could not want Advice to desire any Thing that was proper, or that they had a Right to demand. Neither they nor any of the greatest Quality that have had the Misfortune of being try'd for an Offence of this Nature, ever demanded it; which is an Admission that they were not entitled to it; and if the Course of the Court be so, we must not establish a new Course; we can't see what the Consequences may be.

Mr. *Just. Eyre*. The Case of reading the Indictment to a Prisoner is certainly very different, and can be no Authority to warrant the reading of the *Venire*; for the Indictment is the Charge to which the Prisoner is obliged to plead, and he must know his Charge before he can give it an Answer: Besides, the Merit and Justice of the Case depend entirely upon the Indictment, which must be read, in order to understand the true State of the Question, and to see the Fact to which the Witnesses are to be examin'd. 'Tis therefore absolutely necessary, that the Indictment should be read; but none of these Reasons will serve for reading the *Venire*, which is only to summon the Jury, and bring them to the Bar; and therefore as it was never done, nor ever asked before, I can by no means think it fit for us to allow it now.

Mr. *Just. Powys*. I think it is a perfect Novelty what you demand, and not only so, but in its Consequences very dangerous: For, properly speaking, the common Usage to move in Arrest of Judgment, hath been out of the Indictment; but to run back to those Things, which if you had a Right to demand, it had been proper to have done it before; and since you have many Times known that nothing but the Indictment hath been read, since the Judges were never

mov'd,

mov'd, nor any Thing of this kind done, and nothing in the World hath been demanded like it; if it should be granted at this Time, when Men are to receive Judgment, and Exceptions are to be taken to the Indictment, if they should run back to all the Proceedings, it would be a thing of strange Consequence. But besides that, it is a Thing you have no Example for, it hath been never done; and it hath been observed, that nothing but the Copy of the Indictment hath been read before this Act of Parliament of King *William*. Now there are two Things given by this Act of Parliament of King *William*; the Prisoner is to have the Copy of his Indictment five Days, the Copy of the Pannel of the Jury two Days before his Trial, and these were proposed as Advantages which the Common Law did not admit: Shall we come to unravel all the Matters preceding? it would be a Matter of strange Consequence, and what we can't do or warrant by Law: If you have any Thing to move out of the Indictment, we are ready to hear it.

Mr. *Just. Fortescue Aland*. This is perfectly new, or else in Favour of Life I should be ready to grant it: The true Reason of having the Indictment read is, that the Prisoner may know what his Charge is, in order to make his Defence at his Trial; but that Reason holds not in this Case, which is after Conviction, and what is ask'd now is not relative to his Charge, but concerns the Acts of the Court only. The Court will assist in Matters of Law, when they appear, but will never assist the Prisoner with Facts, in order to make Points of Law; and therefore it has been denied the Prisoner to take Minutes even of the Indictment, and for the same Reason Counsel has ever been denied, in all capital Cases, before the late Act of Parliament, unless a disputable Point of Law did arise and appear.

You move this Matter as a Motion purely at Common Law; and as such it will extend to all Indictments of Murder, and other capital Cases, which may be of very evil Consequence. It would be very strange to have all the Proceedings upon Indictments read to the Prisoner; and there is as much Reason to call for all as for the *Venire facias*: I take it clearly there never was a Case, where the Acts and Proceedings of the Court have been called for to be read to the Prisoner, and for no other Purpose but to make an Error: It is a Thing that is entirely new, the Consequences may be very fatal, and therefore I think it is an unreasonable Motion, and ought not to be granted.

Mr. *Hungerford*. I assure your Lordship I did not do it out of an Affectation of Novelty, neither shall I persist in urging it further, since the Court hath given their Opinion; but I thought the Reason of the Thing, in reading the Indictment, before the Act of Parliament was with me; but since it is your Lordship's Opinion that it is otherwise, I desire your Lordship to give me leave to go on.

Prisoner. I beg leave to say but a short Word in respect to this Objection that hath been made by Mr. *Hungerford*. If I take the Thing right, it is, that the *Venire* may be read, to see if it is properly issued, and I hope thus far it shall be granted, to shew a Reason why this *Venire* is returned on one Day, and the Jury appear on another; and if it doth appear that there is an Er-

ror in the Proceedings on the Foot of the *Venire*, I humbly hope I shall have the Benefit of it. The Objection, I take it, must be this; the *Venire*, I take it, is returnable the 19th of the Month of *November*, I was not try'd till the 21st; therefore, what I humbly offer is, whether or no, after the Return of the Writ, this is a good convening of the Jury together to try me on a Writ when there was no such Writ in being, more especially when the Proceedings against me are by Original, where the Returns in this Court are the same as in the Common Pleas; so I shall leave it to my Counsel to say the rest, and humbly hope, that I shall have leave to look into the *Venire*, and if it come out so, I hope it is erroneous, and that Judgment shall be arrested.

Mr. *Hungerford*. The Gentleman hath given Utterance to some of my Thoughts; and not by comparing of Notes, for I have not seen his Face, nor heard from him since I saw him here at the Bar at his Trial.

That which occurs to me on this Occasion, but I can but guess at some Part of the Fact, is, I take it, that the *Venire* bears Teste the last Day of *October*, and is returned the 19th of *November*; there are stated Return Days of the Law, and, my Lord, if a Man appears in a Court of Justice one Day, and he is not by the Course of proceeding indulged with a further Day of appearing, there is a Discontinuance of the Process, and the Man is out of Court. The different Days the Law takes notice of for this Purpose are, the *Essoign Day*, the Day of Exceptions, the Day of Appearance, the *quarto die post*; I take the *quarto die post* to be an Indulgence which a Court of Justice gives to a Suitor to appear at a further Day, when he ought to have appeared at a former Day; and this is the Practice in real Actions in the Court of Common Pleas. As to the Exception Day, the Use of that is, that a Man that is summon'd may object to the Summons, as not being a fit and regular Summons to draw him in Contempt.

But, my Lord, in Cases of Juries, who are not Suitors in Court, I take the Law and the Practice to be, that they are oblig'd to attend upon the Process of the Court; I take it, they must do Duty on the Return of the *Venire*, which, in this Case, is on *Monday* the 19th of *November*, and did not appear till *Wednesday* the 21st; so that if they were to appear on *Monday* the 19th of *November*, and did not appear then, there must appear some Act of the Court, by which they are indulg'd to a further Day: And I put it upon Mr. *Harcourt* to shew, whether there is any Indulgence of the Court entered upon Record for the continuing of the Jury till *Wednesday* following; and if there is not, there is then a Discontinuance of their being in this Court, and consequently the Proceedings are irregular, and the Trial a Mistrial: I shall quote some Authorities which justify this Observation; when a Man by a Process of Court appears on the Day of the Return of that Process, unless there be a Continuance of that Process, that *ulterior dies datus est* to the Party, or a subsequent Process issues that Day, the Law deems that Chasm in the Proceedings to be a Discontinuance, and that the Party is out of Court. It was so resolved in *Yelverton*, 204; and 2d *Coke*, 284. It is the Case of *Bradley and Banks*; and reported in both Books, but most fully in *Yelverton*. There is an Authority which weighs with me something more,

more, and seems to be a Case in Point; it is the Case of *Peplow and Rowley*, 2d of *Croke*, 357. and and there the Case is on a Writ of Error brought upon Proceedings in the Court of *Sbrewsbury*, where the Usage was, to hold Plea in some real Actions, and there was an Entry that the Parties did not appear on a preceding Day, but made Default: And the Entry was *habuit diem per default* given to the Party by the Court, *secundum consuetudinem villæ prædictæ*. This came before this Court by a Writ of Error, and it was adjudg'd, that both the Entry and the Custom were naught. The Reason assigned why the Entry was so, is, for that the Party having made Default, was out of Court, and the Court could upon that Process give him no new Day to appear. And the Reason why the Custom itself is naught, is, for that there can be no Custom to help that (which the Book calls) a Discontinuance at Common Law; for if the Man be out of Court, he can't be brought in there again by the same Writ.

My Lord, if that be the Case then, that the Jury were to appear on the 19th, and there is no Entry to continue them till *Wednesday* the 21st, then by the Authority of these Cases they had no Call nor Right to appear, but were out of Court, the Trial was no legal Trial, and consequently no Trial at all.

I am told, that the Practice of all Trials at Bar is, that the Jury do appear here on the Return of the *Venire*, and immediately proceed to do Business; why should it not be so too in a criminal Case, as this is? I think the Reason in both Cases is the same: I humbly hope therefore, my Lord, that if the Fact be as I have represented, that there is no Entry to continue over the Attendance of the Jury from *Monday* to *Wednesday*, there is a Blemish in this Proceeding; and you can't proceed to Judgment against the Prisoner at the Bar.

Mr. *Ketelbey*. If your Lordship will favour me ———

L. C. Just. You shall be fully heard; but because Mr. *Hungerford* hath appeal'd to Mr. *Harcourt*, I shall ask Mr. *Harcourt* this Question about the Matter of the *Venire*.

Mr. *Harcourt*. I shall be very tender in this Matter, where the Life of the Prisoner is at Stake, as Mr. *Hungerford* has observ'd, and will not say any thing but what I am sure is the Course of the Court. If a *Venire* be returnable the first general Return of the Term, the Appearance-Day of the Jury is the *quarto die post*, which is the first Day of the Term. If the Court be not pleased to try the Prisoner then, they may adjourn the Jury over to any Day before the next Return in the Term; but no Entry is ever made on Record of such Adjournment, and the Proceedings are always enter'd on Record to be at the Return of the Writ. In all other Returns in the Term, there is the same Course observ'd: The Jury is never oblig'd to appear before the *quarto die post*; nor can the Prisoner be try'd sooner. What makes this clear is, to consider the Proceedings on *Distringas*, where the Prisoner is not try'd on the *Venire*: In such Cases the *Distringas* is never tested on the Return-Day, but the *quarto die post*; which, if what is insisted on by the Prisoner's Counsel is Law, would make a Discontinuance, and that has always been held otherwise; for till there has been a Default of the Jury's appearing on the *Venire*, no *Distringas* can issue, and no Default can be objected to the

Jury for not appearing till the *quarto die post*; nor are they amerçiable sooner for not appearing. This Matter was settled on great Deliberation, by my Lord Chief Justice *Holt*; and I am confident, has been ever since so practis'd.

Mr. *Ketelbey*. My Lord, it was my Misfortune not to get into Court sooner; so that I did not hear the first Application Mr. *Hungerford* made to your Lordship on Behalf of the Prisoner, nor shall I presume to break in upon what your Lordship has already determin'd; but whether or not we are entitl'd to see the *Venire*, or hear that Part of the Record read. I hope we shall be able to make out, that there has been a Mis-trial in this Case. The *Venire*, it is agreed on all Hands, was returnable *oëtabis Martini*, which was *Monday* the 19th of *November*. That the Prisoner was not tried till the 21st, is most certain. The general Return was *oëtabis Martini*, and he was not tried till two Days after; and notwithstanding what Mr. *Harcourt* hath said, I must beg Leave humbly to insist, that there hath been a Mis-trial, and Judgment ought to be arrested; and for that I have as strong an Authority as any that can be cited in this Court, 'tis the Trial of *Rookwood*; and for the greater certainty, I have brought the Book along with me, and have it in my Hand; where it is agreed, by the Court, and all the King's Counsel, that the Trial must be on the Day of the Return of the *Venire*, or else that it would be Error: And my Lord Chief Justice *Holt* declared, the Issue could not be tried after the Day of the Return: This Matter came before the Court upon an Exception taken by Sir *Bartholomew Shower*.

Mr. *Just. Eyre*. That was on a Commission of Oyer and Terminer, which was quite different; there is no *quarto die post* there, no Day of Appearance, but the Day of the Return of the Writ.

L. C. Just. It must be so, because there is no such Thing as a *quarto die post* in Commissions of Oyer and Terminer.

Mr. *Ketelbey*. I submit it to your Lordship, whether there is any *quarto die post* in a *Venire*?

L. C. Just. It is always so.

Mr. *Just. Eyre*. You know we had the Consideration of this when we appointed the Trial.

Mr. *Ketelbey*. I beg leave to offer one Word, that in case of a *Venire*, there is no *quarto die post*, because there is no *Essoign*, no Exception-Day for the Jury. The Authority in first *Roll's Abridgment*, 822. *Placit.* 4. & 6. is express, that in a *Venire facias* or a *Scire facias*, there is no *Essoign*: And where there is no *Essoign*, there can be no Day of Exception, because the Exception depends on the *Essoign*-Day, and consequently the Day of the Return, and of the Appearance must be the same. The Case of *Essoign*, Exception, Return, and Appearance-Days, concerns only original Writs, and the Plaintiffs and Defendants therein; there if the Defendant appears the *quarto die post*, his Appearance shall be accepted as good, and no further Process made against him. But who ever heard that a Jury were *Essoign'd*? There are several other Authorities for this. *Dalton*, 415. 2d. *Instit.* 125 & 33 *H. VI.* 5. *b.* that no *Essoign* lies upon a *Venire facias*; and the *Essoign* was quashed.

L. C. Just. This you now offer will set aside all the Proceedings either on the Plea Side, or the Crown Side.

Mr. *Ketelbey*. There is a Case reported in the Year-Book, *Michs. 33 Henry VI. fol. 35. 36.* and abridged in *Brook*, Title *Nisi prius*, Pl. 32. It was disputed by the Judges of the Bench, and at first there was a Difference of Opinion among them; but at last it was unanimously resolved, That the *Nisi prius* was not well taken. I will state the Case as it appears in the Year-Book and the Abridgment. There was a Writ of *Nisi prius* made with a certain Return, and the Justices tried the Issue upon a *Day mesne* during the Interval between the *quarto die post*, and the Return of the Writ. This was objected to, and said to be a Mis-trial; and afterwards the Judges agreed in their Opinion, that it was a Mis-trial, because it was not upon the Return-Day of the Writ of *Nisi prius*; and if not upon that Day, the Trial ought not to have been at all. And I don't apprehend any Difference between that Case and this, but only that was at *Nisi prius*, and this a Trial in Bank. There is no Continuance lies on a *Venire facias*; and if so, I shall submit it, whether there is any Day of Appearance.

Mr. *Just. Eyre*. Sure there is a Day of Appearance on the *Venire facias*; the Proceedings in this Case are like those upon an Original. The same Day which is the Day of Appearance for the Party upon an Original, is the Day of Appearance for the Jury upon a *Venire*.

Mr. *Ketelbey*. I believe it will be hard for Mr. *Harcourt* to shew where there is an *Essoign* on a *Venire facias*.

L. C. Just. We have heard already what Mr. *Harcourt* hath said. I desire Mr. *Simmonds* may inform you how it is on the Civil Side.

Mr. *Simmonds*. Our Process where the Suit is commenced by Bill, is return'd on a Day certain in Court; that doth not respect this Case.

L. C. Just. How is it when it is by Original?

Mr. *Simmonds*. Where it is by Original, it is always returnable as the Process is in the *Common Pleas*; and the Day of the Appearance of the Jury, I take to be the *quarto die post*.

Mr. *Harcourt*. If this was to be a Discontinuance, what will become of all the Records where the Proceedings are at general Returns, and which are tried on the *Distringas*, which always bears *teste* the *quarto die post* after the Return of the *Venire*? Every one of these Records, which are many every Term, would be discontinued.

L. C. Just. You can't but be sensible that there is nothing in this Exception.

Mr. *Serj. Pengelly*. There is no Foundation for it in Practice.

L. C. Just. You need not labour it.

Mr. *Serj. Pengelly*. The Sheriff, or the Jury, are not amerciable, tho' they did not appear on the Day of the Return, if the Jury do appear upon the *quarto die post*; that shews it —

Mr. *Att. Gen.* If this Objection prevails, it will overturn all the settled Course of Trials at Bar.

Prisoner. One Thing I would humbly offer to your Lordship. I have not had my Books by me, but only what occurs to my Memory, I cannot be so exact as I ought to be. This Overt-Act in *Essex* of Treason found by the Jury to be so, I humbly apprehend, and I offer it to your Lordship's Judgment, in Law is no Overt-Act at all. All the Reason I shall humbly offer to your Lordship, that tho' it hath been said, that

there was a consulting and agreeing in order to levy War, yet it doth not appear that War to be levied was such a War as in the Law is adjudged to be Treason. My Lord, this differs from the levying War it self. An Intention and Consultation, or a Conspiracy barely to levy War, unless War be levy'd, it is no Treason. If it be a Consultation to levy War against the King's Person, to imprison the King, to dethrone and murder him, it ever hath been adjudg'd to be Treason. If it be only a Consulting to levy War, as if to agree to break open Meeting-Houses, to throw down Houses, was the same as doing of it. There must be a War that is levy'd, or else it is no Treason. Not only that, but I beg leave to say one Word more. In my Case, all the Evidence given in respect of this Overt-Act in *Essex*, there is no Foundation for it; and if there is no Overt-Act in *Essex*, no Overt-Act elsewhere can affect me. It stands on the Evidence only of Mr. *Lynch*: He talks of a Declaration. Who read it? The only two Things are a Discourse between us, and a Declaration which I gave him to read. If that, as I humbly submit it, be an Act of Treason, it is carrying the Matter further than it hath been in those few Cases I beg leave to mention that just occur to my Memory. If I state them wrong, I shall be sorry. The Case of *College*, the *Oxford Joiner*. It was asked the Court, Do you take my Words distinct from my Actions? No, says the Court, we do not do so. You declared you would go down to *Oxford*, and assassinate the King's Person. In order to that, you went down with Pistols before you. That at that Time was declared to be an Overt-Act; the going down to *Oxford* in that Manner; and the Court seemed to rely upon it, as the Overt-Act of the Treason, and not the talking here, or conspiring that he would assassinate the King, but the going down in a hostile Manner. So likewise in the Case of my Lord *Preston*; there the Question was, whether those Letters that were found with him in the Ship; whether that was an Overt-Act of Treason. The Judges seemed to be of Opinion, that the taking those Letters with him as he was going to *France*, and there to consult the stirring up an Insurrection here, and to invite the *French* King to invade us, was an Overt-Act of Treason. But there is a stronger Case, the Case of my Lord *Russel*. He was indicted, as I am, for compassing and imagining the Death of the King. The Overt-Act laid in the Indictment to manifest that Intention, was, that he, with the rest of the Conspirators, consulted to seize upon the King's Guards: In pursuance to that Discourse and Conspiracy which they had had, it appeared that Sir *Thomas Armstrong* was sent to take a View of the Guards in order to carry on the Design. Notwithstanding there was a pursuing of their Design of seizing the King's Guards, in sending Sir *Thomas Armstrong* to view them, yet the Case was thought so very hard in respect to my Lord *Russel*, that his Attainder was reversed by an Act of Parliament. Therefore I only argue, with great Submission, that in my Case, where nothing is done but accidentally calling in at the *Green Man*, staying a little while there, and, as hath been sworn, here was nothing but a mere Discourse, and then I gave him a Declaration to read. If I did so, it was only Words. As to the second, it was nothing but publishing a Libel. And shall this be a Foundation to deprive me of my Life
and

and Estate, to the utter Ruin of myself and Family? It is an unprecedented Thing, hath it ever been? Therefore I hope your Lordship, before you give any Judgment in this Matter, will take it into your Consideration, whether any Thing done in *Essex* doth amount to an Overt-Act of Treason.

Mr. *Hungerford*. My Lord, I humbly hope, as it is my Duty to do what Service I can to my Client, and as it is in Case of Life, that I shall have your Lordship's Indulgence for a few Words. My Lord, he hath justly observed —

Mr. Serj. *Pengelly*. My Lord, I would not interrupt Mr. *Layer*, because it may be supposed he is not so well acquainted with the Method of Proceeding. But I hope I may take the Liberty to interrupt his Counsel, who know by very great Experience the Method of Proceedings, that they are not now to insist on the Nature of the Evidence, whether the Evidence that hath been given is sufficient to maintain the Indictment; that is not the Business of this Day. If they have any thing to offer, any Objections to make in arrest of Judgment, that is the Business of the Day: But to arraign the Proceedings upon the Trial, as it is said that the Evidence given did not amount to a Consultation, or to prove any Overt-Act of the Treason alledg'd, I don't apprehend it to be proper at this Time: I did not interrupt the Prisoner himself; but I hope his Counsel, who know the Method of Proceeding better, in Cases of High-Treason, shall not be permitted to go on in that Manner.

Mr. *Att. Gen.* The Gentlemen that are Counsel for the Prisoner know very well, that the Evidence given on the Trial is not now before your Lordship; the single Question that can now be made is, whether the Indictment is good, and the Facts charged and found by the Jury, are well laid, and do amount to sufficient Overt-Acts of the High-Treason, of which the Prisoner stands indicted. Mr. *Layer* hath been giving an Account of the Witnesses, and making Observations on the things which they swore; he was borne with: But the Gentlemen that are his Counsel, seem to be opening in the same Manner, but as to them, we must insist upon it, that they should be confin'd to what is proper, and apply themselves to move in Arrest of Judgment, if they can find any thing upon the Face of the Record of which they can take Advantage. But I think they are not entitled to go on with Observations upon the Evidence in the Manner they were beginning.

Mr. *Hungerford*. I assure your Lordship I did not design it, I did not intend to recapitulate any part of the Evidence, or to observe upon it. And therefore there was no Occasion for the Caution. I thank your Lordship for the Indulgence you give me, and I will conform myself to the Rules the *King's Counsel* prescribe, to observe upon nothing but the Record.

My Lord, the Indictment is in this Manner; the Species of the Treason laid to the Charge of the Prisoner, is the compassing and imagining the Death of the King. The first Overt-Act of that Treason, is, that he did meet, consult, conspire and agree to raise a Rebellion, and a *Guerram* in the Kingdom, which is no Overt-Act of compassing and imagining the Death of the King.

I know how the Authorities have been; but in the Case of Life, your Lordship will give me leave to observe, that by the Statute of 25 *Edw.* III. compassing and imagining the Death of the King —

L. C. Just. Mr. *Hungerford*, we would hear you in any thing that is proper, but consider if you are not offering a matter in Arrest of Judgment that

hath been determined against you a hundred times. Hath it not been constantly allowed as an Overt-Act of Treason in compassing and imagining the Death of the King, if the Parties did meet, consult, and agree to levy War? Hath it not been constantly agreed, and doth it not stand allowed to be so? Now to persuade us at this Time to overthrow those Resolutions taken by our Predecessors, is such a thing as is not right. Do you think we will give a Judgment contrary to what our learned Predecessors have given in Cases of the greatest Moment? If I thought it was of any Effect, I should not grudge spending time to hear you, but you must agree, it hath been over-ruled a hundred times.

Mr. *Just. Eyre*. It hath been settled a great many times, particularly in the Case of *Dorrel, Gordon and Kerr*, in which it was argued over and over again, and the Court was of Opinion that the consulting and agreeing to levy War, was an Overt-Act of Treason in compassing and imagining the Death of the King, and gave Judgment accordingly.

Mr. *Just. Fortescue Aland*. Mr. *Kettelbey* was Counsel for the Prisoners in that Case, which was in this Court in the 1st Year of this King, when this Objection was made; and very well knows, that the Court, upon that Occasion, said, that they ought not to have suffered this matter to be made a Question, for that it was arraigning the Judgments of very many learned Judges.

Mr. *Just. Powys*. No one thing relating to Treason is more settled; and in that Case as hath been mentioned, it was agreed, and it was the Judgment of all the Judges that tried that Cause.

Mr. *Hungerford*. My Lord, I humbly hope —

Mr. *Just. Eyre*. It must not be admitted, we must not suffer so plain a Point to be disputed; it is not only mispending of time, but shaking what has been established by every Trial in which any thing of this kind has been mentioned, from the Case of the Regicides to this Day.

Mr. *Just. Powys*. In the Cases of the Regicides, these Matters are printed in *Keyling*.

L. C. Just. And in all the Trials ever since, there is scarce one Case hath happened, where the Case hath been for compassing and imagining the Death of the King, but that it hath been laid for an Overt-Act, that the Party charged, did consult and agree to levy War to bring his wicked Intentions to Effect.

Mr. *Hungerford*. There is no Doubt, but that the Regicides were the worst and most notorious Criminals that were ever brought before a Court of Justice; and yet there is one Circumstance of those Trials, quoted in the very Book which Mr. Justice *Powys* mentions, which was never practised before, and I am sure never was since; that is, the Judges who were to try the Criminals, and the King's Counsel who were to prosecute them, met and consulted together to form and fix the Accusation.

But if it is your Lordship's Pleasure, I shall speak no further to that Matter.

L. C. Just. You have the Opinion of the Court, and I dare say it is your own Opinion; and as the Resolutions are so positive, it is not for us to make Indictments at this Day.

Mr. *Hungerford*. I shall not press it any further. There is another thing arises upon another Overt-Act laid in the Indictment, that is, *Publicavit quoddam Scriptum*, &c. I apprehend the Substance of the *quoddam Scriptum* ought to be mentioned in the Indictment.

L. C. Just. It is mentioned in Effect, that it was to excite People to a Rebellion and an Insurrection.

Mr. *Hungerford*. Your Lordship will observe that the criminal Words in the *Scriptum*, are not mentioned in the Indictment; and by the Rule given by all the Judges of *England* in *Dr. Sacheverell's* Case, in all Accusations, whether by Information or Indictment, the Words supposed to be criminal ought to be inserted; and since that is not done in this Case, the Overt-Act is not well laid, and the Judgment ought to be arrested.

L. C. Jusf. You know, Mr. *Hungerford*, if but one Overt-Act is well-laid and prov'd, it is sufficient.

I don't know, I was sorry you forc'd me to remember what I would willingly have forgot. I remember, on that Occasion, you was pleas'd to compare it to a Ballad, which is an Expression that ought not to be us'd. Is that a Thing, when a Prisoner is on Trial for his Life, and a Matter of Insurrection is intended against the King, to be treated in so ludicrous a manner? It is laid as an Overt-Act of Treason, and what is an Overt-Act of Treason, if a Man's publishing a traitorous Libel, and exciting Persons to a Rebellion and Insurrection against the King is not? This is undoubtedly so: And when we are upon this Consideration, to compare it to a Ballad, and say he might as well publish a Ballad, and lay it as an Overt-Act of Treason in the Indictment; it is an Expression that ought not to be us'd, and I was very sorry you did use it.

Mr. *Hungerford*. I am sure I did not say he might as well publish a Ballad and make it Treason; I have a greater Duty, and a more tender Regard to his sacred Majesty, and the Quiet of his Kingdom and People, than to express myself so. What I then observed, as near as I can recollect, was, that there were but few Minutes to transact the Business at the *Green Man*; that what was done, could not amount to the publishing of a Declaration, when there was nothing done but a Man's reading to himself: I knew the whole Accusation did turn upon that Transaction at the *Green Man*; and in Service to my Client, I thought it my Business to make it appear as inconsiderable as I could; and if in this I have offended your Lordship, or the Court, I am heartily sorry for it, and beg their Pardon.

Mr. *Ketelbey*. If your Lordship please to favour me with a few Words.

I shall be very tender of offering to your Lordship any Thing on this Indictment, which hath been over-ruled in any of the Cases where I have been before concerned; whether conspiring to levy War, unless War be actually levy'd is an Overt-Act of High-Treason, was mentioned on the Trial of *Dorrel*, *Gordon*, and *Kerr*, and I then took that among other Exceptions in Arrest of Judgment, which were not allowed; but the Statute of 13 *Eliz. cap. 1.* was not at that Time mentioned; and I have some other Matters to offer on that Head, if it is now open to me.

L. C. Jusf. Consider a little how you treat the Court; the Objection hath been solemnly taken in this Court, argued and adjudged by this Court, and now you come to arraign that Judgment that was then given.

Mr. *Ketelbey*. I shall go off from that, and say no more upon it, since your Lordship is of Opinion that it is a Point settled. But, my Lord, I must beg Leave to take Notice of what Mr. Attorney has observed relating to the five Overt-

Acts laid in the Indictment, and submit to your Lordship; for I don't know that it was ever determined otherwise, but that if one of the Overt-Acts appears to be bad, Judgment must be arrested.

L. C. Jusf. Alas! quite the contrary: I believe you will find in *Rookwood's* Trial, which you have in your Hand: There it is said, if one Overt-Act held, the Indictment is good.

Mr. *Ketelbey*. If I am not mistaken, in *Sir John Friend's* Case it was not so: We can't take upon us to say, That all the Overt-Acts are wrong. Is it not like an Action in a Civil Case, where there are several Counts in the Declaration? If there be one wrong, that will stay Judgment for the whole.

L. C. Jusf. Because it is an entire Declaration; and the Jury instead of giving Damages on one Count, may have given it on the Count they ought not.

Mr. *Jusf. Eyre*. But if one Count be sufficient, the Plaintiff shall certainly have Judgment upon Demurrer.

Mr. *Ketelbey*. What I had to offer was, that if one Overt-Act is bad, the Indictment is bad; but if it be otherways, and if there be any one Overt-Act well laid, that that shall make the Indictment good; and your Lordship will maintain that Indictment: I have nothing else to offer.

Mr. *Att. Gen.* Say what you have a Mind to say.

Mr. *Ketelbey*. I did not know but I was right in what I was going to say; and I think it a Point too material to be easily given up.

L. C. Jusf. You allow one of the Overt-Acts is well laid; consider if there is no Overt-Act but that one; must there not be Judgment against the Prisoner? Suppose one Overt-Act that is not good, must that take off the Force of that which is good?

Mr. *Ketelbey*. I submit it, whether this is a Parallel Case in a Declaration for Work and Labour done, if there be but one Count, and that well laid, the Plaintiff shall recover: But if in a second Count, he comes and says in Court, that he had done such Work and Labour; that the Defendant promised to pay him such a Sum, if either these Counts are naught, it may be moved in Arrest of Judgment.

Mr. *Jusf. Eyre*. If the Damages are taken generally, otherwise not.

Mr. *Serj. Pengelly*. You find in *Rookwood's* Case, it is there held, if the Jury found him guilty of any one Overt-Act, that it would maintain the Indictment: But what is your Objection?

L. C. Jusf. We will hear any Thing that you think material to offer.

Mr. *Ketelbey*. I would not have offered it, if I did not think it material; and for my part, I cannot find any such thing in *Rookwood's* Trial, or any where else, (I beg Pardon if I have overlooked it) that one good Overt-Act should maintain the whole Indictment; I admit three or four of them to be good, as they are laid in this Indictment; the only Objection I have, is, to the Uncertainty of that which relates to the publishing of a malicious, scandalous, seditious, and traitorous Writing, *contenen' & purportan' exhortation' incitament' & premiorum promission' ad suadendum & excitand' subditos Domini Regis ad arma & guerram*

contra Dominum Regem, &c. My Lord, the Rule that my Lord Chief Justice *Coke* lays down in his first *Institutes*, f. 303. a. is, That in Indictments, a Certainty to a common Intent is not sufficient, no more than in Counts, Replications, or other Pleadings of the Plaintiff. Now whether this, as it is laid, hath the Certainty which that Rule requires, your Lordship will determine. In all capital Cases, especially in High-Treason, the Indictments must be drawn with the utmost Accuracy and Certainty. The Words here are, that he *publicavit quoddam malitiosum, seditiosum, & proditorium scriptum*: And then sets forth only the Substance of the Libel in general. Is there not the same Reason that the Words should have been set forth in this Indictment, as in an Indictment for a Libel, that so the Court might judge, upon the Face of the Indictment, whether they did import Excitement and Exhortation, *levare Guerram*. I must own, in two or three late Cases, the Words have not been set forth.

L. C. Just. Remember *Francia's* Case.

Mr. Ketelbey. I am going to mention *Francia's*, and hope I shall be able to account for that, as well as the others: In *Francia's* Case the Indictment was, that he wrote several Letters, notifying his Intention to levy War, and requiring Aid from Abroad, without particularizing the Words of those Letters, or the Substance of them. The Question was not upon an Arrest of Judgment; but it came on in the Course of the Trial, whether such Evidence should be allowed. It was insisted upon, that there was a Letter mentioned, and the Substance of that Letter ought to have been set forth in the Indictment; or else the Letter itself ought not to be read, much less a Copy of it entered in the Prisoner's Copy-book, as Evidence against him: And I must beg Leave to rely on the solemn Resolution of all your Lordships in *Dr. Sacheverell's* Case, that the very Words should be expressly set forth in all Indictment whatsoever. In *Francia's* Case, there was no Motion in Arrest of Judgment; for there was no Verdict against him: Therefore, whether that Precedent will stand in our Way, so as to stop us in our present Objection, your Lordship will determine: And in the Case of Colonel *Sidney*, the very Words are set forth, the Title of the

Book, and the Part charged to be
- *Trial 64.* Treason. In *Keylinge 22.* in *Twine's* Case, he was indicted for compassing the Death of the King; and his Overt-Act was, the publishing a Book call'd, *A Treatise of the Execution of Justice*; and the Title of that Book, and the very treasonable Part objected against the Prisoner were set forth at large. In *Coleman's* Indictment, two Letters were mentioned, which were declared to be his Hand: There was no Counsel, nor Motion made in Arrest of Judgment. I don't remember any Case where they are laid so general, as in this Indictment, except *Francia's* and *Coleman's*. I shall only beg Leave to add, that where there is a Libel, a Book, or Letters, charged as the Overt-Act of that which is supposed to be Treason, and upon which the Offence is grounded, they ought to be so far set forth, that a Person may have an Opportunity to clear himself of the Accusation: I don't know any Precedent to the contrary, but that of *Francia's* Case, where there was not any Opportunity

of debating it, he being acquitted on his Trial; and the Case of *Coleman*, which was before any Counsel was allowed.

L. C. Just. The Objection was taken then in *Francia's* Case as properly, as if it had been taken in Arrest of Judgment; for the Act of Parliament says, that no Evidence shall be admitted or given of any Overt-Act, that is not expressly laid in the Indictment, against any Person or Persons whatsoever. You took the Objection, and said, that this Overt-Act of Treason is not expressly laid in the Indictment; and therefore it ought not to be given in Evidence: You know, that that was over-rul'd at the Time of making the Objection, and that the Opinion of the Court was against you. As to what you say, that the Words must be set forth, it is perfectly wrong; a Man may set forth the Substance of the Words, without shewing the Words themselves: That is the Way that is proper to be taken, and when it is otherwise, it is not so as it ought to be done.

Mr. Jus. Eyre. It was indeed the Opinion of the Judges who were present at *Dr. Sacheverell's* Trial, that the particular *Trial 181.*

Words supposed to be criminal ought to be expressly specified in every Indictment or Information for any Misdemeanour by writing or speaking; and since it is urged as an Authority to conclude our Judgments, I can't forbear saying, that it was a great Surprize to *Westminster-Hall*, and particularly to those who attended this Court, to hear that any such Opinion had been given; for it had never been laid down in any of our Books as the Rule of Law or Practice, that the particular Words supposed to be criminal, ought to be specify'd in the Indictment or Information; and we had learned from my Lord Chief Justice *Holt*, that a Libel might be described either by the Sense and Substance, or by the particular Words, and that an Indictment or Information in either of these Forms would be good. If you look into the Books of Entries you will find several Instances where Slanders and Perjuries are charged in *Latin*, as false and scandalous Assertions, and not in the Words as spoken. And in *Staley's* * Case who was indicted for treasonable Words upon the Stat. 13 *Car. II.* it was charged in the Indictment, that he speaking of the King, had traiterously declared, *quod ipse praedictus Staley ipsum Dominum Regem interficeret*; and the Fact was, that *Staley* in Conversation had spoke Words to this effect in *French*, which were proved by two Witneses; and this Evidence was thought sufficient to convict him of High-Treason; and yet the particular Words supposed and adjudged to be criminal, were not specified in the Indictment; and there was an Information for Perjury †, in which all the great Counsel of *England* were concerned on one Side or other, which was tried at Bar in my Lord Chief Justice *Holt's* Time, and the Offence was charged in the same Manner; for the Substance of what the Defendant had sworn was set forth in *Latin*, and the Evidence which he gave in *English* being prov'd to be false, he was convicted of the Perjury without any Objection; and yet the particular *English* Words in which he gave his Evidence were not expressly specified in the Information; and I don't find that the specifying of the particular Words was ever said or suggested to be necessary, till this sudden Opinion

* Mich. 30 *Car. II.* B. R. *Trial 74.*

† Dom. Rex v. *Grieppe.* Trin. 8 Will.

was given; and therefore as I never thought it right, I can't hear it urged as an Authority without offering my Reasons to the contrary, and acknowledging that I have been long in a great Mistake, if there be any one Resolution in the Books to support it.

Mr. *Just. Powis*. In the Case of *Francia* it was insisted on in order to stop the Trial; the main of the Objection was, that they ought not to produce Evidence of the Letters, because those Letters were not expressly set forth in the Indictment, and that very Objection was made in order to stop the Trial. What was said there in Cases of *Libels* is intended when set forth *in hæc verba*, and not in *Latin*, the more common Way: But it is another Thing where it is an Overt-Act of the Imagination of a Man's Heart in Treason, it is sufficient to set forth the Substance of them; therefore it was so fully settled in *Francia's* Case, that I thought it would be never mentioned again; the Point was argued, the Objections were made and over rul'd, and it was the very Point on which the Trial proceeded.

Mr. *Att. Gen.* In my Lord *Preston's* Case there were several Notes, Memorandums and Writings, that were the very Overt-Acts of the Treason, yet they were not particularly set forth in the Indictment.

Mr. *Serj. Pengelly*. There it was alledged, that the Lord *Preston* prepared and composed several Writings, several traitorous Notes and Memorandums, for the giving Instruction and Information for the *French* King how to invade *England*. I desire to put Mr. *Ketelbey* this Case: Suppose any one had proclaimed the Pretender at *Charing-Cross*, or elsewhere, and had read his Declaration, exciting the People to revolt and to come in to him, and promising them Rewards; and then the Declaration had been carried off, or so disposed of that it could not be recovered and produced in Evidence; I would be glad to know, whether that Person might not be indicted for Treason, without setting forth the particular Words which he read out of such Declaration; or whether he should escape Punishment for want of being able to set out the particular Words?

Mr. *Ketelbey*. The reading of the Paper in that Case would be sufficient.

L. C. *Just.* Have you done, or have you any thing further to offer for the Prisoner?

Cl. of the Cr. *Christopher Layer*, hold up your Hand. You have been indicted of High-Treason, &c.

Pris. I have nothing more to say now, because my Counsel have given it up. But after your Lordship hath passed Sentence upon me, I hope and desire, for the Sake of other People more than myself, those that I have had very great Dealings and Correspondence with, particularly my Lord *Londonderry*, and several others, that I would do Justice to; that your Lordship would give me a reasonable Time to make up their Accounts; and when that is done, I hope your Lordship will give me still a further Time to make up that great Account which I have in another Place: When this is done, if his Majesty doth not think fit graciously to continue me in this World, I will dare to die like a Gentleman and a Christian, not doubting but that I shall meet with a double Portion of Mercy and Justice in the next World, tho' 'tis denied me in this.

L. C. *Just.* *Christoyber Layer*, You have been indicted, and after a long Examination and fair

Trial, have been convicted of High-Treason in compassing and imagining the Death of the King.

You have had all the Indulgence and Advantage that the Law would allow you. You have had Counsel assigned you of your own chusing, to advise you preparatory to your Trial, and to assist you in making your Defence at your Trial.

These Counsel have been permitted to say whatever they thought proper for your Service; and I heartily wish that I could say that they had not exceeded, that they had not taken a greater Liberty than they ought to have done: But however that was, the Court thought fit to permit it in them, that they might not be discouraged in offering any thing that was proper for your Defence; we did not censure it then, on this Consideration.

The Jury that have found you guilty, are such, as may be justly said, you yourself approved of; for, tho' the Law gives you a Liberty of challenging five and thirty, you challenged but four and thirty; so you allowed the rest to be an indifferent Jury, to pass between the King and you as to your Life and Death.

The Evidence on which you have been convicted, is the clearest and plainest that ever I heard. Your personal Conferences with the Pretender at *Rome*; your constant Correspondence with him and his Agents afterwards; the Scheme you had formed for the Executing this Treason; your Confession of the greatest Part of it before the Lords of the Council; and at last your Flight when in the Hands of Justice, out of Window two Pair of Stairs, and the Endeavours you used when retaken to corrupt and prevail with those that took you, by Rewards, to let you go off; these are Matters so very clear and plain, and did concur so exactly with the Evidence of the Witnesses, that it did not rest on their Credit; the only Question was, whether the Jury did believe what you yourself had declared on your Examination before the Lords of the Council, and by the Scheme that was found in your Custody.

This being the Nature of the Evidence, I must, according to what is usual, put you in mind of the horrid Wickedness you have been found guilty of.

The first Matter projected to be done, was to seize the Tower of *London*, to set a Guard at the *Exchange* and other Places; to seize the Bank, and take from thence what Money you had Occasion for; by which the whole City of *London*, and in consequence the whole Nation, would inevitably have been involved in Blood and Confusion; This was to have been the first Fruits of this projected Scheme.

The next Step to be taken by this execrable Scheme, was to seize the sacred Person of the King: a King, who during the whole Course of his Reign hath been the most religious Observer of our Laws, the most careful Preserver and Protector of all our Civil and Religious Rights, and the most merciful Prince that ever sat on the Throne of these Kingdoms; yet this, this most excellent Prince, was to be seized and made a Sacrifice to Popery and arbitrary Power.

The next Step to be taken, was to seize the Prince; and when that was done, no body can doubt but the young Prince and Princesses must and should have followed the Fate of their Father: So that the Project must and would have ended in the Destruction of all the Royal Family on

on this Side the Water; and when that was done, 'twas thought 'twould be an easy Matter to set the Pretender on the Throne.

This being done, the King and the Royal Family destroyed, and the Pretender advanced to the Throne, what the Consequence of that must and would have been, is obvious to every body; it must have ended in the entire Destruction and Dissolution of our most happy Establishment and Constitution; the happiest, I think, that ever any People enjoyed; it must have ended in the Destruction of our Laws, our Liberties, our Religion, and the Church of *England* as by Law established; and we must have become from the most happy, the most miserable People on Earth.

These horrid and execrable Designs are so very heinous in themselves, that they hardly will admit of any Circumstance of Aggravation: But I must say, I can't avoid saying, that there are Circumstances with respect to you, that make them more heinous, if possible. You were bred up to the Law, and you must be supposed to know the Excellency of our happy Constitution and Government, and the Laws which you professed; which makes your Crime much the greater.

Another Matter, which is a great Aggravation of your Offence, is, that you were, or at least professed yourself, a Protestant, and a Member of the Church of *England*, whilst you engaged yourself in Measures which must inevitably have destroyed that Church which you profess yourself a Member of.

These are the Treasons which you are convicted of; and being so, the Law adjudges you not fit to live; and the Judgment of the Law is, and it is considered by the Court, that

You, Christopher Layer, be led to the Place from whence you came, and from thence you are to be drawn to the Place of Execution, and there you are to be hang'd by the Neck, but not till you are dead, but you are to be cut down alive, and your Bowels to be taken out, and burnt before your Face; your Head is to be sever'd from your Body, and your Body to be divided into four Quarters; and that your Head and Quarters be disposed of where his Majesty shall think fit.

Then the Prisoner was carried back to the Tower of *London*; but on *Wednesday November 28.* the Attorney and Solicitor General moved for a Rule for his Execution, and that the Court would appoint a Time and Place for that Purpose; and said, that the chief Design of executing such Criminals was to be an Example to others not to offend in the like Manner, and to deter them from committing Treason, and therefore they moved that the Execution might be in *Middlesex*, though the Fact was done in *Essex*, and said, that there were many Precedents for executing Criminals in such Places as this Court should think proper.

Thereupon the Court asked the Clerk of the Crown if he knew any such Precedents, who replied, that one *Fitzpatrick**, who was an Associate with the Lord *Audley*, was executed in *Middlesex* for a Fact committed in *Wiltshire*, and two other late Precedents of the same Nature.

So a Rule was made to the Lieutenant of the Tower, to deliver the Prisoner to the Sheriffs of *London* and *Middlesex*; and another Rule to the said Sheriffs to execute him on *Monday December* the 12th, at *Tyburn*.

Then the King's Council moved the Court to alter the Rule made the Day before, for Mr. *Morgan*, the Clergyman, to attend the Prisoner, for that he was taken into Custody upon Suspicion of Treason, and had given Bond to appear in Court this Day.

The Court answered, That any Clergyman should be admitted to the Prisoner, who was a Person of known Honesty, Integrity, and Learning, but not such who might harden him in his Iniquity in his last Moments; so two more Clergymen were joined in the Rule, and the other two struck out.

Afterwards, and on that very Day before he was to be executed, he had a Reprieve, and there being some Opinions, that he could not be executed by Virtue of any Warrant signed by the King; but that a new Rule must be made in the Court of *King's-Bench* for his Execution, he was accordingly brought to the Bar in *Hilary-Term* following; and a Rule was made for his Execution on the 27th of *March*; but before that Time he procured another Reprieve, and afterwards another Rule was made to execute him on the 17th Day of *May* following, which was done accordingly. He made a short Speech to the Assistants, wherein he avow'd the Principles for which he suffered, recommending the Interest of the Pretender; and delivered a Paper to the Under-Sheriff, and also another to a Friend of his. His Head was afterwards carried to *Newgate*, and was the next Day, fixt upon *Temple-Bar*; but his Quarters were delivered to his Friends; who took care to get them decently interr'd. The Paper abovementioned was inclosed in a Cover, superscribed,

To Mr. Walter Price, Under-Sheriff, at his House in Castle-Yard, in Holbourn; And was as followeth, viz.

Mr. SHERIFF,

I Having previously resolved to employ all the Time allowed me at the Place of Execution, in Devotion, and making my Peace with God, thro' the All-Sufficient Merits and Mediation of my Gracious Saviour, I have, instead of any Speech I could make to the Spectators, on this unfortunate Occasion, committed my last Thoughts of all Worldly Affairs to Writing*, while I had some Intervals of Time for so doing; and have sent two Authentic Duplicates thereof, with my Hand subscribed to the Bottom of each Sheet, to two trusty Friends, to testify thereby to the World, in due Time, and as Occasion offers, the *True Principles* of both my Religion and Royalty, as well as the *unparallell'd Hardships* and *Injustice* I have lately met with; for which I pray God forgive the Authors thereof.

And to the End, that none of my Friends, who had Access to me since I was sentenced to die, may be liable to come into any Trouble upon the Score of publishing my said Writings, I sent the Draughts thereof sealed up, together with Draughts of two several Letters directed to certain Persons in the Administration, to One of my Friends abovemention'd, desiring him to copy them all over fair, and return them to me: And then I subscribed them, and returned them to my Friends, without letting the Bearers, First or Last, know any thing of the Contents.

So, taking Leave of this vain World, God in Mercy, Receive my Soul! Amen.

Christop. Layer.

* See Trials Vol. 1. No. 357. p. 374.

† This Writing never appear'd in Public.



CXCIV. Proceedings in Parliament against John Plunket, George Kelly alias Johnson, and Dr. Francis Atterbury, Bishop of Rochester, upon Bills of Pains and Penalties for a Treasonable Conspiracy, May 1723. 9 Geo. I.

THE abovenamed Persons having been taken into Custody by Order of the Government, for a treasonable Conspiracy, it was thought proper to lay the Letters, Papers, and Examinations relating thereto, before the Parliament; whereupon the House of Commons appointed a Committee, Jan. 15. consisting of the following Persons:

The Right Honourable *Spencer Compton* Esq;
Speaker.
Robert Walpole Esq; Chancellor of the Exchequer.
Sir *Joseph Jekyll*, Master of the Rolls.
Paul Melbuen Esq; Comptroller of his Majesty's Household.
William Poulteney Esq;
John Smith Esq;
Richard Hampden Esq;
Lieutenant General *Wills*.
Sir *Robert Sutton*.

The Committee chose *William Pultney* Esq; their Chairman, and made their Report to the House, March 1. which was as follows:

THE Committee appointed to examine *Christopher Lyster* and others, in relation to the Conspiracy mentioned in His Majesty's Speech, to be carrying on against his Person and Government, having perused the several Papers and Examinations referred to them, and having gone through the Examination of those Persons, have agreed on the following Report.

In such various and so long Examinations, and in so extensive an Inquiry, your Committee are in Hopes that they need not be strictly ty'd to the Method and Order in which they were appointed, but may for the Ease of the House range the several Matters occurring to them, as near as they can, in the Order of Time in which they were transacted, or as they best serve by their mutual Connection to illustrate each other, without adding any observations of their own, but such as naturally arise from comparing the several Papers and Examinations together, and such as are necessary to help the House the more easily to perceive the Contradictions and Inconsistencies of the Confessions made by the Prisoners, as well as the Confirmations and Coincidence of the Facts inquir'd into.

The Committee observe in general, that a Design has long been carrying on by Persons of Figure and Distinction at home, in Conjunction with Traitors abroad, for placing the Pretender

on the Throne of these Kingdoms. That various Methods have been attempted, and various Times fixed for putting this Design in execution. That the first Intention was to have procured a regular Body of foreign Forces to invade these Kingdoms at the Time of the late Elections; but that the Conspirators being disappointed in this Expectation, next resolv'd to make an Attempt at the Time that it was generally believed His Majesty intended to go to *Hanover*, by the Help of such Officers and Soldiers as could pass into *England* unobserved from abroad, under the Command of the late Duke of *Ormond*, who was to have landed in the River with a great Quantity of Arms, provided in *Spain* for that Purpose; at which Time the *Tower* was likewise to have been seized, and the City of *London* to have been made a Place of Arms: But this Design being also disappointed, by the Discoveries made in *England*, and his Majesty's putting off his Journey; by the Incampment of his Forces at home, as well as the sending for those from *Ireland*; and by the readiness of his Majesty's good Allies the *States General* to assist him in case of Need; by the Orders given in *Spain*, that the late Duke of *Ormond* should not be suffered to embark, and the like Orders issu'd in *France*, that he should not be suffered to pass through that Kingdom; the Conspirators found themselves under a Necessity of deferring their Enterprize till the breaking up of the Camp: during which Interval, they were labouring by their Agents and Emissaries to corrupt and seduce the Officers and Soldiers of His Majesty's Army, and depended so much on this Defection, as to entertain hopes of placing the Pretender on the Throne, though they should obtain no Assistance from abroad, which nevertheless they still continu'd to solicit for.

The Truth and Reality of these wicked Designs, your Committee are of Opinion will appear confirmed to the House by concurrent and unquestionable Advices from almost all Parts of *Europe*, sent by Persons who appear to have had no Communication with each other; which Advices have again been verify'd and supported by several Discoveries made at home, by the Informations and Confessions of some of the Persons concerned, as well as by a long and regular Series of Correspondence, which the Conspirators have furnished the Government with against themselves, and the several Branches of which appear to the Committee connected with one another, and all concurring in one continued Design of subverting our present happy Establishment, and involving these Kingdoms in Blood and Confusion.

The several Examinations, Letters, and other Papers, are all contained in an ^a Appendix to this Report; and as they are all severally numbred, so the several Paragraphs which are quoted from them have References to those Numbers, that they may the easier be turned to upon occasion, and be supported by the Authorities from whence they are taken.

That the first Design was to have been executed during the Elections, and to have been supported by foreign Forces, is collected from the following Circumstances:

Philip Neynoe Clerk (who was drowned in attempting to make his Escape from the Messengers) declared upon his ^b Examination before some of the Lords of the Council, 'That he had been employed by *George Kelly*, and one *Watson*, whom he took to be the late Earl Marshal, and who was in *England* last Spring, to draw up three several Memorials to the Regent of *France*, to solicit him to send Forces to the Assistance of the Conspirators. That the last of these Memorials was drawn up in *December* 1721, and contained a Demand of Five thousand Men, to be sent over by the Regent to invade these Kingdoms.'

This is confirmed by unquestionable ^c Advices from *France*, the 19th of *April* last, in which it is expressly affirmed, 'That repeated Application had been made to the Regent for some Time past, to furnish only a Body of Three thousand Men, by the help of which the Conspirators made no doubt but to be able to place the Pretender on the Throne.'

Layer, at his ^d Examination before a Committee of Lords of the Council, confess'd, 'That being in Discourse with Lord *Orrery*, soon after his first acquaintance with him, (which was before the Incampment) Lord *Orrery* said, Nothing could relieve the Nation, but a Restoration; and that he would be glad if he could contribute to bring it about: That it must be done by foreign Forces, and could be done no other way. That he often asked Lord *Orrery* what Methods they had taken to procure them? That Lord *Orrery* said, they had Friends abroad that had made Application to the Regent for Assistance to bring about a Revolution; but he does not know whom his Lordship meant; General *Dillon* might be his Correspondent for ought he knew: That Lord *Orrery* likewise told him, the Regent might be brought to wink at any thing, but was so perfidious that he was not to be trusted; and that the *French* had made a Tool of the Pretender.'

Layer repeated the same in part, at two other Examinations before his Trial, and has since confirmed to your Committee, upon his ^e Examination at the Tower, 'That Lord *Orrery* declared himself constantly of Opinion, that nothing could be done to any purpose in the Pretender's Favour, without foreign Forces.'

About the latter end of *April*, a ^f Letter was intercepted here, coming from *Spain*, inclosing the ^g Copy of one from O—— to L——, which will be shewn in the Sequel of this Report, to have been from the late Duke of *Ormond*; in which *Ormond* says, 'Pray tell Mrs. *Chaumont*, that since the Parliament is dead and gone, I think

'it is a good Time to make an Effort, when the Elector is gone to *Hanover*.' It will appear from the Sequel of this Report, that by Mrs. *Chaumont* is probably meant the Pretender.

On the 23^d of *April* another ^h Letter was intercepted, sign'd 1387, and directed to Mr. *Jackson*, which your Committee have good Reason to believe was from the Bishop of *Rocheſter* to the Pretender, as will be shewn in the following Part of this Report. In this Letter he says, 'Notwithstanding *this Opportunity* is elapsed, I agree with you another may offer before the End of the Year, though not perhaps every way so favourable.' This Letter was writ on the 20th of *April*, when most of the Elections were over, and consequently that Opportunity was elapsed.

That an Insurrection was thought of at the Time of the Elections, is farther confirmed from the following Particulars; *Layer* ^k confessed before the Lords, that *Green* the Gunsmith being in company with Lord *North* after Dinner, and talking of Five thousand Arms, and Seven thousand Arms that were ready, said, *When the Westminster Mob were up, if they had had Arms!* Upon which Lord *North* interrupted him, and said, *Don't talk, you are a Citizen, you know there are no Arms; but that the Man insisted there were Five thousand Arms ready in the City.*

Neynoe ^l declared, 'that *Tbo. Carte*, Clerk, made two Expeditions in the Spring (during the Elections) one into *Cornwall*, and another into the Counties of *Warwick*, *Nottingham*, *Derby* and *Stafford*; and that upon *Neynoe's* blaming the riotous Conduct at the *Coventry* Election, *Carte* replied, *Hang the Election, you never saw Fellows of such Mettle, so well trained, so fit for business.*

Among Mr. *Dennys Kelly's* Papers was seized an exact ^m List of the Quarters of all his Majesty's Forces in *Great Britain*, about the Time that they were drawn out of most of the great Towns and Boroughs, on account of the Elections.

From all these Circumstances the Committee see reason to conclude, that the first Design was to have been executed with the Assistance of foreign Forces, at the Time of the Elections; that the Pretender, the late Duke of *Ormond*, Lord *Orrery*, and the Bishop of *Rocheſter* were of this Opinion; that Memorials were drawn up here, to be presented to the Regent for this Purpose; and that those Memorials were actually presented, or at least Application made to the Regent in consequence of them, by Directions from Persons in *England*; and that such Dispositions had been made for this Enterprize at that Time, as broke out into Riots at some of the Elections: which must be allowed to have been no unfavourable Juncture for such an Attempt, considering the Discontents occasioned by the late *South-Sea* Scheme, which the Conspirators have all along flattered themselves they should be able to improve into a Spirit of Rebellion; and the Liberties usually taken at such a Season, when all the Freeholders of *England* are necessarily and legally assembled together, and when the whole Nation is too apt to be in a ferment, even in the quietest Times.

This Design failing, on account (as tis reasonable to believe) of the Conspirators not being able

^a The Appendix consists of twelve Sections, marked A. AA. B. BB. C. D. E. F. G. H. I. K. ^b E. 10. ^c A. 2.
^d B. 11. ^e B. 8. 10. ^f B. 38. ^g AA. 4. ^h AA. 5. ⁱ D. 12. ^k B. 11. ^l E. 10. ^m F. 9.

to obtain the Forces they solicited from abroad, and of their being themselves divided in Opinion as to the Time and Manner of Execution, their next Endeavour was to attempt an Insurrection at the Time when they supposed His Majesty would be going to *Hanover*.

Of the Reality of this Design your Committee have found such evident and concurrent Testimonies, that they think stronger could not reasonably be expected, in an Affair where it was so much the Interest of the Conspirators to act with the utmost Caution and Secrecy.

It has already been observed, that the late Duke of *Ormond* ^a thought the Time of the King's going for *Germany*, a favourable Opportunity for making an Effort, and that the Person who signs 1378, ^b says, 'Notwithstanding this Opportunity is elapsed, I agree with you another may offer before the End of the Year, tho' not perhaps every way so favourable.'

Layer confess'd to the Lords at ^c two several Examinations previous to his Trial, and has since ^d confirmed to your Committee, 'That he made Application to Lord *Orrery* to stand Godfather to his Child for the Pretender, intending that this Mark of Kindness from the Pretender should serve as a Credential to Lord *Orrery* to induce him to converse freely with him, in relation to the Pretender's Affairs: that their Acquaintance having begun in this Manner, ^e Lord *Orrery* sent to him to inquire into the Pretender's Character and Qualifications, and asked him several Times whether he had any Recommendation from the Pretender to any Person; that upon his answering No, his Lordship told him, that he seem'd to be an honest Man, and People of his Integrity should be always welcome to him, whether they had any Credentials or no; that he, *Layer*, then gave his Lordship an Account of what had pass'd between the Pretender and him during his Stay at *Rome*, and asked his Lordship what Hopes there were? To which his Lordship answered, that there were Hopes, for all the Nation were generally for the Pretender, except such as had Places, or Money due to them from the Government. That Lord *Orrery* farther told him, that Lord *North*, Sir *Harry Goring*, Lord *Strafford* and others were going to do a rash Thing in Favour of the Pretender, which he, Lord *Orrery*, was sorry for, because it would prove abortive, and hinder its succeeding another Time: That *Layer* asked him, who was to have the Command, and Lord *Orrery* told him, he believed Lord *North* and *Grey* was to have the Command, and that the said Lord had a Commission from the Pretender; that the Lord *Orrery* called this Design rash, because not duly concerted, nor supported by foreign Forces, without which, he said, he thought they must be more than Madmen to hope to do any Thing to Effect, for the Pretender's Service. That he, *Layer*, the next Time he saw Lord *North* and *Grey*, which was before the Encampment of the Troops, acquainted him with what Lord *Orrery* had said about the Rashness of the Design; that Lord *North* and *Grey* replied, Lord *Orrery* was a timorous Fellow, and was always making Difficulties, and Schemes out of his own Brain; that he knew

'nothing, nor should know; but that it was his, [Lord *North*'s] Opinion, the Pretender might be restored by the People of *England*, without the Assistance of any foreign Force. That he, *Layer*, talked to Lord *North* and *Grey* of his Lordship's being General; but Lord *North* said, he was not popular enough, that the Duke of *Ormond* would be fit for it, and if they had him here, his Lordship believed most of the Soldiers would join him: That he, *Layer*, continuing to press Lord *North* and *Grey* on this head, by telling him that he was fitter for a General, and was popular, the said Lord answered No, the Duke of *Ormond* was the Man, he was the Soldiers Darling. That he, *Layer*, often talked of this Affair to the Lord *North*, being induced so to do, by the Impatience he observed in him, and in Lord *Orrery*, that something should be done.'

Matthew Plunket, Serjeant of Invalids, has ^f deposed upon Oath, 'that *Layer* told him (in *July* last) that the late Duke of *Ormond* would come in a single Ship with some Officers, and that it had been done long ago, if the *French* Ambassador had not been told of it, who told it again to the King.'

^g It appears to your Committee from several Depositions on Oath, as well as from Informations and written Intelligence, that in consequence of this Design of bringing over the late Duke of *Ormond*, Captain *Charles Halstead*, a *Lancashire* Man (who was concerned in the Insurrection intended at *Oxford* in the Year 1715) set sail from the River for *Bilboa*, about the 12th Day of *March* 17²¹/₂₂, on board the Ship *Phineas* of *Bristol*, *William Arnold* Master, with a Provision of Arms and Powder on board, which one of the Sailors on his ^h Examination declared, 'He apprehends to have been greater than was necessary for an ordinary trading Voyage. ⁱ That the said Ship was hired at one Hundred Pounds Freight per Month, two Hundred being paid in Advance (as *Halstead* himself owned) and had no Goods nor any Passenger on board, except the said *Halstead*, who went by the Name of *Nowell*, and was known to the Master and Sailors by that Name only, during the Voyage to *Spain*. ^k That the said Ship was cleared at the Custom-house in Ballast for *Lisbon*; but that when they came into the Bay of *Biscay*, the Master, who had Orders to follow *Nowell*'s Directions, ^l gave private Instructions to the Pilot to steer to *Bilboa*; that they arrived there on the 25th of *March*, O. S. and that *Halstead* went on Shore, and lay that Night at Mr. *Brown*'s an *Irish* Merchant, and the next Day went forward towards *Madrid*, being furnished with Horses by the said *Brown*, on which Journey he was absent about a Fortnight; that during his Absence, a ^m Report was current all over the Town of *Bilboa*, and particularly among the Convents, that the said Ship was come to fetch over the Duke of *Ormond*.ⁿ And *Thomas Carter*, one of the Sailors of the said Ship, who was employ'd by *Halstead* to wait on him as a Servant, has ^o deposed upon Oath, 'That three Days after the said *Nowell*'s Return, the Deponent heard him propose to the above-named Captain *Arnold*, to carry the late Duke of *Ormond* and Four other Passengers to *England*; which the

^a AA. 5.^b D. 12.^c B. 10. 11.^d B. 38.^e B. 11.^f B. 6.^g AA.^h AA. 15.ⁱ AA. 13.^k AA. 11.^l AA. 9.^m AA. 9.ⁿ AA. 14.^o said

‘ said Captain *Arnold* refusing to do, the said
 ‘ *Nowell* insisted, saying, the Ship was his so long
 ‘ as he paid the Hire of her, and the Wages and
 ‘ Victualling, and they had high Words upon it.
 ‘ *Carter* farther deposed, that *Halstead* received a
 ‘ Letter directed to Colonel *Nowell Butler*, which
 ‘ was the Name the said *Nowell* went by, when
 ‘ he was in *Spain*. That, when the Ship was re-
 ‘ leased, they plied off and on about four Hours
 ‘ off *St. Andero*, expecting some Body to come
 ‘ off in a Boat; but no Body coming, and Night
 ‘ drawing on, they made the best of their way
 ‘ to *England*, and arrived in the Downs the Be-
 ‘ ginning of *July* last.’ *Allison*, who came over
 to *England* a Passenger in the said Ship, has^a de-
 posed upon Oath, ‘ that he left *Madrid* on the
 ‘ 4th of *June*, *N. S.* and that some Time before
 ‘ he came away, the late Duke of *Ormond*, who
 ‘ had resided a considerable Time at *Madrid*, had
 ‘ sent away his Horses and Equipage from thence,
 ‘ and put his Servants on Board-wages, and that
 ‘ it was reported he was to go to *Ventofilla*. That
 ‘ he, *Allison*, upon his coming to *Bilboa*, found
 ‘ the Ship *Phineas* bound for *England*, but stopt;
 ‘ that he agreed to take his Passage on board her,
 ‘ and going to the Corregidor of *Bilboa* for a Pass,
 ‘ he found there *Mr. Brown* a Merchant, and one
 ‘ who went by the Name of *Nowell*; that *Brown*
 ‘ asking the Corregidor why the Ship was stopt,
 ‘ he said, it was not the Ship, but *Nowell’s* Per-
 ‘ son, that was detained, by Orders from *Madrid*;
 ‘ that he, *Allison*, heard a Report at *Bilboa*,
 ‘ that the late Duke of *Ormond* was on the Coast
 ‘ in Disguise, and that *Nowell* had been at *Madrid*,
 ‘ and come back again in Fifteen Days; the
 ‘ Expedition of which Journey, and the Ship’s
 ‘ coming in Ballast, had raised a Suspicion in
 ‘ *Bilboa*, that *Nowell* came over to the late Duke
 ‘ of *Ormond*, on Account of the Conspiracy. The
 ‘ Sailors^b observed, that during *Nowell’s* Stay at
 ‘ *Bilboa*, *Brigadier Campbell* (a Person concerned
 ‘ in the *Preston* Rebellion) was frequently on
 ‘ board with him, but did not care to own his
 ‘ Name.’ The same Particulars are confirmed
 by ‘ Letters from *Sir Anthony Wescomb*, who was
 sent to *Spain* to gain Intelligence, with several
 other^d Circumstances relating to Ships, Arms
 and Recruits, provided for the Pretender’s Service
 in *Spain*.

During these Transactions, ‘ Colonel *Stanhope*,
 his Majesty’s Ambassador at *Madrid*, who does
 not appear to have known any thing of this Ship’s
 being come to *Bilboa*, having received Intelligence
 from other Hands, that the Duke of *Ormond* was
 preparing to set out for *England* with some *Irish*
 Officers, in order to put himself at the Head of
 the Rebels, obtain’d Orders from the Court of
Madrid, to hinder the late Duke of *Ormond’s*
 Embarkation, as will appear more fully in the re-
 maining part of this Report.

In consequence of these Orders, the King of
Spain’s Officers^f came on board the Ship, and
 laid an Embargo upon her for about a Fortnight,
 till *Halstead*, finding himself disappointed of his
 Design, agreed that Part of a Cargo of Wooll
 and Iron should be put on board the said Ship by
Brown and *Slinger*; and then returned to^g *England*
 with one *Maxwell*, whom the Sailors understood
 to be a Relation of the late Lord *Marr’s*, and

two other Passengers, and arriv’d in the River a-
 bout the 7th or 8th of *July*.

About the Beginning of *May*^h Letter was inter-
 cepted here coming from *Spain*, directed to *Monf.*
Dumville Procureur, and enclosed under Cover to
 one *Wilmore* at *Mr. Stokoe’s* Bookfeller near
Charing-Cross. Who is meant by the Name
Dumville, the Committee have not been able to
 discover.

In this Letter was enclosed theⁱ Copy of a Let-
 ter, which the Committee have Reason to believe
 was from the late Duke of *Ormond* to some Per-
 sons abroad, the initial Letter of whose Name is
 discovered by the Decyphers to be *L*.

The Letter to *Dumville*, as well as the Copy
 of the late Duke of *Ormond’s* Letter, was writ
 partly in Cypher; and among the Words out
 of Cypher several fictitious Names were made
 Use of, which the Committee observe is the Case
 also in several others of the intercepted Letters
 referred to them.

It was reasonable to expect, that in managing
 Correspondences of so hazardous a Nature, all
 sort of Art and Industry should be used, and all
 the Help of Cyphers and Jargon called in, to
 disguise the real Designs, and to conceal the
 true Names of the Persons concerned, in order
 to their avoiding the Danger of legal Conviction:
 but your Committee likewise observe, that sever-
 al of these Disguises are so gross and obvious,
 that they only serve to betray themselves; others
 of them are explained by the Skill of different
 Decyphers, agreeing in the same Explication;
 which Explication is again confirmed by Facts
 unknown to those Persons at the Time of the
 Decyphering. Others are explained by Cyphers
 and Lists of fictitious Names, seized on the Con-
 spirators themselves, as well as by comparing the
 several Parts of their Correspondence together;
 and others again by direct Informations upon
 Oath. And, as the Degrees of Evidence, in a
 Search of this Nature, must be various, the Com-
 mittee have taken all the Care they can, to di-
 stinguish what appears to them fully proved, from
 what is supported by strong and probable Con-
 jectures only.

In this^k Letter to *Dumville*, dated the 27th of
April 1722, (*N. S.*) mention is made of its be-
 ing publickly known in *Spain*, by Letters from
Bilboa and other Parts, ‘ that a Ship came to
 ‘ *Bilboa*, with an express to *Ormond*, in order to
 ‘ bring *Ormond* to *England*; that the said Ex-
 ‘ press went to the Place where *Ormond* was;
 ‘ that this had made so much Noise, that it
 ‘ was necessary to send to *England* with all pos-
 ‘ sible Dispatch; that a Ship’s coming with *Bal-*
 ‘ last only gave Occasion to those Reports, and
 ‘ that in order to stifle them it was necessary to
 ‘ put in the Ship Goods for *England*; that this
 ‘ would be a considerable Expence to *Tom*, who
 ‘ hopes that Friends will consider it, and send
 ‘ him if possible a greater Supply than the five
 ‘ Thousand Pounds that he wrote for in his of the
 ‘ 6th and 20th of *April*; that the Bills must be
 ‘ sent directly to *B—*, and may be bought at
 ‘ the Exchange of *London*.’

The Committee are of Opinion, that by *B.*
 is meant *Brown* the *Irish* Merchant at *Bilboa*, be-
 cause the^l Cargo was put on Board by the said

^a AA. 16.^b AA. 8. 9. 11.^c A 38.^d A. 34—40. 43. A. 26. 27. 28.^e A. 15.^f AA. 8. 9. 11. 16.^g AA. 9.^h AA. 4.ⁱ AA. 5.^k AA. 4.^l AA. 11.

Brown and *Slinger*; and it appears by subsequent Letters that this *Brown* had twelve Thousand Arms in his Custody, for the Service of the late Duke of *Ormond*. It is also proved ^b by the Sailors, that *Halstead* was frequently in Company with this *Brown* and his Nephews, and lay sometimes at his House.

Who is meant by *Tom* in the said Letter, the Committee will not take upon them to determine; but they believe it will appear probable to the House, from the Connexion and other Circumstances, that it must mean the late Duke of *Ormond*.

The Person that writes this ^c Letter to *Dumville*, adds, 'That since Mrs. *Chaumont* cannot meet *Ormond* at any Place on the Road, it is absolutely necessary that *Ormond* should have as good a Preparation of Arms as can be had there, and in order to make it, he will want more Money from Friends.'

The same Person says, that he had that Day received a Letter, importing, 'That *M*—— could get more Arms if he had more Money.' The Committee are of Opinion, that by *M*—— is meant *Morgan*, who is mentioned in several Letters from *Spain*, as Intendant of the Pretender's Ships at *Cadiz*, and active in procuring Officers and Arms; which Letters are confirmed by the Seizure of the Ship *Revolution* at *Genoa*, of which it appears by Captain *Scot*'s ^e Letter from *Genoa*, that *Morgan* had the chief Care, going by the Name of *Walton*; which is again confirmed by a ^f Letter from Sir *Anthony Wescomb* at *Bilboa*.

The Person that ^g writes to *Dumville*, farther adds, 'That *Ormond* hopes *Onslow* and *Hawley* will send a Part of the Money they have raised directly to *Ormond*; for *Ormond*, upon the Hopes of it, has sent Credit to *M*——; he desires *Dumville* to mind this, and not to lose a Moment.'

Who are meant by *Onslow* and *Hawley*, the Committee cannot determine; but they are inclined to believe, that they are the same Persons, who in another ^h Letter, enclosed to *Wilmore* soon after, and writ in the same Cypher, are found by the Decyphers to have the initial Letters of their Names *G*—— and *N*——; in which Conjecture they are the more confirmed, by ⁱ a Cypher seized on *John Plunket*, in which the real Names beginning with *G*. are constantly designed by fictitious ones beginning with *H*. the Letter immediately following in the Alphabet, and the real Names of the Letter *N*. by others beginning with *O*.

In the ^k Letter to *Dumville* above-mentioned, was enclosed the ^l Copy of a Letter from the late Duke of *Ormond* to *L*. which was sent to *Dumville* as being in part an Answer to one received from him; who is meant by *L*, the Committee cannot determine.

In this Letter, the late Duke of *Ormond* mentions his having received an Account from *D*—— (General *Dillon* probably) that he had procured ten Thousand Arms, and advises the joyning Stocks with *D*——, since they cannot have too many Arms; and says he can only depend on two Thousand Arms from *M*—— (*Morgan* pro-

bably) but that he could have had more Arms, if he had had more Money.

The Committee observe, That this Account of ten Thousand Arms procured by *D*——, and of two Thousand by *M*——, agrees exactly with an ^m Account sent soon after from Mr. *Stanbope* at *Madrid*, and ⁿ confirmed by Sir *Anthony Wescomb*, that twelve Thousand Arms were lodged in the Hands of *Brown* at *Bilboa*, for the Pretender's Service; and that *Morgan* was ordered to the Bay of *Biscay*, in order to transport the said Arms to *England*.

The Committee take Notice likewise, that the very same Number of Arms is mentioned in a ^o Letter, writ, as they have good Reason to believe, by *George Kelly*, to General *Dillon*'s Secretary; and the Arms are there spoken of, as provided by *Mansfield*'s Relations, which Name *George Kelly* ^p explained to *Neynoe* to mean the late Duke of *Ormond*.

The Circumstance of *Kelly*'s mentioning these Arms to *Dillon*'s Secretary, makes it probable that by *D*. in *Ormond*'s Letter, is meant the said *Dillon*, who, as your Committee are informed, is an *Irish Roman Catholick*, and quitted *Ireland* on the Capitulation of *Limerick*, and is at present a Lieutenant-General in the *French Service*, and has the Command of one of the *Irish Regiments* in *France*; and he appears to your Committee, from several Parts of the intercepted Correspondence, to have the chief Management of the Pretender's Affairs, and to be the principal Agent and Director of carrying on this Conspiracy.

Ormond in his ^q Letter to *L*—— afterwards says, 'That since the Parliament is dead and gone, he thinks it will be a good Time to make an Effort when the Elector is gone to *Hanover*; and adds, I hope you have agreed with *D*—— the Time of going for *England*, and when that is fixed between Mrs. *Chaumont* and *D*——, you will let *Ormond* know the Place of landing in *England*. I desire an Express may be sent to me, with particular Accounts of what is agreed on.' This, the Committee take Notice, agrees with Mr. *Stanbope*'s ^r Intelligence, that *Ormond* was going for *England*, and likewise with ^s Intelligence sent from *Rome*, that the Pretender was to embark, as soon as two Officers, Relations of the late Duke of *Ormond*, should arrive at *Porto Longone*; which Circumstance makes it not improbable, that by Mrs. *Chaumont* may be meant the Pretender.

In the same ^t Letter to *L*——, *Ormond* says, 'I have ordered *H*——'s Ship, that I depended on, to return to *England*; it was not proper to make use of it, for Reasons not necessary to trouble you with. There was no Message sent by him, because of the Uncertainty of the Time of his getting to *England*.'

This Passage, the Committee are of Opinion, evidently relates to *Halstead*'s Ship. Upon mentioning his sending back this Ship, he immediately adds, 'I have ordered *M*——'s Ship to come to *A*——;' which agrees exactly with Mr. *Stanbope*'s ^u Account, that *Morgan*'s Ships were ordered to the Bay of *Biscay*, to transport to *England* the Arms above-mentioned, together

^a A. 15. 35.^b AA. 9. 14.^c AA. 4.^d A. 26. 34. 36. 40.^e A. 44.^f A. 40.^g AA. 4.^h AA. 6.ⁱ C. 51.^k AA. 4.^l AA. 4.^m A. 15.ⁿ A. 35.^o F. 35.^p E. 10.^q AA. 5.^r A. 15.^s A. 23.^t AA. 5.^u A. 15.

with *Ormond*, and what Officers could be got; and it appears by subsequent ^a Letters from Sir *Anthony Wescomb* at *Bilboa*, that the said Ships, under the Command of *Morgan*, did put in at *Sainto Andera*, which the Committee understand to be the Place meant by *A*——, to which *Ormond* says he had ordered *M*——'s Ship to come. The said Ships having put in at *Andera*, and staid there fifteen Days, is again confirmed by a ^b Letter from *Genoa*, writ by Captain *Gardiner*, who commanded the Ship *Revolution* lately taken.

Soon after this Letter to *Dumville*, ^c another was intercepted here coming from *Spain*, directed *A Monsieur Dodsworth*, not signed, enclosed under Cover to *Wilmore* as the former, and writ in the same Cypher; the most material Paragraph of which is thus explained by the Decyphers.

‘ I must again entreat you to use your utmost Endeavours, to get the five Thousand Pounds from Friends returned to *O*—— directly; the Hopes given by *G*—— to expect a great Sum, and by *N*——, that he had raised twenty Thousand Pounds, induced *O*—— to supply *M*——, and to make other necessary Provisions. If that Money be not returned, it will fall heavy upon *O*——, and he will be disabled from answering the Expectation of Friends, therefore ought to be your first and greatest Concern. All other Actions are Trifles in Comparison of it; for the Hopes of Success depend principally on *O*——. I mentioned this in former Letters, and Friends are desired to return more than five Thousand Pounds, if possible. If they do, more Arms and Ammunition, and Officers can be had here; and the End of raising Money by Friends, is to procure Arms, Ammunition and Officers.

To whom these Letters were writ does not appear; but the Committee observe that they are writ in the same Cypher with three ^d Letters, which they have Grounds to believe were from the Bishop of *Rochester*. They observe likewise that the same Cypher is sometimes made use of by ^e *George Kelly*.

Mr. Stokoe the Bookseller being examined about *Wilmore*, under whose Cover these Letters to *Dumville* and *Dodsworth* came enclosed, could give no other ^f Account of him, but that he was one who once writ a Letter in his Shop, and desired him by a Letter, dated *Epsom* the first of *March*, 1722, to take in such *French* Letters as should come directed to him; and by another Letter, dated *Harwich* the 14th of *May*, desired him to take in no more; that he, *Stokoe*, did receive two Letters from abroad so directed, which were fetched away, and paid for by Persons to him unknown.

That the late Duke of *Ormond* was expected to head an Insurrection in *England*, is farther confirmed by the following Particulars.

Neynoe upon his Examination before a Committee of Lords of the Council, ^g declared, ‘ That the first Design in the Spring was to have been executed in *London*, by seizing the *Tower*, and that the late Duke of *Ormond* was then to have landed in the River; but upon Discovery of the Plot, and the King's not going beyond Sea, it was put off for some Time; that the

‘ Bishop of *Rochester*, Lord *Orrery*, Lord *North*, and Sir *Harry Goring*, were the principal Leaders and Directors of the whole Design; and that *Watson* (whom he took to be the late Earl Marishal) had told him, Lord *North* and *Grey* was thought of for the Command.’

On the 29th of *April*, O. S. ^h Intelligence came from *France*, ‘ That the Week before the late Duke of *Ormond* had made Application to the Regent by a Person of great Distinction, for Leave to pass through *France*, under a Pretence of going into *Italy*, but that the Regent had absolutely refused him, and at the same Time had dispatch'd the necessary Orders to the Frontiers of *Spain*, to hinder him from passing either openly or in Disguise.’

On the 2d of *May*, O. S. Sir *Luke Schaub* sent ⁱ Advice, ‘ That one *Lesley* had been looking out for Lodgings at *Paris* for the late Duke of *Ormond*; and ^k on the 9th, that Alderman *Barber* carried with him Bills of Exchange for fifty Thousand Pounds Sterling for the Pretender; and that the same Sum was sent to *Ormond* by another Hand, to enable him to make the necessary Preparations in *Spain* and *Italy*.’ The Committee observe, that this agrees, as to the Division of the Money, with a Passage in another ^l Letter from *Dillon's* Secretary to *George Kelly*, dated the second of *May*, N. S. which will be farther explained in its proper Place.

On the 23d of *May*, O. S. Sir *Luke Schaub* sent ^m Advice, ‘ That the late Duke of *Ormond* was to set out from *Madrid* about the 20th of that Month, with his Family, without its being known whither he was going; that it was believed he would give out that he was going to settle at a certain Distance from *Madrid*, from whence he might steal away afterwards unobserved.’

On the 28th of *May*, O. S. *Mr. Stanhope* ⁿ writes Word from *Madrid*, ‘ That having had Intelligence to be rely'd on, that the late Duke of *Ormond* intended speedily to pass into *England*, with a great Number of *Irish* Officers at that time in the Service of his Catholick Majesty, in order to put himself at the Head of the Rebels there, and for that purpose was to set out from *Madrid* the next Day, under Pretence of going for the rest of the Summer to *Ventofilla*, a House of the Duke of *Medina Celi*, half-way between *Madrid* and *Bilboa*, but in reality to be thereby readier to pass to that Port, and with less Suspicion to embark from thence for *England*, whenever Matters should be ripe for his so doing; he made Application to his Catholick Majesty by the Marquiss *de Grimaldo*, for Orders to be sent to all the Ports of *Spain*, to prevent the said late Duke's embarking with the Officers above-mentioned, and received a Letter from the Marquiss *de Grimaldo*, (a Copy ^o of which is annexed to this Report) acquainting him, that the King of *Spain* had directed such Orders to be issued, and was ready on all Occasions, more particularly on this which regarded the Quiet and Tranquillity of his *Britannick* Majesty's Kingdoms, to contribute all in his Power towards his Majesty's Satisfaction.’

^a A. 36.^b A. 45.^c AA. 6.^d D. 10. 11. 12.^e E. 35.^f AA. 1.^g E. 10.^h A. 4.ⁱ A. 5.^k A. 4.^l E. 30.^m A. 11.ⁿ A. 15.^o A. 17.

Andrew Pancier, formerly Captain-Lieutenant of Lord *Cobham's* Dragoons, has ^a deposed upon Oath, ' That being grown intimately acquainted with *Skeene* (now in Custody) a Person related to *Marr*, and engaged in the Rebellions of *Pres-ton* and *Glensbeild*, *Skeene* began to acquaint him, about *June* last, that there was a Design carrying on in *England* for placing the Pretender on the Throne, of which he at different times told him the following Particulars: That six or eight Battalions of *Irish* Foot, double Officer'd, were to have come over from *Spain*, which were quarter'd upon the Coast of *Gallicia* for that purpose; that the nine *Spanish* Men of War which have joined the *Dutch*, and four more to have been fitted out at *Barcelona*, and three at *Alicant*, (as he best remembered) being in all sixteen *Spanish* Men of War, were to have been employed in this Service. That these Troops were to have landed either in *Cornwal*, or near *Bristol*: That there were forty Thousand Stand of Arms in *Great Britain*, part in *Scotland*, other part in *London*, other part in *Bristol*, and other part in *Cornwal*. That there were seven or eight hundred Men, with Officers among them, in *London*, subsisted, and in readiness for such an Occasion. That a Sum of two hundred thousand Pounds had been raised by Contribution for carrying on this Design, and put into the Management of the Bishop of *Rocheſter*, who with the Lord *North* and *Grey* were the leading Men among them; and that the Lord *Strafford* and Lord *Kinoule* knew the Thing. That the Managers of this Affair in *Spain*, were the late Duke of *Ormond* and the late Earl Marishal; and those in *France* the late Lord *Marr*, and Lieutenant General *Dillon*. That the Court of *Spain* was in their Interest, but as to the Regent and Cardinal *Du Bois*, they could not tell what to make of them: That this Design was to have been executed some time ago, but was then disappointed by the Regent: That the late Duke of *Ormond*, and the late Earl Marishal, were to have come with the Troops before mentioned from *Spain*, and the Pretender about the same time was to have left *Rome* privately, and to have lain conceal'd somewhere near, from whence he would have come over when there had been a fair Prospect of Success. That as to any Opposition they could expect, we had but fourteen Thousand Men in all, of which three Thousand were necessary to guard *London*, three Thousand more for *Scotland*, and two Thousand for the Garisons; so that the Remainder would never dare to attack those who came from *Spain*: and in the Confusion, their (meaning the Pretender's) Friends would have been able to have got together, and made a Head. That in the Conduct of this Affair there passed little in writing, and only the four Lords before mentioned, viz. the Bishop of *Rocheſter* and Lord *North* and *Grey* principally, and Lord *Strafford* and Lord *Kinoule*, were concerned in the Management of it here. That the Business was to have been done before the *Dutch* Troops could come to our Assistance.

The Committee have laid these several Particulars together, though of different Dates, that the House may see at one view, the Reason there is to believe, that the late Duke of *Ormond* was to

have landed in *England* with Officers and Arms, about the Time that it was generally supposed his Majesty intended to go to *Hanover*. The reason of *Ormond's* not coming, is sufficiently explained by the Orders issued at *Madrid* and in *France*, by the King's not going abroad, and by the Discoveries, and Disposition of the Forces made in *England*. And notice is taken, in ^b Letters to one of his Majesty's Secretaries of State from *Rome*, that a Person of great Distinction at that Place, had declared it as his Opinion, that the grand Project formed in the Conclave for placing the Pretender on the Throne of *Britain*, was going to be put in execution; but that the same Person afterwards assigned four Reasons for its having miscarried; which were, the Want of Money, the suspected Faith of the Regent, the Want of Skill in those who were to conduct it, and the Pusillanimity of the Pretender, who, to avoid hazarding his own Person, proposed to send his Child: which last Particular is again mentioned in another ^c Letter from *Rome*.

The Committee now return to shew what other Evidences they have before them, of a Design laid for beginning an Insurrection in *London*, at the Time when it was supposed the King intended to go to *Hanover*.

About the latter end of *April*, his Majesty received ^d Intelligence from abroad, upon which he can intirely depend, ' That a Design was laid for bringing in the Pretender, which was thought to be so well concerted, and conducted by Persons of such Experience, that, if the Secret was but kept, as was propos'd, the Success was looked upon as infallible; and that it was to be put in Execution about the end of *April*, or beginning of *May*.' The original Letter containing this Intelligence, has been communicated to your Committee, and an ^e Extract of it is annexed to this Report.

On the 29th of *April*, the same ^f Intelligence was repeated, with these farther Particulars, ' That the Conspirators did no longer think it necessary to insist on foreign Assistance, flattering themselves that great part of the King's own Forces would declare in their favour. That they now contented themselves with desiring the Regent should observe a Neutrality between his Majesty and the Pretender; and that Lord *Lansdowne* was to present, or cause to be presented, a Memorial to the Regent to this effect, that Day or the next. That the Design was probably to be executed in *London*; that the beginning of *May* was the Time fixed on; and that the Pretender was speedily to set out for *England*.'

Your Committee do not find that the above-mentioned Memorial was presented to the Regent; but in ^g Letters from *Plunket* to *Dillon* they find the same repeated in these Words; ' If the Regent stands neuter, we will soon bring the *Law-suit* to bear:' which *Layr* ^h explained to be the Pretender's Cause.

On the 24th of *April* O. S. Mr. *Davenant*, His Majesty's Minister in *Italy*, sent an Express from *Rome*, with ⁱ Advice, ' that the Pretender's Adherents were making Preparations in *Cadiz*, and other Ports of *Spain*, for an Attempt on *England*; that the Pretender was speedily to embark at *Porto Longone*, and was retired from *Rome* for

^a D. 1.^b A. 8. 23.^c A. 22.^d A. 2.^e A. 1. 2.^f A. 4.^g C. 59. 61.^h B. 38.ⁱ A. 3.

' that

‘ that Purpose :’ And ^a it appears, that the same Advice was soon after confirmed to his Majesty, by a foreign Minister residing in *England*, who received the Intelligence from a Person of great Distinction abroad, and communicated it to his Majesty.

On the 9th of *May*, Mr. *Craufurd*, His Majesty’s Resident at *Paris*, ^b writes word, ‘ that the *Jacobites in France* expected soon an Insurrection ‘ in *England*, which was to be begun by the ‘ Heads of their Party here soon after His Majesty’s setting out for *Hanover*, and was to be ‘ supported by *Irish* Officers and Soldiers, who ‘ lay ready at *Cadiz*, besides such as should be ‘ able to pass over into *England* from *France* by ‘ stealth :’ and in his ‘ Letter of the 26th of *May* O. S. he adds, ‘ that the Grounds of this Expectation were, Assurances given from *England*, ‘ that the Conspirators would immediately make ‘ themselves Masters of the Tower, and City of ‘ *London*.’

This Intelligence agrees with a ^d Paper delivered to the Secretaries of State in *July* last, by one of the Lords of his Majesty’s Council, who, as they have ^e certified, assured them that a Person, whom he had good reason to believe to be deeply concerned in the Conspiracy, came to him in the Month of *July*, and brought him a Paper, which he affirmed he had copied by stealth out of the Scrutore of a noble Lord, whom he refused to name ; and that the said Person writ out a fair Copy of the Paper in his presence, which contains Minutes of Resolutions taken at a Consultation, and is in the following Words.

‘ *R.* That the Arms be dug up immediately, ‘ and dispersed in small Parcels. Begin in *Southwark*, *Whitechapel*, *Wapping*, *Holborn* and *Smithfield*. March into City. Possess the Gates. ‘ Against the Horse, Barricades in the narrow ‘ Streets, especially at both Ends of *Fleet-bridge*, ‘ *Shoe-lane*, *Fetter-lane* and *Chancery-lane*. Possess ‘ *St. Clement’s* Churchyard by a Party from *Holborn*. A strong Barricade in the narrow Part of ‘ that Street. Line the two first Stories. Bricks, ‘ Stones, &c. may be useful in the upper Rooms, ‘ and may be thrown by Women and others unfit to bear Arms. Lighters with Ammunition ‘ under Coals, lie at *Blackfryars* and *Milford-lane*. ‘ No Dependance or Assistance from *Westminster* ‘ and those Parts, except some few by Water, the ‘ Communication being cut off. Message to the ‘ Lord Mayor by three Lords. Proclamation ‘ made to oblige all who shall not come in, to ‘ bring in their Muskets, and Militia Arms. Declaration ready printed, to be dispersed among ‘ the People. Twenty three Officers of the ‘ Guards to be depended on : a great many ‘ others well affected, especially the common ‘ Centinels. Day resolv’d on *April* the 30th. ‘ *R.* That forty determin’d Persons be immediately pitch’d upon, armed with Swords and ‘ Pistols, to execute all Orders ; and that for the ‘ Subsistence of the said forty Gentlemen, Money ‘ be advanced out of the Fund, at the Rate of seven Shillings *per Diem* for Man and Horse. ‘ Commander in Chief Lord *N.* Time seven in ‘ the Morning.’

Dis : *C. W. M.*

^a A. 3. ^b A. 7. ^c A. 14. ^d BB. 2. ^e BB. 1. ^f B. X. 1. ^g B. 38. ^h G. 9. ⁱ BB. 4.
^k B. X. 1. ^l G. 9. ^m D. 1. ⁿ B. 11. ^o B. 38. ^p BB. 2. ^q A. 2. 3. &c. ^r D. 1.
^s B. 11. ^t E. 9. ^u B. 6.

The Committee make no doubt but the House will readily observe, that this Scheme, drawn up in *April*, and delivered as aforesaid to one of the Lords of the Council in *July* last, has a near Affinity with ^f that of *Layer*, and appears to be the Groundwork of it, tho’ *Layer* ^g denies his having ever seen any such Paper of Resolutions, or having received any Instructions relating to his Scheme, except from *Wilson* a Surgeon, *Murphey* a Physician, and *White* a Serjeant.

The Committee likewise observe from this and *Layer’s* Scheme, as well as from a ^h Letter of *Sample’s* (of which notice will be taken in its Place) that the involving the City of *London* in Blood and Confusion, appears to have been universally understood and agreed on among all the Conspirators, as the first Step to be taken, and the Foundation of their future Hopes.

By another ⁱ Paper delivered in *July* last by the same Person, it appears, that when the Stroke was struck in *London*, there were to be Insurrections in several Counties of *England* ; and that the Numbers of Gentlemen and private Men, to be depended on both in *London* and the Country, were computed and set down : and the Committee observe, that the extending the Insurrection to the Country, after *London* was seized, makes likewise a Part of ^k *Layer’s* Scheme, and ^l *Sample’s* Letter.

The Committee farther take notice that in these Schemes, as well as in ^m *Pancier’s* Deposition, mention is made of great quantities of Arms conceal’d for the Use of the Conspirators ; and *Layer* having confess’d at his ⁿ Examination before the Lords, that he supposed there were Arms provided, and that *Green* the Gunsmith being in company with Lord *North*, had mentioned five Thousand Arms, and seven Thousand Arms, and insisted, in contradiction to Lord *North* who bid him hold his Tongue, that there were five Thousand Arms ready in the City ; the Committee examined him particularly on this Head, but could draw nothing more from him, than ^o that *Green* had told Captain *Bonyn* at Lord *North’s*, that he could help him to five or seven Thousand Arms at an Hour’s warning. And tho’ your Committee is fully satisfied that no Care has been wanting elsewhere to discover these Arms, and to defeat the Conspiracy in so essential a Circumstance ; yet they cannot but think it a melancholy Consideration, that through the determined Obstinacy of the Conspirators, these Endeavours have hitherto proved unsuccessful.

The Committee observe farther, that in the ^p Paper of Resolutions, Mention is made of a Fund of Money provided, and of a great Number of determined Persons subsisted in *London* for the Purposes of the Conspiracy, for the Execution of which a Day was likewise fixed on and appointed, and the Commander in chief known. All which several Particulars correspond exactly with the ^q Intelligence received at the same Time from abroad, with ^r *Pancier’s* Deposition, with what *Layer* ^s own’d Lord *Orrery* had told him, that he believed Lord *North* and *Grey* had a Commission for commanding in chief ; and with what *Neynoe* ^t was told by *Watson*, that Lord *North* and *Grey* was thought of for the Command ; as likewise with what ^u was told *Matthew Plunket* by *Layer*

and *John Plunket*, that Lord *North* and *Grey* with others were ready to head an Insurrection.

Your Committee having thus laid before you the general Evidence, which convinces them that a Design was formed by Persons of Distinction, to invade these Kingdoms with a foreign Force; that being disappointed in this Expectation, they still persisted to make an Attempt, with such Officers and Soldiers as could be procured privately from Abroad; that the late Duke of *Ormond* was to have landed for this Purpose, and to have been followed by the Pretender; that Arms and Money were provided, and Men subsisted for this Service; that the Insurrection was to have been begun in *London*, and thence to have been extended over the whole Kingdom. They will now proceed more particularly to explain the several Parts, which the Leaders and inferior Agents appear to have taken in conducting this Design, as far as the same can be collected from the intercepted Correspondence, and other Papers referred to them, and from the Examinations of the Persons concerned; by which it will farther appear to the House, that the Design was constantly prosecuted in all Parts, without any other Relaxation or Intermission, than what the Necessity of their Affairs, and the Discoveries made, obliged them to, in order to lay their Measures deeper, and to make the Success of them more certain: And that the Enterprize, which was first calculated for the Spring, was to have been afterwards put in Execution at the breaking up of the Camp, with the Help of Officers and Soldiers from Abroad, if they could be obtained; if not, on the Strength of such as they hoped to be able to corrupt and seduce, among his Majesty's own Forces.

The Leaders, in order (as 'tis natural to believe) to save themselves from the Danger of legal Conviction, chose to manage their Correspondences by the Intervention of Persons of a meaner Rank and Figure, and of desperate Fortunes; who, they hoped, might escape the Observation of the Government, being no otherwise considerable, than as the Trust reposed in them made them so.

The Committee think proper to take notice, that of these inferior Agents, *Layer* appears to have been principally intrusted by Lord *North* and *Grey*, and Lord *Orrery*; and that *Plunket*, who travelled with *Layer* to *Rome*, and whose treasonable Practices and Correspondences are closely connected with those of *Layer*, writes of himself as transacting Part of his Treasons with Lord *Orrery*'s Clerk, and sending frequent Accounts to the Pretender's Agents abroad, of Matters relating to the said Lord.

George Kelly, a Nonjuring Clergyman at present (tho' in the late Queen's Time, the Committee is informed, he took the Oaths to the Government, and likewise the Abjuration) appears to have been the Person principally entrusted by the Bishop of *Rocheſter*, and to have been employed in writing for him, and conveying Letters to him, until the Time that he, *Kelly*, was first taken into Custody; after which it appears to the Committee, that *Thomas Carte*, another Nonjuring Clergyman, was entrusted and employed by the Bishop in the same Manner. And the Committee observe, that *George Kelly*'s Correspondence has a close Connexion with that of *Dennis Kelly*; and likewise that he appears

to have been privy to *Plunket*'s and *Neynoe*'s Transactions.

The Person employed by the Duke of *Norfolk*, in conveying Letters between him and *George Fernegan*, an Agent of the Pretender's in *Flanders*, they find to be Mrs. *Spelman*, alias *Yallop*; who has likewise owned her conveying Letters in the same Manner between Mr. *Harvey* of *Comb*, and one *Moor* of *Brownlowe-street*, and the said *Fernegan*. The Committee observe, that *John Sample* acted under the Direction of Mr. *Sempill* (commonly called Lord *Sempill*) and his Son at *Paris*, and that he wrote Letters to the late Duke of *Ormond* and the Pretender; but whom he transacted Matters with in *England*, your Committee do not find, by his Examination, he would declare.

The Committee farther observe, that this treasonable Correspondence extended itself into *Scotland*; that *William Erskine* remitted Money to *France* for the Service of the Pretender's Friends, and had a Letter under the late Lord *Marr*'s Hand found upon him, when he was taken into Custody. That Mr. *Cockran*, now in Custody, and others of that Country yet unknown, were concerned in the same treasonable Correspondence, carried on under the same fictitious Names and Expressions that are made use of by several of the Correspondents in *England*; and that the same Cant was likewise made use of, for the same Purposes, by Persons in *Ireland*. That all these several Negotiations and Correspondences concurred in one common Design, of stirring up an Insurrection in these Kingdoms, and placing the Pretender on the Throne.

The Committee have thought it proper to lay before the House such Particulars as occur to them relating to each of these Negotiations, and to begin with those of *Layer* and *Plunket*, as being closely connected with one another, and set on foot earlier than it yet appears the others were; and as being likewise what the House thought fit first to refer to the Examination of the Committee: And by comparing the Substance of the Papers, and Examinations of these two Persons together, the House will be enabled, at one View, to form a true Judgment of the Sincerity of their Confessions.

Before the Committee examin'd Mr. *Layer*, they acquainted him that the several Questions they intended to propound to him were reduced into Writing, and that to avoid all Mistakes, his Answers should be so likewise, and before they were reported to the House he should have the Perusal of them. Accordingly he did review his first Confession to the Committee, and made several Additions and Alterations, which will be taken Notice of in their proper Places.

Mr. *Layer* has own'd partly to a Committee of Lords of the Council before his Trial, and partly to your Committee (as will appear by reference had to his^a several Examinations annex'd to this Report) ' That being bred up under an Uncle
' who was a Nonjuror in *Norfolk*, he early im-
' bib'd those Principles; that having a private Af-
' fair to transact at *Venice*, this and a natural In-
' clination and Curiosity, which he had always had
' to see the Pretender, carried him on to *Rome*;
' that he set out from *England* on the first of *April*
' 1721, in company with *John Plunket*, now in

^a B. 8, 9, 10, 11, 38.

‘ Custody, who went sometimes by the Name of
 ‘ Rogers, whose Expences he bore on Account of
 ‘ his being useful to him, as speaking several Lan-
 ‘ guages. That he believes from the Time of his
 ‘ first acquainting *Plunket* with his intended Jour-
 ‘ ney (which was some Months before their setting
 ‘ out) the said *Plunket*, in order to magnify his Ser-
 ‘ vices to the Pretender and his Adherents, might
 ‘ write to General *Dillon*, and others of them, that
 ‘ he was going to *Rome* with a Friend, and that
 ‘ his and his Friend’s Journey would be of great
 ‘ Consequence to the Pretender’s Affairs.’ But
 this Particular he did not own till the Review of
 his Examination, when he found the Committee
 were apprised that Notice had been sent to *Rome*
 of his Journey; for he insisted at first that his
 Journey to *Rome* was purely accidental, and not
 concerted with the Pretender or any of his Agents.

He farther owned, ‘ That in their Way to *Italy*,
 ‘ they passed through *Antwerp*, and that *Plunket*
 ‘ there received a Letter from General *Dillon*,
 ‘ which he shewed to *Layer*, directing them whom
 ‘ to apply to on their Arrival at *Rome*, to intro-
 ‘ duce them to the Pretender.’ And on his re-
 viewing his Examination, when he found your
 Committee were in Possession of that Letter, he
 own’d, ‘ That *Francis Kennedy* was the Person
 ‘ they were directed by *Dillon* to apply to.’ A
 Letter^a to that Effect being found among *Plunket*’s
 Papers, signed *Dixwell*, and the same being shewn
 by your Committee to *Layer*, he declared, ‘ That
 ‘ to the best of his Memory and Belief, it was the
 ‘ very Letter which was shewn to him by *Plunket*
 ‘ at *Antwerp*, and affirmed by *Plunket* to be from
 ‘ General *Dillon*: That he, *Layer*, believes *Dillon*
 ‘ goes by the Names both of *Dixwell* and *Digby*;
 ‘ and that by the Name of *Joseph*, in the said
 ‘ Letter, is to be understood the Pretender.

‘ That he and *Plunket* arrived at *Rome* the lat-
 ‘ ter End of *May* 1721; and that after he had
 ‘ been a Day at *Rome*, he sent to *Francis Kennedy*,
 ‘ Secretary to the Pretender, to let him know he
 ‘ should be glad to see him, and to renew Ac-
 ‘ quaintance with him.’

Being asked when and where he first became
 acquainted with *Francis Kennedy*, he said, ‘ That
 ‘ *Kennedy* has a Brother, Secretary to the late
 ‘ Duke of *Ormond*, with which Brother he had
 ‘ some Acquaintance; and he thinks he has former-
 ‘ ly been in *Francis Kennedy*’s Company at *Lon-
 ‘ don* along with the other Brother: But as to
 ‘ this Particular he cannot be positive.’ This is
 what he said relating to *Kennedy* at his first Exa-
 mination; and your Committee observed by his
 Behaviour, that he was under Difficulties how to
 account for his applying to *Kennedy*, not having
 owned at that Time he had any Directions so to do,
 and being willing to have your Committee be-
 lieve, that his Journey was not known of at *Rome*:
 But after *Plunket*’s Examination, being uncertain
 what *Plunket* might have confess’d, he thought it
 proper to be more open upon this Head, though
 contradicting in some Measure his own former
 Confession. He farther said, ‘ That upon his send-
 ‘ ing to *Francis Kennedy*, as above, the said *Ken-
 ‘ nedy* came to his Lodgings, which at the same
 ‘ Time he said he was surprized at, it being in the
 ‘ Face of all the *English* Gentlemen; but that
 ‘ *Kennedy* told him, he needed not be uneasy at his

‘ coming to his Lodgings openly, since he frequent-
 ‘ ed the Company of all the *English* Gentlemen that
 ‘ came to *Rome*, without Distinction. That at the
 ‘ first Visit he desired *Kennedy* to introduce him to
 ‘ the Pretender, which he promised to do. That
 ‘ *Kennedy* came to him again the next Night, and
 ‘ promised to introduce him to the Pretender pri-
 ‘ vately in an Evening, so that no Body should
 ‘ be able to prove his having been there.’

And when he reviewed his Examination, being
 asked by your Committee, whether he knew of
 any Letter to *Plunket*, on their first coming to
Rome; and being asked it in such a Manner as let
 him understand that they knew from whom it
 came, and by whom it was writ; then, and not
 till then, he owned, ‘ That he believed *Kennedy*
 ‘ delivered to *Plunket* a Letter under the Preten-
 ‘ der’s own Hand, when *Kennedy* and *Plunket* were
 ‘ alone together; for the next Morning, as he,
 ‘ *Layer*, was in Bed, in a Room next adjoining to
 ‘ that where *Plunket* lodged, *Plunket* came to his
 ‘ Bedside, and told him with seeming Satisfaction,
 ‘ that he had got a Letter under the King’s
 ‘ (meaning the Pretender’s) own Hand; but that
 ‘ *Kennedy* never said one Word of this Letter to
 ‘ him, *Layer*. That *Plunket* shewed him, *Layer*,
 ‘ the said Letter, the whole of which he believes
 ‘ to have been writ in the same Hand in which
 ‘ the blank Receipts taken amongst his Papers at
 ‘ Mrs. *Mason*’s are signed, which he believes to
 ‘ be the Pretender’s own Hand. That the Sub-
 ‘ stance of the Letter was, that the Bearer, *Fran-
 ‘ cis Kennedy*, would introduce *Plunket* to the Pre-
 ‘ tender. He said he could not be positive whe-
 ‘ ther it was said in that Letter, that *Kennedy*
 ‘ would introduce *Plunket* only, or whether he
 ‘ himself was mentioned likewise to be introduced
 ‘ by *Kennedy*. That *Plunket* told him he saw the
 ‘ Pretender the Night before *Layer* was introdu-
 ‘ ced to him.’

This Original Letter has since been deliver’d
 to your Committee, with the^b Depositions relat-
 ing to it; by which it appears, that *Plunket* de-
 livered it with other Papers to one *Mary Fagban*,
 about *Michaelmas* last, which was near the Time
 of *Layer*’s being taken up; it is dated *Thursday*
Morn. signed *James R.* and directed to Mr. *Plun-
 ket*, and is in the following Words:

‘ This is only to direct you not to mention any
 ‘ Thing of Business to any Body, till I have seen
 ‘ you. I have not much Leisure to-night, expect-
 ‘ ing Visits; but however I shall be glad to see
 ‘ you alone, and agree with you the most private
 ‘ Way and Manner for your Companion and me
 ‘ to meet. The Bearer *Fr. Kennedy* will bring
 ‘ you very privately to my House to-night about
 ‘ eight a-Clock.

James R.

For Mr. *Plunket*.

Your Committee observe from this Letter, as
 well as from other Papers before them, what a
 Degree of Trust and Confidence *Plunket* was ad-
 mitted to (notwithstanding he would endeavour
 by his present Appearance to make it seem incredi-
 ble) and perceive likewise by this Letter, that his
 and *Layer*’s Journey to *Rome* had been represented
 to the Pretender as an Affair of some Importance.

^a B. 24.

^b C. 70, 71.

Layer farther said, ‘ That *Kennedy*, in his second
‘ Visit, appointed him to meet him and Colonel
‘ *Haye* in the Square before the Pretender’s House
‘ at Ten the next Night; that he met them there,
‘ and that they conducted him up a Pair of Back-
‘ Stairs to the Pretender.’

Before the Committee proceed to give an Account of the Conversation which Mr. *Layer* says he had with the Pretender, they think it proper to observe, that among *Plunket*’s Papers were found two foul Draughts of Letters, which are sworn to be *Plunket*’s Hand-writing, which give some Light to the Occasion of his and *Layer*’s Journey to *Rome*. The first is without Date or Direction, but appears evidently by the Matter to have been writ to the same Person, and about the same Time as the second, which is dated the 22d of *March*, 1721. (about ten Days before his and *Layer*’s setting out) and directed To Mr. *Jackson*, which Name is found in a ^a Cypher taken among *Plunket*’s Papers, and sworn likewise to be his Hand-writing, to denote the Pretender.

In the ^b first of these foul Draughts are these Words: ‘ There is one that sets out from *Norfolk*
‘ in a few Days to let you know they’ (that is the *Tanners*, which he ^c explained to *Layer* to mean the Tories) ‘ will stand by you on Occasion: He
‘ only stays for me, and offers to bear my Expences, so that I shall wait on you, and have the
‘ Satisfaction to tell you by Word of Mouth what will be acceptable. He carries *The List* with
‘ him, no doubt on’t you may have many such
‘ now.’

In the ^d Letter to *Jackson* of the 22d of *March* are these Words: ‘ The Gentleman I mentioned
‘ to you formerly, is come out of the Country,
‘ with Instructions to wait on you, and tender
‘ you his Service. He offers to bear my Expences.’

From these Passages compared with the ^e Letter received by *Plunket* from *Dillon* at *Antwerp*, in which *Dillon* says, ‘ I have sent *Joseph* Advice of
‘ your Journey, in which I wish you and your
‘ Companion, tho’ unknown, all Happiness:’ And then directs him to apply to *Kennedy* at *Joseph*’s House for Introduction; and compared likewise with the Pretender’s ^f Letter to *Plunket*, in which he directs him not to mention any thing of *Business* to any Body, till he had seen him alone, in order to agree with him the most private Way and Manner for meeting his Companion. It appears to your Committee to be most evident, that *Layer* did not undertake so long and expensive a Journey on uncertain Prospects of private Business, or out of mere Curiosity, but that his Journey was concerted with the Pretender’s Friends at Home, and notified to the Pretender and his Agents Abroad; and that he carried over with him Tenders of Service to the Pretender from Persons in *England*, as likewise a *List* of Names, which was of such Importance, and so well understood and expected at *Rome*, as to be mentioned by *Plunket* in one of his Letters to the Pretender, without any other Description than barely that of *The List*.

The Committee thought this Observation the more necessary to be premised, because *Layer* did of himself own to them his giving to the Pretender a *List* of Names, and the Pretender’s asking him at a second Interview, what he had to say in relation to his *List*; but yet endeavoured to ex-

plain that Affair in such a Manner, as your Committee apprehend to be no Ways consistent with *Plunket*’s foul Draughts abovementioned; nor with the Expectations that seem to have been raised in the Pretender and his Agents, from *Layer*’s and *Plunket*’s Journey.

Layer told your Committee, ‘ That on his being introduced to the Pretender by *Kennedy* and
‘ *Haye*, as abovementioned, the Pretender asked
‘ him the Occasion of his coming, and whether
‘ he had any Credentials from People in *England*?
‘ that he answered, Nothing but Curiosity and a
‘ Desire of paying my Duty to your Majesty has
‘ brought me hither. That the Pretender asked
‘ him, what Lords he was acquainted with? To
‘ which he answered, None but such as he was
‘ concerned with in the Way of his Profession.
‘ That the Pretender again expressed himself surprized at his having no Credentials nor Recommendations from any Person in *England*; and
‘ said, This Journey must have been very expensive to you, I believe it cannot cost you less
‘ than five hundred Pounds. To which he answered, That a private Affair, which brought
‘ him to *Venice*, would have defrayed the Expence,
‘ if it had succeeded; but that being disappointed
‘ in that, his Inclination drew him on to *Rome*, to
‘ pay his Duty to the Pretender, which he had
‘ long had in his Thought, so took this Opportunity of doing it. That one *Plunket*, who was
‘ now in *Rome* with him, had often told him that
‘ he need not fear being introduced, or to that Effect. That the Pretender said, He believed that
‘ *Plunket* was a very honest Man, and as proper a
‘ Person as *Layer* could have had for a Companion.

The Committee observe, that what is here said concerning the Pretender’s good Opinion of *Plunket*, and *Plunket*’s having given Assurances to *Layer* of his being introduced, was not mentioned by *Layer*, till after *Plunket* had been examined.

Layer farther said, that the Pretender again repeated his Surprize at his having no Recommendation from any Person in *England*; but said, I am informed by *Francis Kennedy*, who knows you, that you have a good Character, and for that Reason you are welcome without any Credentials. Yet your Committee observe, that Dr. *Blackerby Fairfax* (an intimate Acquaintance of *Layer*’s) has ^g deposed upon Oath, ‘ That *Layer*, since his Return from *Rome*, told him, that while he was in
‘ private Audience with the Pretender, a Scotch
‘ Colonel broke in upon them, upon which the
‘ Pretender took him into another Room; and
‘ that he, *Layer*, did there deliver his Credentials
‘ to the Pretender.’

Layer told the Committee, ‘ That the Pretender, after the Discourse abovementioned, asked
‘ him what County he was of, and what Gentlemen he knew: That he answer’d he was of *Norfolk*, and knew all the Tory Gentlemen of that
‘ County. That the Pretender asked him if he
‘ could recollect their Names, and put them
‘ down in Writing: To which he answer’d, He
‘ could easily do that, having brought with him
‘ Memorandums of their Names. That accordingly he drew up a fair List of the Tory Gentlemen of *Norfolk*, and gave the said List to the
‘ Pretender at a second Interview, thinking it
‘ would be agreeable to him. That the Pretender

^a C 51.^b B 23.^c B 38.^d C 41.^e B 24.^f C 69.^g B 36.

‘ then

‘ then asked him, whether he would see the Queen (meaning his Spouse) and promised she should admit him to kiss her Hand.

‘ That about three Weeks or a Month after, *Francis Kennedy* and Colonel *Haye* appointed him to meet them at the same Place and Time as before, and introduced him to the Pretender and his Spouse. That the Pretender then called him to him, and asked him, Whether he had any thing to say in Relation to his List? that he answer’d, He forgot something which he had to communicate to his Majesty; that the Pretender said, His Wife would go out of the Room presently, and soon after spoke to her in *Italian*, to withdraw, as he believes. That the Pretender then asked him, What he had to say? to which he replied, I have nothing so material to offer as ought to have procured me this great Honour and Indulgence; but if there be any Service on Earth I can do, I am most ready. That the Pretender said, What can you do? have you any Acquaintance? To which he replied, that all the Persons mentioned in his List were entirely devoted to the Pretender’s Interest, and all the Gentlemen in *England* the same, except those in Places of Profit and Trust, and that all Parties were united in his Interest. That the Pretender then asked him, What the Gentlemen were whose Names were on his List? to which he answer’d, They were all Tories, and that he had not put down any of the *Roman* Catholics of *Norfolk*, of whom there were several, Men of Estates. That the Pretender said, he believed the People of *England* were generally well inclined to his Cause, and pretty well convinced of their Error; and then spoke of the Discontents occasion’d by the *South-Sea* Scheme.’

The Committee observe that in the Cypher which *Layer* received from Sir *William Ellis*, the Names of several *Norfolk* Gentlemen are inserted; who, they think it probable, made a Part of the List delivered by *Layer* to the Pretender; but at the same Time they think it a Justice due to those Gentlemen, to observe, that *Layer* has owned to the Committee, that, in order to magnify the Number of the Pretender’s Friends, he did, in several of the Lists found among his Papers, insert the Names of Persons, as well affected to the Pretender’s Service, without having the least Authority from them for so doing: And his false Assertion to the Pretender, that all the Gentlemen in *England*, except those in Places of Profit and Trust, were entirely devoted to his Interest, shews, that he made no Distinction between the Innocent and the Guilty.

He next acquainted the Committee, ‘ That after the Discourse before-mentioned with the Pretender in relation to the List, the Pretender commended his Zeal, and told him, he might depend on any Service he could do him. That he, *Layer*, then desired some Token, by which he might obtain Credit among the Pretender’s Friends of the Nobility in *England*, and obtained that of the Pretender and his Spouse’s answering for his Child;’ which the Committee avoid repeating, the Account he gave them agreeing with that printed in his Trial. He said, ‘ That upon his desiring a Letter to the Dutchess of *Ormond*, for her representing the Pretender’s Spouse, Colonel *Haye* told him, no Letter could be sent by him, but that Care would be taken the Dutchess should stand. That he like-

wife gave him a Message to the Dutchess, to this Effect, that *the Duke of Ormond was well, and gone to Madrid*, by which, he told him, she would understand the Business he came about.

‘ That he returned to *England* about the End of *August* or Beginning of *September 1721*, and waited on the Dutchess with his Request, adding, that he hoped she was not altogether a Stranger to that Affair; to which she returned him no particular Answer, but promised to stand Godmother, as he desir’d.

‘ That he then made Application to Lord *Orrery* to stand with her, by *Thompson*, whom he took to be her Chaplain, and by *Swortfegger*, Lord *Orrery*’s Secretary, who understood that Lord *Orrery* was desired to represent the Pretender. That the said Lord sent to the Dutchess to know whether she stood, who answered that she did; yet Lord *Orrery* refused; but upon farther Acquaintance, and hearing that Lord *North* and *Grey* had consented to stand, he sent for *Layer*, and made Excuses to him for his Refusal. That he made use of this Credential to Lord *Orrery*, to induce him to converse freely with him in relation to the Pretender’s Affairs, having heard that the said Lord was in the Pretender’s Interest.

‘ That upon his being refused by Lord *Orrery*, he made his Application to Lord *North* and *Grey*, as mention’d in his Trial, who stood; knowing, as he believes, that he stood for the Pretender. That this Transaction was the Beginning of his Intimacy with Lord *North* and *Grey*.

‘ That the first Conversation he had with Lord *North*, relating to the Pretender’s Affairs, was soon after the Christening; that he then asked Lord *North*, whether nothing could be undertaken in the Pretender’s Favour, his Lordship being a military Man. That his Lordship replied, he believed the Pretender had Friends enow, if they did but understand one another; that the Army in general, and most of the Half-pay Officers were well inclined to the Pretender.

‘ That in *July* last he, *Layer*, going down to *Norfolk* on the Circuit, called on Lord *North* at *Epping*, and again at his Return; that he then asked the said Lord again, whether nothing could be done in Favour of the Pretender? That Lord *North* said, How can any Thing be done, while so great a Body of Forces is encamped under the very Walls of *London*, besides the Encampments in other Parts of the Kingdom? That *Layer* told him, he found most of the Gentlemen in *Norfolk* that were Tories before, Jacobites now; that Lord *North* and *Grey* said, it was the same in other Counties, but that nothing could be done till the Camp should break up. That upon *Layer*’s pressing him to know whether any Scheme was formed, Lord *North* said, What does your Friend Lord *Orrery* think of Things? that he answered, Lord *Orrery* was of Opinion, nothing could be done without a Foreign Force; that Lord *North* and *Grey* reply’d, I cannot be of his Opinion, I believe the People of *England* may do it of themselves.

‘ That *Layer* visiting him during the Vacation, and staying two or three Days at his House, continued to press him about forming a Scheme; that Lord *North* reply’d, We Soldiers do not trouble ourselves much about Schemes: *Be you quiet*

‘ quiet something will be done’. And at his ‘ Examination before the Lords, he owned, ‘ Lord North and Grey said, If there be a Rising, you shall not want Men, or Money, or Arms.’

Layer farther gave your Committee an Account of his becoming acquainted with *Lynch*, and of his carrying him to Lord North and Grey, upon *Lynch*’s telling him that he had something to propose to that Lord, that might be of great Service to the Pretender’s Cause. But in giving an Account of what passed between *Lynch* and him at the *Greenman*, your Committee observed, that *Layer* took great Pains to shew, that he did not communicate any Papers to *Lynch* till after Dinner, and that he then only shewed him Memorandums, transcribed out of the Prince of Orange’s Declaration, tho’ *Lynch* has^b deposed upon Oath, that mention was made in that Paper of Lord Cadogan’s being seized, and remaining in the Custody of the Conspirators.

He owned to your Committee his having carried *Lynch* to Lord Cadogan’s, but said, ‘ He went thither only in relation to the Purchase of an Estate; that while they were waiting there in a Room next the Garden, *Lynch* viewed the Garden and House, and said, I can easily seize you this General: but he deny’d their having had any previous Discourse to this Purpose, and said the Proposal arose from *Lynch*, and that he, *Layer*, was mad enough to make it part of his Scheme.’

He said, ‘ That when *Lynch* and he came to Lord North and Grey’s, his Lordship asked him who *Lynch* was; that he said, he was an honest Gentleman, recommended by a particular Friend. That his Lordship said, I wonder you would bring him, you know I am not easy nor free before Strangers. That however, Lord North and Grey entertained *Lynch* civilly, and after Supper inquired of him, whether he was in the Army, to which *Lynch* answered, that he was bred up to Merchandize, but had been with the Pretender in Scotland, and had the Command of a Ship under the King of Spain in the Descent on Scotland, and enlarged much on his Loyalty and Zeal for the Pretender; but that Lord North waved the Discourse.

‘ That not long after, *Lynch* came down again to Lord North and Grey’s to *Epping*, while *Layer* was there a shooting, and was civilly receiv’d by his Lordship; and that after he was gone, *Layer* making Apologies for *Lynch*’s intruding, Lord North and Grey said, *Lynch* was a good honest Fellow, and had entertain’d them with several merry Stories.’

The Committee observed, That *Layer* in relating what passed while *Lynch* was at Lord North’s, took so much pains to shew that Lord North and Grey could have no private Discourse with *Lynch*, that he left no room for the said Lord North’s having had any private Discourse with him, *Layer*; which yet is inconsistent with his ‘ Examination taken before the Lords, as well as with his Confession to your Committee; in another Part of which he owns, that while *Lynch* was at Lord North’s, he, *Layer*, shewed Lord North some part of his Scheme or Heads relating to a Declaration, as he was walking with him in the Garden, and that they had some Discourse upon it.

They observe likewise, That what he owned to the Committee in relation to his introducing *Lynch* to Lord North and Grey, falls very short of what he confessed to the Lords of the Council on the same Subject, previously to his Trial. For he then said, ‘ That *Lynch* having told him he would seize Lord Cadogan, he carried *Lynch* to Lord North and Grey’s, and recommended him as a proper Person for such an Attempt. That he had before-hand proposed to Lord North and Grey the carrying *Lynch* to him, that his Lordship made a Difficulty of seeing him, but that he, *Layer*, insisted on *Lynch*’s being an honest Man, fit to be employed in an Insurrection for the Pretender, saying *Lynch* would do any thing his Lordship would have him, if there should be a Rising: That he was fit to be sent with a Party to seize any particular Person, and that *Lynch* was impatient to see his Lordship; *Layer* having told him, that his Lordship was at the Head of those Designs.’

Layer farther acquainted your Committee, ‘ That during his Stay at Lord North and Grey’s at *Epping*, in the Vacation, he again pressed his Lordship to bring Matters to some Issue in favour of the Pretender, saying, if something be not done speedily, we shall all be taken up; that his Lordship reply’d, Is not the Camp there still? if you can find some Expedient it would be well, it is more than I can do. That *Layer* said it was his Opinion something might be done even during the Encampment; and in order to discover whether Lord North and Grey and Lord Orrery had any Scheme of their own, he drew up a Scheme himself, and having so done, lodged it with Mrs. Mason, the Day before he was taken up. That he intended to have communicated this Scheme to Lord North and Grey and Lord Orrery; that he had some Discourse with George Wilson, Dr. Murphey AND OTHERS on the Subject of it, before it was drawn up.’ Being asked, who those OTHERS were, he said, ‘ He could recollect no one else but one who called himself Serjeant White, whom he saw in Company with Dr. Murphey at a Tavern, and inquired of him how far some Parts of his Scheme were practicable.’

Being asked whether he had shewn this Scheme to any Body? he said, ‘ He did shew the Heads of it to Lord North and Grey, as he was walking with him in the Garden, and that his Lordship said, all was impracticable during the Encampment: but that he never shewed his Scheme to any Body, after it was drawn up in the Form in which it was left with Mrs. Mason.’ Which last part of his Answer, the Committee observe may be evasive; since by his own Account, as soon as he had drawn it up in that Form, he lodged it with Mrs. Mason, and the Day after was taken into Custody.

The Committee farther take Notice, That the Accounts he gave when he was questioned before the Lords, whether he had shewn this Scheme to any Body, are inconsistent and contradictory.

For in some Parts of that ‘ Examination, he says, ‘ Lord North and Grey would not hear of any thing till the Camp was broke up; That the said Lord would not see his Scheme; That the said Lord said, he might keep his Heads and his Schemes to himself, for there was no-

^a B. 11.^b B. 1.^c B. 11.^d B. 11.^e B. 11.

‘ thing to be done ; That the said Lord said
‘ there was Time enough for forming a Scheme ;
and yet in another Part of the same Examination,
he says, ‘ Lord North did not dislike a Scheme in
‘ general, but disapproved his Scheme.’

Your Committee beg leave to make the following Observations on these Passages, with a Design to shew the Insincerity and Inconsistency of *Layer’s* Confessions, and without presuming to draw from them any other Conclusions.

First, That if what *Layer* said, was true, Lord *North* must have perused and examined *Layer’s* Scheme, since a Man that did not dislike a Scheme in general, could not be said to disapprove any particular Scheme, unless he had first considered and examined it.

The Committee observe farther, that the Scheme itself does not appear drawn up by a Man of *Layer’s* Profession, assisted only, as he would insinuate, by *Murphey* a Doctor of Physick, *Wilson* a Surgeon, and *White* a Serjeant ; and they cannot but think it very extraordinary, that his Scheme drawn up in *August* or *September*, should have so great an Affinity with the ^a Paper of Resolutions, for *the digging up the Arms*, &c. mentioned above, which was drawn up the *April* before ; and yet that *Layer* should have had no sight of that Paper, nor have received any Instructions or Assistance from any Persons, who were privy to those Resolutions which he has declared to the Committee he had not. And the Committee are farther confirmed, that the Scheme was not drawn up by himself, from a Particularity contained in a ^b Deposition of Dr. *Blackerby Fairfax*, who has sworn, that being for four or five Years past employed in reading Civil Law and *French* to the said *Layer*, he recollects that *Layer* once asked him the meaning of the *French* Motto, since prefixed to his Scheme in these Words, *Au défaut de la Force il faut employer la Ruse* ; and that upon *Fairfax’s* explaining it to him, *Layer* said, it had been explained to him in the same manner by others. Neither does the Scheme appear drawn up at a Venture, or merely with a View of engaging the Pretender’s Friends in the Execution of this, or some other Scheme of their own, as *Layer* would insinuate, but several Passages in it, compared with his other Papers, make it probable, that the Officers, Serjeants, Soldiers and Arms mentioned in the Scheme, were first engaged and prepared, and then the said Scheme drawn up, for employing in the best manner possible such a Force as had been so prepared.

This appears by comparing these Words in the third Paragraph of his ^c Scheme (‘ And as there
‘ is eight Serjeants, viz. Three of the first Regiment of Foot-Guards, Three of the second,
‘ and Two of the third, all ready at an Hour’s
‘ warning to obey Orders’) with two of his Papers taken with his Scheme at *Mrs. Mason’s*, viz. ^d That which contains a List of Thirteen Serjeants of the Guards, and another ^e Paper of *Layer’s* Handwriting, which contains Eleven of these Thirteen Serjeants Names, and Eight of those Eleven Serjeants have Marks set against their Names: so that it may be concluded from thence, that *Layer* had been able to engage but eight of the said Thirteen Serjeants, and therefore in his Scheme he mentions no more than Eight Serjeants.

The Truth of this Observation farther appears, by comparing *Layer’s* said ^f Examination of the

ist of *October*, with the fourth Paragraph of his Scheme ; for in that Examination he says that *George Wilson* had assured him, that two hundred of the Soldiers in the Camp had been spoken to and were ready : and therefore *Layer*, in the said Fourth Paragraph of his Scheme, mentions only two hundred Soldiers to be ready, and gives every one of his eight Serjeants the Command of Five and Twenty of the said Two Hundred Men. From whence it may be concluded, that the Officer that was to seize the *Tower*, and the Arms for executing the Scheme, were also in a Readiness.

It is farther remarkable, that *Layer* intended, as he owned to your Committee, to communicate this Scheme in its present Form, to Lord *North* and *Grey* and Lord *Orrery* ; and yet several principal Parts of it are not explained as things new, but referred to as Matters already known and understood by the persons that were to see it, which could only be by previous Consultations on that Subject ; for Instance,

In the First Paragraph it is said, ‘ Let the General and only one Officer of note in the Camp agree
‘ upon a Day for Execution ;’ which must have appeared a most absurd Beginning to any Body that had not had some previous Discourse or Notice, of several Officers in the Camp engaged in the Design. And the same Observation will hold, with respect to the Paragraphs where Arms are mentioned as provided ; which shews, at least, that *Layer* believed those Persons that were to see his Scheme, had heard of Arms that were provided.

In the Third Paragraph, *George Wilson* is named in such a manner, as makes it probable he was already known to those who were to have a Sight of this Scheme ; and the Committee observe that *Layer* ^g confessed to the Lords that he had told Lord *North* and *Grey*, that *Wilson* was a Fellow who had served in the Army, had a general Acquaintance, and was fit to be employed if his Lordship would make use of him ; to which the said Lord replied, that when he had Occasion he would employ him.

In the Thirteenth Paragraph of the Scheme it is said, ‘ Let the General order four of the Half-pay Captains,’ without any farther Description ; which shews that *Layer* thought those to whom his Scheme was to be communicated, knew already of Half-pay Officers that were engaged, agreeably to what Lord *North* and *Grey* had ^h told him, that most of the Half-pay Officers were well inclined.

In the Nineteenth Paragraph, he allots part of the Execution of the Design to *the Duke’s Barge-men*, without any other Addition : which is a manner of Expression no one would have used in a Paper to be shewn to Persons, who were entire Strangers to the Affair.

Layer being in the Course of his Examination desired by the Committee, to explain by what Services or Merit on his Part, the Shyness, which, he would have it believed, the Pretender expressed towards him at his first coming to *Rome*, and the little Acquaintance he then had with Persons of Distinction at home in the Pretender’s Interest, came soon after to be changed into so great a degree of Confidence both at *Rome* and here, that he should be trusted with negotiating Blank Receipts, under the Pretender’s own Hand, for unlimited Sums ; he told the Committee, that during his Stay at *Rome*, he contracted a Friend-

^a B. B. 2.^b B. 37.^c B. X. 1.^d B. X. 9.^e B. X. 7.^f B. 11.^g B. 11.^h B. 38.

ship

ship with Sir *William Ellis*, who is a Servant of the Pretender's, and that at his leaving *Rome* he settled a Correspondence by Cypher with the said *Ellis*, and acquainted him from time to time how the Pretender's Affairs went on here: but the Committee observe, that this general Answer does by no means account for the Terms of Thankfulness and Respect, with which ^a *Ellis* writes to him from the Pretender, nor lay a sufficient Foundation for his being admitted to so particular a Trust. He said that in the Course of his Correspondence, he writ to *Ellis* that he had got acquainted with *Bursford* and *Symms* (by the first of which Names he meant Lord *Orrery*, and by the latter Lord *North and Grey*) and that if he had but Blank Receipts, under the King's (meaning the Pretender's) own Hand, he believed he could raise a considerable Sum of Money upon them, and put the Pretender's Affairs in a great Forwardness, by engaging a considerable Part of the King's Army in the Pretender's Interest, with the Money so raised. That he did not name any particular Sum to *Ellis*, but hoped himself to have raised twenty Thousand Pounds by this Method. He said he received from *Ellis* only the ten Receipts taken among his Papers at Mrs. *Mason's*, that he received them at different times by the Post, and that the first of them came to his Hands the latter End of *July* last. He said farther, he intended to have tried to put off these Receipts among the *Norfolk* Gentlemen named in the List which he gave to the Pretender, but that he never had spoke to any of them on this Subject, nor received any Assurance from them.

Being asked by the Committee whether he had shewn these Receipts to any other Persons, or had any Discourse with any Body about raising Money this way? he said, he believed he had mentioned to Lord *North and Grey* and Lord *Orrery*, his having such Receipts in his Possession; and that the said Lords told him, they believed they would be of little Use, for that People would scarce venture to keep such Receipts by them, or to have them in their Custody, or Words to that Effect.

The Committee take Notice, That when he was examined before the Lords, he prevaricated in relation to the Cypher received from Sir *William Ellis*, which he said was an old Cypher, in use before the *Preston* Rebellion. But being shewn the Names of several Persons in that ^b Cypher, with the addition of their Employments, which they did not enjoy at the time of that Rebellion, nor some of them till very lately, he said that he applied to *Plunket* for such Names as were not in the old Cypher; tho' the Committee observe, that the whole Cypher is in the same Hand with the Letters he owned he received from *Ellis*, and that the Persons designed by late Employments are not added or interlined, but placed in their Alphabetical Order in the Body of the Cypher. Being asked by the Committee, whether he had seen or knew of any other Cyphers, he answered in the Negative; yet they observe that in the ^c Letter from Sir *William Ellis* dated the 1st of *October*, he desired to make use of a Pattern of Lace of Mrs. *Kinders*, (which Name he owned to the Lords to mean Mrs. *Hughes*, Nurse to the Pretender's Child) Sir *William Ellis*

having lost or mislaid his own. Now the Word Pattern in *Ellis's* Cypher denotes Cut-Paper, which shews that *Layer* was privy to another Cypher of that Kind, in use among the Pretender's Agents.

He likewise denied his knowing any fictitious Names made use of by the Pretender or his Agents for carrying on their Correspondences, except those mentioned in his Examinations before the Lords; yet afterwards, upon being asked by the Committee, who was meant by *Joseph* in *Dillon's* ^d Letter to *Plunket*, he confessed that he knew *Joseph* was one of the Names made use of to denote the Pretender.

The Committee farther observe, that the Accounts he has given, do by no means clear up several Passages in Sir *William Ellis's* Letters, particularly one in the ^e Letter of the 30th of *Jan.* in which *Ellis* says, 'That *Layer* having read over several times the Paper he shewed him, and having a good Memory, *Ellis* does not think it necessary to send a Copy of it.'

Layer being questioned by the Committee about the Lists of Names taken at Mrs. *Mason's*, says he employed *George Wilson* and Dr. *Murphey* to enquire into the Characters of Officers and Soldiers, and that he received most of the Lists from *Wilson*, who told him, he believed if the late Duke of *Ormond* were to come over, and Lord *Cadogan* were shot, the Soldiers mentioned in those Lists, would readily joyn *Ormond* in favour of the Pretender.

That *Wilson* made most of the Marks against the Names, to explain what Men might or might not be confided in; from which Circumstance your Committee observe, that there were Persons in those Lists whom the Pretender's Friends could not confide in. He told the Committee, that *Roath* or *Roach* in the ^f List N^o 15, against whose Name is set 1000, is one whom he does not know; but that *Murphey* told him the said *Roath* or *Roach*, was a Person of great Interest in *Staffordshire*, and able to raise a thousand Men. That the ^g Paper N^o 11, at the Bottom of which is writ *Enquire of North and Grey*, was a Memorandum for enquiring of the said Lord whether he knew Cornet *Redding* in the Service abroad.

Being shewn the two Lists endorsed ^h *Briquet's* List, and ⁱ Lord *Yarmouth's* List, he says *Briquet* is an eminent Tobacconist in the City; that the said two Lists only contain Names of a Jury for a Relation's Cause, but that he intended to shew those two Lists to Lord *Orrery* and Lord *North and Grey*, as containing an account of Men to be raised for the Pretender's Service, in order to magnify to those Lords the Number of the Pretender's Friends.

Being asked by the Committee what was the Occasion of his taking away his Papers from Mrs. *Mason's*, when he went down to *Epping*, and what Papers he at that time took out? he said, he only took out a Paper containing a Transcript of the Prince of *Orange's* Declaration, and some other Memorandum Papers. He farther added, that he was to have gone to Lord *North and Grey's* to Dinner the Day that he was taken up, and that he sent his Servant to the said Lord's, to let him know he was arrested for High-Treason, that his Lordship might not be surpris'd at his not coming, and likewise that his Lordship

^a B. Y. 38. 40. 41.^b B. Y. 1.^c B. Y. 39.^d B. 24.^e B. Y. 38^f B. Y. 15.^g B. Y. 11.^h B. Y. 14.ⁱ B. Y. 18.

might provide for his own Security: and before the ^a Lords he said, That he thought it reasonable to send this Notice to Lord *North and Grey*, apprehending that the Government would seize the said Lord immediately, on Account of what had passed between his Lordship and him.

It appears to your Committee, that Lord *North and Grey* did, in pursuance of this Message from *Layer*, endeavour to provide for his own Security, by making his Escape. *Layer* sent that Message to Lord *North and Grey* on *Tuesday* the 18th of *September*; the Day that he was taken into Custody; and *Hugh Floyd*, his Lordship's Servant who attended him to *Portsmouth*, ^b has declared, that Lord *North and Grey* came to Town from *Epping* on *Wednesday* the 19th of *September* (which was the Day after his receiving this Message from *Layer*.) That his Lordship did not go to his own House, but to the *King's Arms Tavern* in *Paul's Church-yard*, and there dismissed him, *Floyd*, with Orders to meet him at four in the Morning on the *Friday* following, over-against *St. James's Church* in *Picadilly*. That his Lordship came at the Time and Place appointed, in a hired Coach and Six, without Servants, and ordered the Coachman to drive on to *Kensington*, and then to *Brentford*, and so on from Town to Town, and bid him, *Hugh Floyd*, have nothing to say to any Body, nor take any Notice that he was travelling with his Lordship; so that in the whole Journey to *Portsmouth*, he remembered no Town but *Kensington*, *Brentford* and *Egham*. That the second Morning his Lordship proceeded on his Journey, with hired Saddle-Horses, without Boots, with a Guide and several other minute Circumstances, which may be seen in the ^c Examination of *Hugh Floyd*, and ^d others, in relation to his Lordship's Journey to the *Isle of Wight*, and to the manner of his endeavouring to escape from thence; which serve to shew the Precipitancy of his Lordship's Flight, and of what Importance he thought it to take Advantage as soon as possible of the Notice given him by *Layer*.

Layer being asked by the Committee from whom he received the ^e Names found in his own Hand-writing among his Papers, *viz.*

Digby. — *Dillon*.
Orrery. — *Burford*.
Regent. — *Steele*.
Tories. — *Tanners*.
Whigs. — *Waggs*.
Rogers. — *Plunket*.

said, the Names of some Persons whom he had Occasion to mention in his Letters to Sir *William Ellis*, not being inserted in the Cypher he had from *Ellis*, he applied to *Plunket* now in Custody, to know by what Names he should denote those Persons, and that *Plunket* gave him the six fictitious Names above-mentioned; which Names the Committee find frequently repeated in *Plunket's* Letters and Papers. Being asked if *Plunket* ever explained to him who were meant by *Burford's* Club (an Expression which is often used by *Plunket* in his Letters to *Dillon*, as will be observed in its Place) he said, that *Plunket* had told him, it was an Appellation made use of by the Pretender and his Agents, to denote a Club of Tory Lords and

others, of which Club Lord *Orrery* was Chairman. That *Plunket* had named to him several Persons of Distinction, as Members of that Club, whose Names *Layer* repeated to the Committee, as contained in his ^f Examination, annexed to this Report. But the Committee think it a Justice due to several of the Persons named by *Layer*, to observe, that the Matters asserted of *Burford's* Club in *Plunket's* Letters, seem utterly inconsistent with the known Characters of some of those Persons.

Layer being asked by the Committee, whether he ever was employed by *Plunket* to transact Business with this or any other Club, in *Plunket's* Absence (which appears to the Committee to be asserted in ^g one of *Plunket's* Letters) he absolutely deny'd it; but admitted that he went often to visit Lord *Orrery*, and had frequent Conversations with him relating to the Pretender's Affairs, and the necessity of foreign Assistance. And that Mr. *Swortfegger*, Lord *Orrery's* Secretary, came to him once and told him, that Lord *Orrery* had left a Note in Writing, that if *Layer* came to Town, he should come down to Lord *Orrery's* in the Country, which Invitation he understood to be with an Intention of their discoursing more at leisure about the Pretender's Affairs, having never had any Business with Lord *Orrery* in the way of his Profession, nor any other private Business, that could give Occasion to such a Message; but that he did not go down at that Time.

The Committee observe, that a ^h Paper of *Memorandums* was taken in the Book-Cafe of *Swortfegger*, Secretary to Lord *Orrery*, which he declared to the Lords on his Examination, to be Lord *Orrery's* own writing, in which the Message to *Layer* is contained, and *Swortfegger* ⁱ owned, that he delivered this Message to *Layer*, and that he had sometimes seen *Layer* at his Lordship's House.

Layer being shewn by the Committee a ^k Letter taken among his Papers, signed *J. Plunket* and dated the 8th of *November*, 1720, owned that he received that Letter in *Norfolk* from *Plunket* now in Custody; that it relates to the Pretender's Affairs; that by *Plunket's Friend* in the said Letter is meant, as he believeth, *Dillon*, and by his *Law-suit*, the Pretender's Cause; in which Sense the Committee find the Word *Law-suit* frequently made use of in others of the intercepted Letters. *Layer* farther owned that *Plunket* gave his Wife a Letter of Recommendation to General *Dillon*, when she went to *Paris*, which Letter was signed *Rogers*.

Being asked by the Committee, whether *Plunket* had any Conferences with the Pretender or his Agents, during their Stay at *Rome*, or had owned to him his being employed by the Pretender in *England*, he said that *Plunket* had two private Conferences with the Pretender, and conversed often with *Francis Kennedy*, Secretary to the Pretender, and with others of his Agents at *Rome*. That *Plunket* has frequently owned to him, that he was employed in the Pretender's Affairs, but never explained to him by which of the Pretender's Agents particularly; and that he, *Layer*, never opened himself to *Plunket* in relation to the Pretender's Affairs, after their Return from *Rome*.

Yet the Committee observe, that *Plunket* in his ^l Letters to *Dillon*, speaks frequently of

^a B. 11.
^b B. 35.

^b B. 18.
ⁱ B. 35.

^c B. 18.
^k B. 33.

^d B. 13.—17.
^l C. 61. 62. 65.

^e B. Y. 10.

^f B. 38.

^g C. 61.

himself as privy to *Layer's* treasonable Transactions, and grounds his ^a Recommendation of Mrs. *Layer*, on his Knowledge of her Husband's Merit and Industry in the Service of the Pretender.

They likewise observe, that *Layer* owns he received the Names of *Digby*, *Burford*, &c. from *Plunket* since his Return from *Rome*, which they think plainly implies, that *Plunket* and he were privy to each other's treasonable Correspondence.

The several Particulars above-mentioned contain the Substance of what *Layer* confessed on his Examinations before the Lords, and before your Committee. And after this long Account given by him, in which there appear so many and such convincing Proofs of the Conspiracy in general, your Committee think it proper to observe, that though he affected a great Openness and Frankness, when such Questions were put to him as tended only to a general Discovery, to accuse himself, or such as he knew were escaped and fled out of the Kingdom, yet when such Questions were put to him, as he apprehended might affect or discover any others of the Conspirators, he always gave Answers with great Shyness and Reserve: and this Care to say as little as possible that might affect others in a criminal Way, joined with a Desire to seem candid and ingenuous, often produced the Inconsistencies and Contradictions, upon which the Committee have thought it their Duty to make the foregoing Observations.

Your Committee will now proceed to lay before you what they have been able to collect from the Papers and Examinations of *John Plunket*, whose treasonable Practices and Correspondences, as has been observed before, appear to be so closely connected with those of *Layer*, that they give great Light and Confirmation to each other.

The Committee observe, from a careful Perusal of the Letters and Cyphers seized at *Plunket's* Lodgings, that he not only of late, but for many Years past, has been employed in carrying on several treasonable Correspondences with Persons of high Rank and Distinction abroad; that a very great Share of Confidence has been placed in him by the Pretender, and several of the most considerable Agents for him, and that he has been a principal Actor in the late horrid Conspiracy, and too much, as they have Reason to believe, concerned in the blackest Part of it. And tho' the Evidence against him, in several Particulars, is most full and undeniable, yet his Behaviour on his Examination was so hardened and obstinate, and attended with such bare-faced Prevarications and Falshoods, that the Committee are very much confirmed in the Opinion of his Guilt, from the Pains he took to deny with solemn Imprecations the most evident Truths.

Layer ^b confessed to the Lords, that *Plunket* recommended *Wilson* to him as a Man of Integrity; that *Plunket* went by the Name of *Rogers* in *Italy* and since; and ^c signed the Letter which he gave Mrs. *Layer* for General *Dillon*, by the Name of *Rogers*. But the Committee observe, that *Layer* let them remain in the Error of believing that *Plunket's* Christian Name was *James*, till the Question was put to him, on his second Examination, in such a Manner, that he found the Committee was already apprized of his true Name, which he then owned to be *John*. He

farther owned, as has been observed above, that *Plunket* received a Letter under the Pretender's own Hand at *Rome*, was twice in private Conference with the Pretender, conversed with *Kennedy* and other Agents of the Pretender, had assured him, *Layer*, of a good Reception at *Rome*, was kindly spoken of by the Pretender, had owned to *Layer* his being employed in the Pretender's Service, and his corresponding with *Dillon*, writ to *Layer* in *Norfolk*, in relation to the Pretender's Affairs, and gave *Layer* fictitious Names for *Dillon*, Lord *Orrery*, the Regent, &c. and among the rest, the Name of *Rogers*, to denote him, *Plunket*; which fictitious Names the Committee find all of them frequently used in *Plunket's* Papers.

It appears farther to the Committee from ^d Depositions upon Oath of *Matthew Plunket*, that *John Plunket* came to him in *July* last from *Layer*, to desire him to meet *Layer* at the *Italian Coffee-house* in *Russel-Court*, and named to him the same Persons, as ready to head an Insurrection, who were at some other time named to the said *Matthew Plunket* by *Layer* on the same Occasion.

That he ^e farther ask'd *Matthew Plunket*, whether he was well acquainted in the Army among the Soldiers? to which he replied he knew many of them that had been with him in *Spain* and at *Preston*. That *John Plunket* then told him, he came from Mr. *Layer*, and under the Arch going into *Drury Lane*, desired him to pick out as many Serjeants as he knew in the Guards to recommend them to Mr. *Layer*. That the next time he saw *Matthew Plunket*, which was in two or three Days, he invited him to his Chambers, and there told him Mr. *Layer* was a very good Man, and the only one he could depend on to do him Service: That the Design on which he, *Matthew Plunket*, was to introduce the Soldiers to *Layer's* Acquaintance, was to serve the Pretender by disciplining the Mob, who were to rise in his Favour. And that all the Transactions of *John Plunket*, with him, *Matthew Plunket*, were, to engage him in Person, and by his Acquaintance among the Soldiers, to serve the Pretender: That *John Plunket* meeting him afterwards in *Covent-Garden*, asked him what he had done, to which he replied, he went on very well, and *John Plunket* bid him go and tell Mr. *Layer*.

Matthew Plunket farther deposes that *John Plunket* told him, the Business (meaning the Invasion and Rebellion) had been done before, but that the *French Ambassador* wrote to the Regent, and the Regent wrote it to King *George* (or words to that effect) and it was upon that account the Army was sent to Camp.

Dr. *Blackerby Fairfax* has ^f deposed upon Oath, that being in Company with *Plunket* and one *Jeffereys*, *Jeffereys* among other Discourse said, *Plunket*, give the Doctor a Commission, adding, *Plunket* has Commissions, which *Fairfax* understood to mean Commissions from the Pretender; but that *Plunket* answered, the Doctor does not wear a Sword.

The Committee observe, that among *Plunket's* Papers was found a large ^g Cypher of Names with fictitious Names over-against them, ^h sworn to be all in *Plunket's* own Hand-writing, which Cypher tallies with, and explains an original ⁱ Letter of the 23d of *July* 1722, directed to Mr. *Digby* at *Paris*, and signed *J. Rogers*, which was stopt at

^a C. 61.^b B. 11.^c B. 38.^d C. 42. 43.^e C. 44.^f B. 36.^g C. 51.^h C. 47.ⁱ C. 62.

the Post-Office, and is likewise ^a sworn to be *Plunket's* Hand-writing. And several other Letters directed to *Digby*, and signed *J. Rogers*, having likewise been opened and copied at the Post-Office, and then sent forwards, the Clerks who were employed in copying them have sworn, that, to the best of their Memory and Belief, the Originals of the said Letters were all writ in the same Hand with that of the 23d of *July*, which was stopped, and is sworn to be *Plunket's* Hand-writing; and the said Copies of Letters, treat of the same Matters as the other, and contain the same fictitious Names which are found in the Cypher sworn to be in *Plunket's* Hand-writing.

The Committee are informed, that it was thought proper to stop but one of the original Letters from *Plunket*, and to suffer the others to go on, because it was judged that one was sufficient to discover the Writer, and that the Permitting the Correspondence to be continued, might help the Government to farther Lights in this Affair.

The Committee likewise observe, that there was found among his Papers an ^b original Letter signed *Digby*, dated the 20th of *May* 1722, which is sworn by the Clerks of the Post-Office to be the same which they opened and took a Copy of, and which was directed to *Mr. James Rogers*, at *Mr. Arthur's* Banker in *London*, tho' the Direction is since torn off. From this Direction your Committee observe, that his Christian Name was disguised as well as his Surname. The Receipt of this Letter is acknowledged in the ^c Copy of one to *Digby* signed *J. Rogers*, and dated the 21st of *May* O. S. 1722.

The Committee observe, that the original Letter signed *Digby*, is in the same Hand with ^d another signed *Dixwell*, found also among *Plunket's* Papers, and owned by *Layer* to be the very Letter shewn him by *Plunket* at *Antwerp*, as from *General Dillon*; that the Letter signed *Digby* is also in the same Hand with ^e another Letter signed *A. D.* and directed to *Robert Dillon* Esq; which, as your Committee are informed, was taken on one *Blunt* a Popish Priest coming over from *France*, and owned by *Blunt* to be from *General Dillon* to his Nephew. And the Committee farther observe, that these three Letters signed *Digby*, *Dixwell* and *A. D.* are in the same Hand with ^f another signed *C. Howell*, found also among *Plunket's* Papers, which Name of *Howell* is explained in *Plunket's* ^g Cypher to mean *Glasgow*, whom the Committee see Reason to believe to be *Christopher Glascock*, an *Irish* Officer in *Dillon's* Regiment, who appears to be employ'd by *Dillon* in writing the treasonable Letters signed by *Dillon* himself, as well as in writing others of the same Kind, signed by fictitious Names belonging to him *Glascock*.

The Committee observe, that in the ^h Copy of the Letter, signed *J. Rogers* directed to *Digby*, and dated the 5th of *July* 1722, the Person who writ that Letter, says, that his Fellow-Traveller's Wife parted hence the Day before for *Paris*, and that he gave her a Letter to him, *Digby*: which agrees with *Layer's* ⁱ Confession that *Plunket* did give *Mrs. Layer* a Letter of Recommendation to *Dillon*, signed *Rogers*, and that he received from *Plunket* the Name of *Digby* to denote *General Dillon*,

which Name was also ^k confirmed to *Layer* by *Lord Orrery* to mean *Dillon*. But that *Dillon* went by the Name of *Digby* is put past all doubt, by a Discovery made by *Mr. Craufurd*, his Majesty's Resident at *Paris*, who being ordered to discover the Person meant by that Name, made use of the following Contrivance, mentioned thus in his own ^l Letter.

^m I have just now found out, who *Mr. Digby* is. ⁿ I folded up a Paper in the Form of a Letter, and ^o sealed it, and directed it to *Mr. Digby* at *Paris*, ^p then wrapt it up in a Piece of waste Paper ^q with a Memorandum in it, to be informed at ^r *Mr. Waters's*, Banker in *Christine* Street, in what ^s Part of *Paris* *Mr. Digby* lived; I gave it thus ^t made up to a sharp young Fellow who speaks ^u both *French* and *English*, and ordered him to go ^v booted and a little dirtied to *Mr. Waters's*, to ^w open before him the sham Letter and read his ^x Memorandum, and to shew him the Direction ^y of the Letter, and to desire him at the same time ^z to send somebody with him, to conduct him to ^{aa} the Place where it was to be delivered; that as ^{ab} soon as he should come to the Door, where he ^{ac} was to deliver it, he should pretend to have ^{ad} left a Packet at Home, and making as if he ^{ae} would go back to fetch that Packet, he should ^{af} slip away from the Person who shewed him thi- ^{ag} ther. The thing succeeded better than I expected, ^{ah} for *Waters* was not at home, and my Man acted ^{ai} his part so well, that *Waters's* chief Book keeper, ^{aj} without giving himself the trouble of going, ^{ak} wrote the Direction for him upon my Sham ^{al} Letter, in the manner your Excellency will see ^{am} in the enclosed. The Book-keeper was very de- ^{an} sires to have the Letter in order to deliver it ^{ao} himself, but my Man insisted to deliver it with ^{ap} his own Hand, and answered boldly to some ^{aq} Questions which the Book-keeper asked him, ^{ar} pretending he was to return the next Day for ^{as} *England*.^{at} The Direction writ by *Mr. Waters's* ^{au} Book-keeper under the Name of *Digby* was, *A* ^{av} *Monsieur Dillon*, *Rue Colombier à l'Hotel d'* ^{aw} *Hollande*; which, as your Committee are informed, ^{ax} is the ordinary Residence of Lieutenant-General ^{ay} *Dillon*.

Upon this Discovery ^{ba} Notice was sent from *France*, by *Dillon* and his Agents, to his Correspondents in *England*, to forbid them making use any more of that fictitious Name, as shall be more fully taken Notice of hereafter in this Report.

Notwithstanding all this Evidence of *Plunket's* corresponding with *Dillon*, when he was examined, ^{bb} he denied his knowing *General Dillon*, or his having ever exchanged a Letter with *Dillon*, or his Secretary in his Life; he denied the Letter to *Digby* of the 23d of *July*, stopped at the Post-Office, and the Cypher found at his Lodgings to be his own Hand-writing; he denied the Receipt of the Letters from *Howell*, *Dixwell* and *Digby*, found among his Papers; but owned he had once received a Letter from one *Farely* a Popish Priest, formerly Governor to the Duke of *Berwick's* Children, signed by the Name of *Digby*, and relating to Stocks of *Nicholas Wogan's* and others. The Committee observe that in this prevaricating Answer he was labouring to account for the Meaning of the

^a C. 47. 72.^b C. 51.^c C. 54.^d B. 38.^e C. 57.^f B. 10.^g B. 24.^h A. 31.ⁱ C. 56.^j E. 58. D. 38.^k C. 53.^l C. 73.

Word *Stocks*, which is mention'd in the Letter from *Digby*, but will be shewn in the Sequel of this Report, to be meant in a very different Sense from its natural Import, and to mean the Conspiracy only; and in *Plunket's* own ^a Cypher the fictitious Word *Brokers*, is explained *Agents*. Upon pressing him farther to see if he would own the Correspondence with *Dillon*, and acknowledge the Letters the Committee had such full Evidence were his, they found that, in order to avoid the owning it, he run himself into such an evident Absurdity and Inconsistency, as appears to them a strong Argument of his Guilt.

^b He affirm'd the Cypher (which is sworn to be his own Hand-writing) to belong to one *Hugh Thomas*, formerly of the Herald's-Office, who had lodged in the same House with himself; that he had heard this *Hugh Thomas* own in Company with *Neynoe*, that he corresponded with *Dillon*; that *Hugh Thomas* went by the Name of *Rogers*, and that he, *Plunket*, found this Cypher and several Letters directed to *Rogers*, among *Hugh Thomas's* old Books and Papers. Being asked whether *Hugh Thomas* ever signed *Plunket*, he said, not to his Knowledge; and then he endeavoured to impose on the Committee, by telling them his own true Name was *Plucknett*. Being asked what was become of this *Thomas*, he said, he had been dead a Year and a Half, and that he, *Plunket*, could not keep him alive. But the Committee observe, that the original Letter to *Digby*, signed *J. Rogers*, is dated the 23d of *July* last, and yet is in the same Hand with that Cypher, which he pretends to be the Writing of a Man, who has been dead a Year and a Half. They observe likewise, that the Letter from *Digby* directed to *Rogers* is dated the 20th of *May* 1722, and that most of the Letters directed to *Rogers* (which *Plunket* pretends were writ to *Hugh Thomas*) had the Name of *Rogers* blotted out, and that of *John Plunket* writ over it; and yet he owns, he never knew, that *Thomas* went by the Name of *Plunket*: Besides which it is notorious, that *Plunket* himself went by the Name of *Rogers* in *Italy*, and *Layer* has ^c owned not only that *Plunket* went by that Name, but that he signed *Mrs. Layer's* Letter of Recommendation to *Dillon*, by the Name of *Rogers*, and also gave him, *Layer*, the Name of *Rogers* to denote himself, at the same Time that he gave him the Name of *Digby* for General *Dillon*.

Your Committee are of Opinion, that these Circumstances laid together leave no room to doubt but that *Plunket* writ and received the Letter above-mentioned; the Contents of which will be explained in their Place.

Plunket being shewn a ^d Letter without Direction, signed *N. Wogan*, enclosing a ^e Cypher, which is called in the Letter the Duke of *Berwick's* Key, he said, this Letter and Cypher likewise belong'd to *Hugh Thomas*, who, he said, corresponded with the Duke of *Berwick* about getting Subscriptions to a Book; which Matter, the Committee observe, neither needed any Cypher, nor could well be treated of by the Help of that. They likewise take Notice, that *Plunket* owned the receiving a Letter from *Digby* in relation to the said *Wogan's* Stocks, and that *Wogan* is inserted in *Plunket's* own ^f Cypher by the Name of

Xoland, which Circumstances make it probable he did correspond with *Wogan*.

There is one farther Particular relating to this Cypher, which the Committee think it proper to remark to the House, which is, that *Plunket* while he was in Custody, desired a certain Book might be brought to him from his Lodgings, but the Messenger's Wife, searching the Book before she deliver'd it, has ^g deposed upon Oath, that she found in it this Letter from *N. Wogan*. And as the Committee are informed, that most of his other Cyphers and Papers were found hid in the Leaves of his Books, they think it probable, that he singled out this Book in hopes of recovering and destroying the Cypher that serves to explain his Letters; the Contents of which the Committee will now proceed to lay before the House, and to avoid Repetition of Names, where-ever they can, will make use of the real Names found in his Cypher, instead of the fictitious ones, by which they are expressed in his Letters annexed to this Report.

Among his Papers was found the ^h foul Draught of a Letter, dated *March* the 22d, 1721, and directed to Mr. *Jackson*, which in his own ⁱ Cypher is explained the Pretender. In this foul Draught (which is sworn to be his Hand-writing) are the following Passages.

' I look, Sir, on your Law-Suit to be in such a Forwardness, that a speedy and happy *Replication* must inevitably ensue; the *Waggs*, as well as the *Tanners* (which Names he explained to ^j *Layer* to denote the Whigs and Tories) seem convinc'd that nothing less can redress their Ruin: Nay the latter is apprehensive the former will compliment you with it on your own Terms, in order to engross your Favour for the future. The *Precepts* my Friend and I gave in lately, have contributed much to this Emulation: We have more to give in; and if they improve them as they have the former, you will have a good Game on't.' The Words *Replication* and *Precepts* are not found in his Cypher, but the Sense of the former may easily be guessed at.

He afterwards adds; ' The Gentleman I mentioned to you formerly, is come out of the Country, with Instructions to wait on you, and tender you his Service; he offers to bear my Expences if I go with him: As I take it that my going will be of more use than my staying now, I believe I shall accept of his Offer.' In ^k another foul Draught of the same Letter, he says (as has been before observed) ' There is one sets out from *Norfolk* in a few Days, to let you know the *Tanners* will stand by you on Occasion, and offers to bear my Expences; so that I shall wait on you, and have the Satisfaction to tell you by word of Mouth what will be acceptable. He carries the *List* with him.' And in ^l Heads or Minutes of the same Letter, he says, ' *Wag* and *Tanner* will equally concur. — My Friend will wait on you to tender their Service — Our *Messager* will pin the Basket — You may have daily Messages of this Kind; you will be courted, 'tis the *English* Way —'

The Committee think it unnecessary to repeat here, how inconsistent these Accounts of *Layer's* Journey, are with ^m those given by *Layer* himself;

^a C. 51.
^g C. 49.

^b C. 73.
^h C. 41.

^c B. 10. 38.
ⁱ C. 51.

^d C. 49.
^k B. 23.

^e C. 50.
^l B. 23.

^f C. 51.
^m B. 38.

and how strongly they contradict *Plunket's* bold ^a Affeuration, that he knew nothing of *Layer's* intending to go to *Rome*, before they set out.

^b Another foul Draught of a Letter was found among *Plunket's* Papers, and is sworn to be his Hand-writing; the Matter of which appears to your Committee very remarkable. It is not dated nor directed, but appears plainly to have been writ the Beginning of the last Year, and in it are the following Passages. 'I had four of Count *Botbmar's* Letters since my last to you; Mr. *Burford* had them all; his Clerk gave me to understand they were sent to Mr. *Jof*— This made me not to trouble you. This only to wish you a happy new Year. I hope it will bring the Law-Suit to bear, afore 'twill end; if they would have Courage and Integrity, they may walk *K. George* out afore Lady-day next—' (and in another Part he says, afore *May* come) 'He is weary of them, and thinks no more of staying among them.' It appears from this Paper, that *Plunket* had conveyed Copies of some Letters of Count *Botbmar's* to Lord *Orrery*; that Lord *Orrery's* Clerk had given him to understand, those Letters were sent to the Pretender (from whence it may be concluded, that either Lord *Orrery* or his Clerk had a direct Correspondence with the Pretender) and that *Plunket* was privy to some Design for walking *K. George* out (as he calls it) which Design required Courage and Integrity, and was to have been executed either before Lady-day, which was during the Elections, or by the Beginning of *May*, which was the second Period fixed (as has been observed) for beginning the Infurrection. *Simon Swortfegger*, Secretary to Lord *Orrery*, owned upon his ^c Examination before the Lords, that he was acquainted with *Plunket*, and had been in company with him and *Layer* at Mr. *Aaron Thompson's* Chambers. And *Plunket* ^d owned to the Committee his being acquainted with *Swortfegger*, and his having been in company with him and *Layer*, at *Layer's* House; but denied his knowing any thing of the foul Draughts of the Letters abovementioned.

Plunket in his ^e Letter to *Digby* of the 21st of *May*, says, 'I hope in a little Time Mr. *Josepb* (which *Layer* owned to be the Pretender) will be the Ministry's only Refuge. *Burford* (whom *Layer* declared likewise to be *Orrery*) and his Club seem to think so: They will have a Finger in the Pye if they can; I know they can come in for a good Share in it, if they can have a little Concert and Regulation; there are those that will undertake to do the Job in twelve Hours Time. A little Time will shew whether they will give fitting Encouragement; if two or three are taken off, no matter how, King *George* will go off by hook or by crook, and of course the *Lowty* will be for *Josepb*: This has been communicated to your Friends.'

What is meant by the *Lowty*, does not appear by his Cypher; but by the Sense, and the alphabetical Order of the Cypher, it is not improbable but it may mean the Ministry.

Whether the Job that was ready to be undertaken on fitting Encouragement, and to be performed in twelve Hours Time, relates to the rash Enterprize for surprizing the City of *London*, which has been already taken Notice of, or to the wicked and execrable Design for seizing and destroying

his Majesty's Sacred Person, of which mention is expressly made in ^f two subsequent Letters of *Plunket's*, is left to the Consideration of the House.

But the Committee, from comparing the Memorandum at the End of the ^g Paper of Resolutions, in the following Characters *Dis. C. W. M.* with *the two or three* that are mentioned in this Letter to be taken off, and likewise with *Wilson's* Intimation to *Layer*, that if Lord *Cadogan* were but shot, the Soldiers would declare for *Ormond*; and also with *Layer's* Negotiation about seizing Lord *Cadogan*, and with the Paragraph in his Scheme for seizing some great Persons at their Houses, see Reason to believe, that by the first of those Characters is meant *Dispatch Lord Cadogan*; and by the others, two other Officers of Distinction.

In the same ^h Letter of the 21st of *May*, *Plunket* takes Notice, 'That *Johnson*, an Acquaintance, was taken up the Day before, but had burnt his Papers, and seemed to be easy in the Matter; and adds, I believe they will get nothing by him.'

Plunket being asked by the Committee, whether he was acquainted with *George Kelly*, alias *Johnson*, said he knew him by Sight and Coffee-house Acquaintance only; that he did not remember his having ever received a Letter from him; and *Kelly* gave the same ⁱ Account in relation to *Plunket*: Yet a ^k Letter from *Kelly* was found among *Plunket's* Papers; and *John Malone*, who waited on *Kelly* at his Lodgings, has named *Plunket* in his ^l Deposition, as one who often visited *Kelly* there. And the Committee are satisfied, that they were privy to each other's treasonable Correspondence, by some Passages in the ^m Letters to and from *Kelly*, in which mention is made of *Plunket* by the Name of *Rogers*, as will be shewn in its proper Place. *Plunket* concludes his Letter of the 21st of *May* with these Words: 'The Motive of my Journey is over at present, my Pocket feels it, the Man must be fed with Money now and then; the labouring Oar will, I believe, be laid on me.'

As he denied the writing these Letters, the Committee could not draw from him any Explanation of this Paragraph; but comparing it with the other Part of his Letter, where it is said, that a little Time will shew whether *Burford* (Lord *Orrery*) and the Club, would give fitting Encouragement for undertaking the Job; they think it appears probable, that some part in this Job is the labouring Oar referred to, for which he expected to be fed with Money.

His next ⁿ Letter to *Digby* is of the 31st of *May*, in which he says, 'He finds the Regent had a Hand in keeping *K. George* from going Abroad, so that the Ministry will carry on their Game safely and leisurely without any Opposition whatever from the Club, or any of the Pretender's Friends.' He adds, 'Let them be ever so sanguine, they can do nothing as long as the Regent stands by the Ministry: But should *Ormond* come, with half a dozen Regiments only he would carry his Point, and make *K. George* run for it.' This Passage confirms what hath been set forth above, that the late Duke of *Ormond's* coming over made a Part of the Original Scheme, and agrees with the ^o Accounts received from *Spain*, of *Irish* Soldiers provided there for the Pretender's Service.

^a C. 73.
ⁱ C. 40.

^b B. 22.
^l E. 14.

^c B. 35.

^d C. 73.

^m C. 66. 67. 68.

^e C. 57.

ⁿ C. 58.

^f C. 58. 60.

^o A. 28, &c.

^g BB. 2.

^h C. 57.

ⁱ E. 81.

Plunket then adds, 'If *Burford* (Lord *Orrery*) and the Club have a mind to have *K. George* delivered up to them *he shall*; there are those that will undertake it, and offer to do whatever required.' And in his ^a Letter of the 4th of July he says, '—I can assure you, *Despair* has made some to take a Resolution to lay violent Hands on *K. George*; but there is a Stop put to them at present: It is not the Pretender's Interest, but you can't do so always; an ill Precedent is dangerous.'

The black and villainous Design expressed by these two Paragraphs, needs no Explication from your Committee, who are sensible the House cannot have heard them read, without the utmost Horror and Indignation.

He speaks of himself in these Letters as knowing the Men, who had taken a Resolution to lay violent Hands on the sacred Person of his Majesty; and was himself so far engaged in this execrable Design, as to say in one of his Letters, If the Club desire it, *His Majesty shall* be delivered up into their Hands: And in another Letter dissuades it, not out of any Conscience or Remorse for the Crime, but merely for fear the same Barbarity should be retaliated on the Pretender: Yet this Man still continues so hardened and obstinate, as to renew his Guilt by refusing to make the least Discovery of his Accomplices, or to give this only Reparation and Atonement he is capable of, to a Country which he has been labouring to involve in the greatest Calamities.

He afterwards ^b says, 'That tho' there should be a Rising in most Parts, if the Mob is beat in one Place, the rest will go home and be quiet for seven Years more.'

His next ^c Letter is of the 21st of June: In this he says, 'That *Burford* and the Club think themselves slighted by the Regent and Ministry of *France*; and conceive, that the Regent joins with *King George* to be revenged on them. That he may have room to repent it early or late; for should the Parliament be broke, and a new one called, he might find himself more embarrassed than he is aware of.' He adds, 'If the Regent stands neuter, they will soon bring the Law-Suit to bear; so far I am satisfied of it, that four or five hundred Men, and as many Arms, with 1500 *l.* will complete the Matters in a little Time, and give a good Account of *King George* and the Ministry. The Army want only an Opportunity to do their Duty. This Scheme, if duly and discreetly managed, will give them an Opportunity to do it. Were we sure the Regent would not interpose, we would take it in hand forthwith.'

The Committee make no doubt but the House has prevented them, in observing how exactly this Letter agrees with the ^d Accounts sent some Time before from *France*; that the Conspirators reckoned on great Part of the King's own Forces; and only desired the Regent that he would keep himself neuter between the Pretender and his Majesty. And this Letter appears to have been writ at the Time when *Layer*, *Wilson*, *Murphey* and *Plunket* were labouring to corrupt the Officers and Soldiers of the Army.

Plunket adds in the same Letter, 'If the Regent and Court of *Spain* will but ply *K. George* with large Demands, and bring the *Czar* down

to *Hanover*, the Pretender will have a *Carte Blanche* from the Ministry and *King George*, as also from all the rest of his Friends and Foes: This I take to be the best and safest Way, both for the Pretender and his Wellwishers.'

This Expression of the Pretender's getting a *Carte Blanche* from the King and Ministry, is repeated several Times in *Plunket's* Letters; and however extravagant and ill-founded such Suggestions were, yet the Committee cannot but observe, that his Representations appear to have met with such a Spirit of Credulity and Delusion in the Pretender and his Agents, that not long after he was vain enough to entertain Hopes of capitulating with his Majesty for the Crown, by that traitorous and insolent Declaration, against which both Houses have so lately expressed their just Resentment and Abhorrence.

Plunket's next ^e Letters are of the 4th and 5th of July, 1722; in which he has the Vanity to tell *Dillon*, 'That he had been desired, by some leading Members of the then Parliament, to acquaint the Regent's Agent here, that it was now in the Power of the Regent and *Spain*, to send away *King George*, and to send home *Mr. Jof.* with a *bonne grace*, and much to their Advantage; that it was only to insist on the Stipulation *King George* had made with them, and they would have a fair Pretence to do it.'

It appears by other Passages, that this supposed Stipulation relates to the Cession of *Gibraltar*.

He afterwards gives an Account, 'That he did, both on the 4th and 5th of July, wait on the Regent's Agent with this Message; and says, That as that Agent was acquainted with some of the Members of Parliament who employed him, he gave some Attention to him: But the Objections which the Regent's Agent made, appear to have been, That the Pretender had not the Name of a Man of great Parts or Resolution: That he had hitherto no great Opinion of *Burford* and the Club; and that such a Procedure on the Part of the Regent, would be a Violation of the *bonne Foy*. To which last *Plunket* replied, That it would be no Breach of their *bonne Foy* to be grateful to those who were their Deliverers formerly.' However, *Plunket* says, 'He convinced the Agent, that it was now in the Regent's Power to make the Ministry and *King George* give the Pretender a *Carte Blanche*; and by so doing, to make the Emperor vomit up what he has now in *Flanders*, without striking a Stroke. That the Common People, the Country Party, and all the *English* Gentlemen might be brought to join with the Regent in proper Measures to do it; or, that if the Regent would but stand neuter, they would soon bring the Pretender's Law-Suit to bear independent on any whatever.' He adds, 'That he is satisfied the Agent would write these Sentiments to his Court; and that it is *Dillon's* Business to let the Regent see he has the same Sentiments from other People here.'

Plunket being examined by the Committee, in relation to this Letter, ^f owned, he had frequent Access to one of the *French* Ministers on private Affairs: And that *Layer* knowing him to be acquainted with him, asked him, Whether he could not find out, by the help of that Minister, whether the Regent might not be brought into Tory

Measures? and *Stephen Lynch* has^a deposed, That *Layer* told him, Application had been made, either by himself, or some other Person, to one of the *French* Agents here, to the Effect mentioned in *Plunket's* Letter. However, *Plunket* denied his having ever spoke to that Minister in relation to State-Affairs, or his having writ any such Account to *France*.

The Committee, from comparing this Relation of these two Conversations with what he says in other Letters, of bringing the *Czar* down to *Hanover*, in order to oblige his Majesty to withdraw from *England*; observe, that the Conspirators were so intent on compassing their wicked Designs by any Means, that having failed in their Applications for foreign Assistance, they were now labouring to make *France* and *Spain* insist on the Restitution of *Gibraltar*, to throw *Flanders* into the Hands of *France*, and to bring the *Czar* into *Germany*, in hopes to involve all *Europe* in Confusion, and thereby to pave the Way for bringing in the Pretender.

In the same^b Letters he tells *Dillon*, ' Now is the Time for the Regent and Ministry of *France* to serve you: If they do not, I can assure them, they may have room to repent it: For the Pretender's Friends will find Means to get into the Saddle, in spite of the Ministry and *K. George*.'

He adds, ' That the Army, will not stand by the King and Ministry, against the great Bent of the *English* Gentlemen, the common People, and the Country Party; who are so incens'd against the Court, that the least Accident would surely overturn what they have been doing these seven Years past.'

He then says, ' That his Fellow-Traveler is, and has been very active since his coming from his Travels, and is more serviceable than those who move in a higher Sphere: That he is spurring on the Club daily, and has made many of them more active in the Law-Suit, than they otherwise would have been. That his Wife parted the Day before for *Paris*; and that he gave her a Letter for *Dillon*; his Fellow-Traveler thinking himself intitled to it, or any other Civilities *Dillon* could shew her, during her stay there.' He adds, ' Your Friends continue their Preparation, and resolve to hold themselves in readiness on Occasion.'

The Committee take Notice, that these Letters were writ just about the Time that *Layer* went down to *Norfolk*. And they think the sanguine Manner in which *Plunket* writes, is in part accounted for by what *Lord North* and *Grey*^c told *Layer*, That the Encampment had spoiled the Project: But we shall have them again. And by his Lordship's saying, ' Be you quiet, something will be done: If there be a Rising, you shall not want Men, or Money, or Arms. And that these Letters and Passages make it highly probable, that the Substance of *Layer's* Scheme had not been only seen, but approved of.

Notwithstanding the Account which *Plunket* gives in this and other Letters, of *Layer's* Proceedings, yet *Layer* denied that he had ever opened himself to *Plunket*, in relation to the Pretender's Affairs, after their return from *Rome*; and *Plunket* affirmed, that he only knew *Layer* by Coffee-house Acquaintance, and never conversed with him but in the Streets publickly.

Plunket's next^d Letter is of the 23d of July,

the Original of which being stopped, and being sworn to be his own Hand-writing, the Committee think it proper to lay the whole before the House, with the Explanation of the fictitious Names taken out of the Cypher, which is sworn to be his own Hand also.

A Monsieur Digby a Paris.

Under a Blank Cover to Waters.

July 23d, 1722.

' BY the Time this comes to hand, King *George's* Agent will arrive there: I'm glad on't, because I hope all the Negotiations and Proceedings of the Ministry and King *George*, will be laid before the Parliament, which will be a Means to send him to *Hanover*. Though he thinks to bring the Country Party to approve of whatever he will propose to the Parliament; he will hardly even bring the Court Party to do it. He thinks to disculpe himself at the Expence of the Dead. This I told some of the Parliament-Men; they say 'twont do for Love or Money. Certain Persons are forming Projects that will distress the Court of *Spain*, in case of War between *Spain* and the Emperor. Count *Bohmar* comes into it by King *George's* Connivance; 'tis now in Embrio: When it comes to Perfection, I shall be Master on't. I gave a Hint on't to the Regent's Agent; he was not a little surprized at it. They must not linger much longer; if they do, the Emperor and King *George* will find Means to distress the Court of *Spain* and the Ministry in *France*; they must hasten the Peace to prevent it.

' My Companion, who has been in the Country this three Weeks past, came to Town Yesterday: He seems to be sure of his Game, viz. that Mr. *Joseph's* Friends will run down the Ministry and King *George*, in a little Time, and bring the Law-Suit to bear on their own Bottom, and independent of the Regent, or any Body else. I am resolved to know nothing of their Proceedings; I am for having every Thing laid before the Parliament first, and then every Body will see we want the Pretender more than he wants us. Both Friend and Foe will join in any Enterprize that will be made in his Favour: Neither will they ever dare upbraid him, if, on any Occasion, he should look askint on 'em hereafter. I hinted often, the only Way to spirit 'em up, was to convince 'em the Law-suit would be brought to bear without them; and that by the Regent, and King *George*. The Construction they put upon this was, that the former was subtle enough to make use of the Folly of the latter, to play the Game to his own Advantage at our Cost, and that he will govern Mr. *Joseph*, when here, as he does now King *George*. This, or some such Imagination, gave them an uncommon Resolution; and I believe they will struggle hard for a Start in the Race of Honour. 'Tis in the Regent's Power to make King *George*, the Ministry and the Club, to give Mr. *Joseph* a *Carte Blanche*: 'Tis incumbent on you to convince him of it. I am sure his Agent here is already; for I gave him this Morning demonstrative Proof, that King *George* designs to support the Emperor against the *French* King and his Coss. and that without being seen in it.

^a B 2.

^b C 60. 61.

^c B 8.

^d B 38.

^e B 11.

^f C 63.

I would be glad to know how the Duke of Berwick does, and if he continues there this Summer. I have little to do in Town, so I design to go to the Country for three Weeks. The Town is dull and empty.

We hear the Czar is in Motion, I wish it may be towards Hanover, for King George would soon move from his Country Seat here.

I believe Mr. Joseph will laugh, when he'll hear of the Stratagem I made use of to bring his Friends to so good Temper of Duty. I hope they will keep to it, which is the Wish of,

S I R,

Your humble, obedient Servant,

JO. ROGERS.

In his Letter of the 16th of August, he says, The Pretender's Law-Business continues in the same Plight. My Companion goes on, as he thinks, very successfully, and is confident he will bring the Business to bear in a little Time.

This Letter was writ nine Days before Laver went down to Lord North and Grey's with Lynch.

Plunket says in the same Letter, 'That the Pretender must promise the Regent and Ministry of France fair, and that he will be a fast Friend, when in his Power, and must seem to rely more on them, than any here; that this is the only Game he has to play at this Time.'

In his next Letter of the 23d of August, he says, 'That his Friend came out of the Country a few Days ago, and told him that his Clients seem now to despair of bringing the Law-Business to bear this next Term, except the Regent were made a Party; that he, Plunket, told him, in case the Regent were applied to in a proper Manner, he might be prevailed upon to come into proper Measures, at least indirectly, and that without Breach of the *bonne Foy* he owes King George or the Ministry.' He adds, 'that they (his Friend's Clients) are for any thing but under their Hands; and that if they should apply to Dillon, or the Regent (as his Companion had told him they soon would) they might safely offer at least to come into their Measures, to stop their Mouths hereafter; And he thinks, with Submission, 'tis pity to hinder them from plunging themselves, as they did before.' He adds, 'That it is in the Power of the Regent and Ministry of France, to make the ensuing Parliament give the Pretender his own Terms and that as the French King is soon to be of Age, he may do every thing with a good Grace and *bonne Foy*; and settle the Pretender so, that it will always be in his Power to serve him, and the Court of Spain.'

Plunket, who assumes to himself so considerable a Part in these Transactions, being asked by the Committee, to give some Account of his Life and Education, said, that he was born at Dublin, and bred up when a Boy, at the Jesuits College at Vienna; that he is a Roman Catholick, but not in any Orders. And tho' he endeavoured (as has been observed above) by his Dress, Appearance, and Behaviour, to represent himself to the Committee as very inconsiderable, and no ways equal to the Part he was taxed with, yet a great Number of Letters from Persons of the first

Quality abroad, were found among his Papers, in which the Committee observe he is treated with great Intimacy and Confidence. And in a Letter from the Lady Middleton, of an old Date, Mention is made of her being to introduce him to the late King James's Queen in France; to whom, as he owned to the Committee, he had been introduced. And that the Trust and Confidence reposed in him, still subsists undiminished, appears to the Committee, not only by his own confessing, that he did walk and converse with the Pretender publickly in his Garden at Rome, but from Laver's Account, that he had two private Conferences with the Pretender; and above all, from the Letter under the Pretender's own Hand, which he shewed to Laver at Rome, and which has been communicated to the Committee, as before-mentioned; in which the Pretender treats him with such Distinction, as to charge him not to mention any Thing of Business to any Body, till he himself had seen him alone; than which, the Committee think a stronger and more convincing Proof of Trust could not well have been given. It appears also by several foul Draughts of Letters taken among his Papers, that he writ directly to the Pretender himself.

Mention being made in Plunket's Letters of Johnson, alias George Kelly, and some Extracts of Letters to and from the said Kelly having been referred to the Committee among Laver's and Plunket's Papers, by which it appeared to them, that Kelly's treasonable Correspondence had a Connexion with the others, and particularly, that he was privy to some of Plunket's Transactions; your Committee thought that their having a general View of all the Papers relating to the Conspiracy, might help to illustrate and explain the several Parts of it, in the same manner as Laver's and Plunket's Papers mutually confirm and give Light to each other.

For this Reason they moved the House to have those Papers laid before them, and to empower them to take such farther Examinations, as might be necessary to lead them on in tracing out the Source of the Treasons enquired into.

Having accordingly perused those Papers, and examined some of the Persons principally concerned in them, they now proceed to lay before you the Result of that Enquiry.

It appears to them, that George Kelly, Clerk, has been of late Years constantly employed in carrying on several treasonable Correspondences and Negotiations between the Pretender's Agents abroad, and Persons of great Distinction at home, tending to the bringing in the Pretender with an armed Force, and to the overturning the present happy Establishment in Church and State.

And here your Committee find themselves obliged to mention the Lord Bishop of Rochester, as principally aiding, directing and employing the said Kelly, in the Prosecution of his treasonable Designs.

As Kelly's Correspondences seem to derive their Weight and Significancy chiefly from his being employed by the Bishop of Rochester, your Committee will first lay before you the several Reasons that induce them to believe he was so employed, and the Part which it appears to them the Bishop has had in this Conspiracy.

^a C. 64.
^s C. 69.

^b C. 65.
^h B. 23 C. 41.

^c C. 73.

^d C. 1.—36.

^e C. 34.

^f C. 73.

It appears to your Committee, from several Informations of *Philip Neynoe*, Clerk, formerly mentioned, ' That *George Kelly*, alias *Johnson*, frequently told him, that the Bishop of *Rochester* held Correspondences with the Pretender and his Agents: That he, *Kelly*, was employed by the Bishop, in writing for him, and carrying on the said Correspondences; that *Kelly* told him, the Pretender relied more on Advices from the Bishop, than from any other Person; that he had several times left *Kelly* at the Bishop's Door, when *Kelly* went into the Bishop's House, and staid there an Hour or two, and upon coming back to him, *Kelly* made Apologies for staying so long, and told him, he had been writing the Bishop's Letters, which he always apprehended to be the Foreign Correspondence of the Bishop with the Pretender's Agents; and that *Kelly* told him, the Bishop never suffered him to take a Bit of Paper of the Bishop's Hand-writing out of the Room.

' That he knows Letters were directed to *Kelly*, by the Name of *Moses Hancock* and *Hatfield*; and that he has seen at *Burton's* Coffee-house a Letter to *Kelly* from *Howell*, (whom he takes to be Agent or Secretary to *Dillon*, and employed by *Dillon* in the same manner as *Kelly* was by the Bishop of *Rochester*) in which Letter there were Compliments to the Bishop, by the Name of *Naunton*, which Name *Kelly* explained to him to mean the Bishop. That *Kelly* has told him, the Bishop of *Rochester* went sometimes by the Name of *Jones*, that he had likewise heard the Bishop went sometimes by the Name of *Illington*, which last he was told by Mr. *Carte*, to the best of his Memory. That in the Letter which *Kelly* shewed him at *Burton's* Coffee-house, mention was made of *Mansfield*, which *Kelly* explained to him, to mean the late Duke of *Ormond*. That he has seen several Cyphers in *Kelly's* Hands, one in Figures, another of fictitious Names, in which last, *Carpenters* stood for *Scotch Soldiers*; *Sadlers* and *Sophisters*, for *Irish Soldiers*, and the like; that he has seen *Kelly* make use of these Cyphers, and that *Kelly* with great Freedom owned, that these Cyphers were for carrying on the Correspondence with the Pretender's Agents. That he had likewise seen Cyphers in *Carte's* Hands, who was also employed in writing Dispatches to the Pretender's Agents abroad. That he, *Neynoe*, had been employed to draw up three several Memorials to the Regent of *France*, to solicit him to send Forces to the Assistance of the Conspirators, the last of which was in *December*, 1721, and contained a Demand of five Thousand Men to be sent to invade these Kingdoms; that the Heads of these Memorials were given him by *Kelly*, and one who went by the Name of *Watson*, whom he took to be the late *Earl Marishal*.

' That in *March* last, *Kelly* brought him the Heads of a Letter, to be drawn up with a Design of its being intercepted by the Government, in order to amuse them into a false Security. That he drew up the said Letter in a Paper writ Column-ways; that this Paper was brought back to him, corrected by the Bishop of *Rochester*, as he believed.'

Your Committee are informed this Letter was not intercepted, but that a Copy of it was sent,

about that Time, to one of the Secretaries of State, from an unknown Hand.

Neynoe farther declared, ' That the Bishop of *Rochester*, Lord *Orrery*, Lord *North*, and Sir *Harry Goring*, were the principal Leaders and Directors of the Conspiracy, which was first to have been executed in the Spring of the Year 1722, by seizing the *Tower*, upon which the late Duke of *Ormond* was to have landed in the River; that upon the Discovery of the Plot, and the King's not going abroad, it was put off for some Time, but that it was afterwards resumed to be attempted in the *West*.' *Neynoe* farther added, ' That *Kelly* assured him, the Bishop got Notice of his being to be taken up, some Days before it happened; and that this Notice was given the Bishop by one of the Lords of the Council.' But he afterwards confessed, (as your Committee are informed) that in this, and other Examinations, he had endeavoured all he could, to create Diffidence and Suspicions among his Majesty's Servants.

These Informations of *Neynoe* are contained, great Part of them, in a Paper^b writ with his own Hand, and deliver'd by him to a Committee of Lords of the Council. The other Part is extracted out of^c Papers which he dictated at his several Examinations; which Papers were read to him Paragraph by Paragraph, and agreed to by him before the Lords.

That *Neynoe* was intimately acquainted with *Kelly*, visited him often, and sometimes lay at his Lodgings, and thereby had a better Opportunity of being informed by him, appears from the^d Depositions of *Stevenson* and his Wife, *Margaret Kilburn*, Landlady to *Kelly*, and *John Malone*, Servant to Mrs. *Barnes*, who waited on *Kelly* at his Lodgings.

That the Bishop of *Rochester* was acquainted with *Kelly*, invited him to dine with him, sent his Servants to enquire after his Health, and wrote to him, appears from^e *Stevenson's* and *Kilburn's* Depositions, as also in Part from^h Mrs. *Levett's*.

But what gives the greatest Weight to the several Particulars contained in *Neynoe's* Informations, is, that they are corroborated and supported in every material Circumstance, by several concurrent Proofs, as will appear from the Sequel of this Report.

Pancier hasⁱ deposed upon Oath, that *Skeene*, among other Particulars of the Conspiracy, told him, that the Bishop of *Rochester*, in Conjunction with the Lord *North* and *Grey*, had the principal Direction of the Conspiracy; and that two Hundred Thousand Pounds had been raised, and put into the Management of the Bishop of *Rochester*, which was called *the military Chest*, and was to be kept together till the Project was put in Execution.

Your Committee are informed, that when the Bishop was taken into Custody, vast Numbers of Letters and Papers were found in his House, bearing Date before the Year 1712; but from that Time downwards, few of any Consequence, except these which follow.

^k One was from the Dutches of *Ormond*, dated *January* 14, 1721. in which are these Words: ' I resolved to send what I received: For tho' it had not happened to belong to the Person I addressed it to, I was sure it could not be put into better Hands.'

^a E. 7.—10.^b E. 7.^c E. 8.9.^d E. 12.^e E. 13.^f E. 14.^g E. 12. 13.^h E. 6. a.ⁱ D. 1.^k D. 5.

This Passage makes it highly probable, that the Bishop used to receive Letters from Abroad, directed by fictitious Names. Which is still further confirmed by the following Circumstances :

In the ^a Cypher which *Laver* owned he received from Sir *William Ellis*, the Bishop of *Rochester* is designed by the Name of *Justus*.

Neynoe ^b declared, that in the Letter which *Kelly* shewed him from *Dillon's* Secretary, there were Compliments to the Bishop of *Rochester*, by the Name of *Naunton*.

Among the Bishop's Letters was found one directed to Mr. *Dubois*, not signed with any Name, nor dated from any Place. It was in the following Words :

S I R,

FORGIVE my Silence. You easily conceive the Difficulties I am under in that Regard. I write this only to assure you of my sincerest and unalterable Respect; and refer you to the worthy Bearer for News, and for every Thing, which otherwise I should have found some Way or other of writing to you myself. I have heard nothing from you since the Letter I had about two Months ago by Mr. *Johnson*, to which I immediately in his Hand returned my Answer. A Rumour has reached me of your having written hither since; but I can find no Body that owns he has seen your Letters.

I am always, S I R,

Dec. 16.

Your truly Obedient, and most Humble Servant.

Your Committee observe, That *Johnson* is the Name by which *Kelly* constantly went, as appears to them from several ^c Affidavits: And that he was at *Paris* the 16th of *December*, 1721. N. S. and set out in two or three Days after for *England*, as appears from the ^d Pocket-Book taken upon him: And the Letter to *Dubois* seems to intimate such a Correspondence as made it unsafe to write openly, and without Disguise.

Among the Bishop's Papers was found another ^e Letter, dated *Rouen*, *Jan.* 15th, 1722. without any Name; and the Superscription torn off, Which Letter is mentioned to be sent by an honest Gentleman; and the Writer of it desires to know how he may direct; and desires to be directed to by the Name of *Wishart*, at Mr. *Arbutnot's* at *Rouen*, which is probably a fictitious Direction, no Name being subscribed to the Letter. He likewise mentions a former Letter sent under Cover to their common Friend Sir *Red*. Who Sir *Red*. is, does not appear to your Committee; but they find one Sir *Red*. *Everard* inserted in *Plunket's* ^f Cypher, and designed by the fictitious Name of *Fly*.

Among the Bishop's Papers were likewise found two ^g Letters from Captain *Charles Halstead* of *Greenwich*; the Person who, as has been mentioned above, was sent to *Bilboa*, to transport the late Duke of *Ormond* to *England*.

Some Letters having been intercepted, which there is good Reason to believe were from the Bishop of *Rochester*; and ^h one of these Letters being signed *T. Jones*, and another ⁱ *T. Illington*,

your Committee will now lay before the House the Evidence they have found of the Bishop's being designed by those two Names, collected from Circumstances, which being in themselves seemingly minute, and of little Consequence, were for this Reason more frankly confessed by those, who were obstinate in concealing stronger Proofs; and yet at the same Time lead directly to the Discovery of the Person meant by those Names.

Mrs. Barnes being examined before a Committee of Lords of the Council, obstinately refused to make the least Discovery relating to *George Kelly*; but when she came to be asked what she knew about a Dog, sent over to *Kelly* from *France*; not suspecting this could lead to any Discovery, she readily ^k owned, That a spotted little Dog, call'd *Harlequin*, which was brought from *France*, and had a Leg broken, was left with her by Mr. *Kelly*, to be cured: That the said Dog was not for her, but for the Bishop of *Rochester*; and that *Kelly* promised to get the Dog of the Bishop of *Rochester* for her, in case it did not recover of its Lameness. This Declaration she made and signed in the Presence of the Committee of Council: And *Kelly* himself made no Difficulty ^l to own the receiving such a Dog from *France*.

But it appears to your Committee, by Letters intercepted between *Kelly* and his Correspondents in *France* (the Proofs of which will be set forth in the Sequel of this Report) That a Dog so named and hurt, was sent over to *Kelly* from *France*, to be delivered as a Present to the Person denoted by the Names of *Jones* and *Illington*.

For in his ^m Letter to *Howell* (who is explained in *Plunket's* Cypher to mean *Glasgow*, and has been observed above to be *Dillon's* Secretary) he mentions his having received the Present, and the Accident of a Leg being broken in the Voyage; and adds, *I will inform Mr. Jones soon of it, to whom I know any Thing from that Quarter will be very acceptable.* In the same Paragraph he says, *Mrs. Jones died last Week; and when the Days of Mourning are over, he will, I hope, be fit for Business.* This Letter was writ on *Monday* the 30th of *April*; and the Bishop's Lady ⁿ died the Week before, on *Thursday* the 26th of *April*.

Kelly in his ^o Letter to *Musgrave*, (which Name will be hereafter shewn to signify the late Lord *Marr*) dated the 7th of *May*, says, ' *Mrs. Illington* is in great Tribulation for poor *Harlequin*, who is in a bad Way, having slipp'd his Leg again, before it was thoroughly well: However, his Obligations to the Lady are as great as if he had come safe, which he desires you to let her know.'

The Words *He* and *His* being relative to *Mrs. Illington*, shew it is a Man that is spoken of: The Bishop's Lady was dead at the Time this Letter was writ. And this Disguise of putting *Mrs.* for *Mr.* is frequently made use of in the intercepted Letters, and is confirmed by a parallel Instance immediatly following.

May the 9th, *Dillon's* Secretary ^p writes to *Kelly*, and says, ' *Mrs. Chivers*, (which will be shewn to be General *Dillon*) prays you will condole in his Name on the Death of *Mrs. Illington.*'

^a B. Y. 1. ^b E. 10. ^c E. 6. 12, 13, 14. ^d E. 17. ^e D. 7. ^f C. 51. ^g D. 8. 9.
^h D. 10. ⁱ D. 11. ^k E. 4. ^l E. 1. ^m E. 35. ⁿ D. 47. 48. ^o E. 42. ^p E. 43.

It appears by these Passages, that the Dog was for Mr. Jones, alias *Illington*: And upon *Kelly*'s writing word that Mrs. Jones was dead, the Correspondents condole on the Death of Mrs. *Illington*; which shews *Jones* and *Illington* to be the same, and both to be made use of to denote the Bishop.

On the 11th of *May*, *Motfield* (who is the same with *Musgrave*, that is, the late Lord *Marr*) sends a ^a Letter to Mr. *Illington*, enclosed under Cover to *Kelly*; in which, after acknowledging the Receipt of *Illington*'s Letter of the 20th of *April*, he adds, 'I did not expect so soon after to have heard of a Loss you have had since; for which I condole with you, and nothing which concerns you so near can fail touching me, as in Friendship it ought. It is tho, becoming us, as it is our Duty, to submit with Resignation, to what the Just and Great God thinks fit to order for us in this vain and transitory World; but you know such Things so much better than I, that will not trouble you with saying any more upon it.'

This last Paragraph seems to point out the Character and Function of the Person to whom the Letter was writ.

Motfield adds, 'I would fain hope that your own Distemper will soon give you ease;' which agrees with the Circumstance of the Bishop's being ill of the Gout, at the Time of his Wife's Death.

This Particularity, as also several others, which will be taken Notice of, as to the Bishop's being in Town or in the Country, at the respective Times mentioned in the intercepted Letters, have been carefully inquired into; and it appears by a ^b Paper annexed to the Report, that these several Circumstances do exactly agree with what is mentioned in the Letters.

Kelly ^c writing to *Musgrave* (the late Lord *Marr*) the 7th of *May* says, Mrs. Jones is come to Town: The same Day writing to *Chivers* (*Dillon*) he says Mr. *Illington* is now in Town; which again confirms *Jones* and *Illington* to be the same, and agrees with the Inquiry made at that Time.

On the 10th of *May*, *Kelly* ^d writes to *Dillon*'s Secretary, *Illington* is gone into the Country, and sent me word he would be in Town on *Tuesday* Night, when he has desired to see me at a particular Hour, by which I conclude it may be about Business. And on *Monday* the 14th of *May*, (the Day before, it is said, *Illington* was come to Town) ^e writing to the same Person, he says, *Jones* is still in the Country, but has sent me word he will be in Town to-morrow.

These several Circumstances, join'd to *Neynoe*'s Declaration, that *Kelly* had told him, the Bishop went sometimes by the Name of *Jones*, and that *Carte* had told him, the Bishop went by the Name of *Illington*, shew, that wherever *Jones* and *Illington* are named in *Kelly*'s Correspondence, the Bishop of *Rochester* is to be understood by those Names.

Your Committee therefore will next proceed to lay before you the Part which *Jones* or *Illington* appear to have borne in the treasonable Correspondence.

It appears by *Kelly*'s ^f Pocket-Book, that *Kelly* set out for *Paris* on the 22d of *February* 1721-2, and return'd to *London* about the 8th of *April* fol-

lowing. It appears by ^g Mrs. *Levett*'s and ^h *John Malone*'s Deposition, that he came to Mrs. *Barnes*'s on *Wednesday* the 11th of *April*, at eight in the Morning, extremely fatigued, and went immediately to bed. Mrs. *Levett* has deposed upon Oath, 'That Mrs. *Barnes* told her he was then just arrived from *France*, and brought over Letters with him: That several of the Disaffected had been at her House to inquire after him before his Arrival, and express'd the utmost Concern for fear he should be taken.' And ⁱ *Neynoe* declar'd, 'That he saw a great Bundle of Letters, which *Kelly* brought over from *France*.' Mrs. *Barnes* farther told Mrs. *Levett*, 'That the Day after, (*viz.* *Thursday* the 12th of *April*) the Bishop of *Rochester* sent his own Coach to fetch him, and that *Kelly* was absent in the Country till *Saturday* the 14th.' Two ^k Depositions, annexed to this Report, shew, that the Bishop of *Rochester* came to Town on *Wednesday* the 11th, and went to *Bromley* on *Thursday* the 12th of *April*.

It appears by a ^l Letter writ to *Kelly* from *France* by the late Lord *Marr*, and intercepted, that on *Monday* the 16th of *April* (which was the first Post-day to *France*, after the Bishop had sent for *Kelly*) *Kelly* had writ to *Marr* an Account of his Negotiations with *Illington*, and of *Illington*'s Willingness to be reconciled to one, designed by the Name of *Hacket*. Who *Hacket* is, does not appear to your Committee, but he is describ'd in several of the Letters as a Person in ill Health, retired in the Country, and one in whom the Pretender's Agents at *Paris* place their greatest Hopes and Confidence next to *Illington*. This Reconciliation with *Hacket*, *Illington* was desirous might be kept secret for some Time, that it might not be known they acted in concert.

It appears by another ^m Letter to *Kelly* from *Dillon*'s Secretary at *Paris*, that *Illington* had writ a mysterious Letter thither, and that *Kelly* had writ a subsequent one in Explanation of it, which had been shewn to *Dillon*.

The first ⁿ Letter that was intercepted from *Kelly* himself, was dated the 22d of *April*, signed *James Johnson* (the Name he always went by, and often signed by) and directed to *Gordon junior*, Banker at *Boulogne*, at whose House it is probable he had been entertained in his last Return from *Paris*; which *Gordon* is mentioned in a ^o Letter from Mr. *Crausford*, as being formerly the Pretender's Banker, and as one employed in hiring a Vessel to transport some of the Chiefs of the Conspiracy to *England*. In this Letter to *Gordon*, *Kelly* recommends to his Care a Packet enclosed.

This Packet was directed to Mr. *Chivers* (which will be proved to be *Dillon*) and consisted of three Letters, one to *Chivers* himself, signed *T. Jones*, another to *Musgrave* (which will be prov'd to be *Marr*) sign'd *T. Illington*, a third to Mr. *Jackson* (which will be proved to be the Pretender) sign'd 1378, which Number is found by the Decyphers, to denote the proper Name of a Person beginning with the Letter *R*, in the Cypher made use of in these three Letters, the Order of which, as your Committee is inform'd, is alphabetical. All the three Letters were dated the 20th of *April*, and appear by the Matter to be from the same Person, which prove 1378 to be the same with *Jones* and *Illington*. The Letters to *Mus-*

^a D. 24.
ⁱ E. 9.

^b D. 47.
^k D. 47. 48.

^c E. 42.
^l D. 13.

^d E. 44.
^m D. 14.

^e E. 45.
ⁿ E. 26.

^f E. 17.
^o A. 9.

^g E. 6.

^h E. 15.

grave and Jackson were enclosed in that to Chivers.

The Person who dictated these Letters speaks of himself as being in ill Health, in great Pain, under some sad and melancholy Circumstances, which made him incapable of doing any thing regularly at that time, but which he expected would soon blow over; which agrees with the Bishop's ^a Circumstances at that time, whose Wife was extremely ill, and died six days after, and he himself, as has been observed before, was at that time afflicted with the Gout.

The Letter to Chivers is a great part of it out of Cypher, and with the Decyphering is in the following Words.

S I R, 20th of April 1722.

I Ought to acknowledge in form the several Papers I have successively receiv'd from you, if I were capable at present of doing any thing regularly; but indeed I am not, as Hatfield well knows, and why I am not. Some time must pass before I am any way capable of Business; in the mean time you are in the right to press the Gentlemen concerned by all manner of ways you can think of, to furnish, what by being hitherto not supply'd, has render'd the thing impracticable. They were desirous of having that Matter intirely in their own Management, and I not unwilling that they should have it, being always diffident of Success on my part upon Interpositions of that kind; and therefore it gave me no concern to be so freely excused from any Share (as I was for a great while) in that trouble. At last indeed, when the point was found upon trial to be more difficult than they expected, I was press'd to undertake the Matter; but so late that I did not think it reasonable for me then to interpose, nor can I yet undertake any thing of that kind, it being what (since some former Mismanagement wherein I was deeply concerned) I have constantly declined, hoping that I might not be altogether unuseful to the Service, if I went on to promote it in my own, that is, in another way. I still hope so, and that a little time (which must be employed in doing nothing but soliciting Supplies) will give me room for entering into Measures that may be somewhat more significant than those formerly taken; this I shall endeavour, being at present perfectly tired by the distracting Measures which have been taken from several Quarters, by Persons no ways equal to the Work, and at the same time not agreeing among themselves. This is all I can say at present, but that I am, with the same entire Respect and Fidelity I ever was,

S I R, Your most, &c.

T. Jones.

I have communicated the Copies of Mr. Mansfield's and Jacob's Letters, which besides the ^b G, (whereof they had a Copy) were the only ones of those transmitted, that I was directed, or indeed thought proper so to do. Tho' I have for some time thought, that nothing of Importance should be trusted to the Post, and am resolv'd myself not to send that way; yet the Death of Lord Sunderland

makes such a Caution more indispensibly necessary; for you may depend upon't, that those in Power here will now enter into Measures of more Severity and Strictness, and employ all their Diligence, as well as Power, on such Occasions.'

That Chivers, to whom this Letter was directed, means General Dillon, is evident from the following Circumstances.

On the 13th of May, Cane ^c writing to Kelly, owns the Receipt of these Letters from the Bishop, but over-against the Name of Cane in Plunket's ^d Cypher, is writ Dillon and Kelly ^e answering this very Letter of Cane's, directs to Chivers. Besides which, it appears from innumerable Passages that Cane and Chivers mean the same with Digby and Dixwell, which have been shewn at large to denote General Dillon.

The Bishop's Letter to Musgrave (who will be prov'd to be the late Lord Marr) is as follows:

To Mr. Musgrave.

S I R, April the 20th 1722.

I Received from Mr. Hatfield (after a long Intermiſſion of such Favours) a Letter which was very welcome to me: I have also consider'd carefully what he had to offer to me in particular, and intirely agree with what is propos'd; but my present sad Circumstances (of which he has already inform'd you) will not suffer me to be active soon, or even set forward the Affairs entrusted with me in so speedy a manner as I could wish. The best is, that as I cannot act openly, so neither is there, I think, any immediate Need of it, some time being requisite towards ripening Matters, in order to fix the ^f C 'd, which, if hastily begun, may be attended with Suspicions and other Inconveniencys; but you may depend upon it that the ^f : s committed to my care, shall be forwarded in due time to the Persons concerned, as also all such other ^f : s as I judge, and at the time I judge, they will best promote the Service. What is to be wish'd for, is, that the Person whom I am to act with, would come to Town, and his doing so may be facilitated better from your side, than by any thing that can be done here; by that time he comes, I hope I shall be able to take my part with him. I add no more now, being very unfit to say even thus much, but that I am with entire Respect and Confidence,

S I R, &c.

T. Illington.

That Musgrave (to whom this Letter was directed) means Marr, is thus proved.

Dillon's Secretary ^g writes to Kelly that Mr. Lane (over-against which Name in ^h Plunket's Cypher is writ Lord Marr) was much pleas'd with his first Letter, which, as has been observed before, was writ on the 16th of April.

Soon after a Person ⁱ writes to Kelly, acknowledging the Receipt of this Letter of the 16th of April, and expressing his Satisfaction at Illington's Willingness to be reconciled with Hacket; his Letter is sign'd 918, which Number is found by

^a D. 47. 48.

^b Not decyphered.

^c E. 38.

^d C. 51.

^e E. 41. 2.

^f Not decyphered.

^g E. 30.

^h C. 51.

ⁱ E. 32.

the Decypherers to denote the proper Name of a Person beginning with the Letter *M*, and *Kelly* ^a answering this Letter directs to *Musgrave*.

Besides which, *Musgrave* is found to be a Person, whose Pension is said to be stopt in *England*, at the very time that a ^b Pension granted to the late Lord *Marr* was stopt, and is spoken of in other ^c Letters as one suspected of betraying them, with such Circumstances as fix the Person meant to be the late Lord *Marr*.

The Bishop's Letter to *Jackson* (who will be proved to mean the Pretender) is as follows:

To Mr. Jackson, under the Cover of
M. Gordon le fils, Banquier à
Boulogne sur Mer.

S I R, April the 20th, 1722.

I AM sorry to find by yours, which *Hatfield* brought, that you know our Circumstances on this side so well, because that Knowledge does not, I apprehend, give you any advantageous Opinion of us; however let that be as it will, 'tis not fit you should be deceiv'd, and rely on more than will be made good to you: if you guess'd at my right Mind, I dare say, it was agreeable to your own, and that you could not but see thro' the forwardness of all those unsupported pretending People. Notwithstanding this Opportunity is elapsed, I agree with you another may offer before the end of the Year, tho' not perhaps every way so favourable: however it became me to speak strongly on that head, especially at the time when the ^d: was drawn, which was long before it was transmitted, for it was kept back a great while, in hopes that Deeds might have accompany'd Words, and sent at last rather to justify the Writer in respect to that part he had undertaken, than to push on any Design in so unprovided a Condition. I find I was not mistaken and am glad I was not so, tho' every Word of that ^d: passed the View and Approbation of the Persons concern'd, but they were to be and shall always be by me treated tenderly; tho' nothing shall engage me to enter deep with them for the future. I had taken this Resolution before *Hatfield's* Return, and am pleased to find that you concur with me in Opinion. As soon as God restores me to my Health, and some other melancholy Circumstances are blown over, which will be as soon as there is any occasion for me, I will not be idle: in the meantime give me leave to withdraw myself seemingly from any Engagement of this kind; I shall return to it, I doubt not, with more Ability to promote the Work: not that I will decline any proper Occasions that may offer themselves to converse freely with the Men and in the manner I have been used to do, for it is fit upon all Accounts I should do so; but by little and little that Confidence will cool, and make room, I hope, for somewhat of a more solid and important Nature. I dictate this in great Pain, and for that Reason, and because I am not at present in any readiness to go further, shall add only my faithful Assurances of an entire and unalterable Respect for you.

R.

That *Jackson* (to whom this Letter is directed) means the Pretender, appears from ^e *Plunket's* Cypher, in which, over-against the Name of *Jackson*, is writ, *the King*; tho' two Names had gone before in that Cypher, over-against which is writ, *King George*.

Besides which, ^f *Plunket's* Letter mentioning his and *Laver's* Journey to *Rome*, is directed to Mr. *Jackson*; and *Jackson* appears from other Letters to be the same with *Malcom*, to whom Application is made in a ^g Letter from *Edinburgh*, for a Patent for Knight Baronet, and for Orders to raise one or two Battalions.

The Cypher made use of in these three Letters is the very same that is made use of in two Letters intercepted from the late Duke of *Ormond's* Agents in *Spain*, of which Notice has been already taken. And the same Cypher is also used in Letters from *George Kelly*, and to *Dennis Kelly*. And among the Papers of the latter was found a ^h Piece of a Cypher in *George Kelly's* Hand-writing, which your Committee are inform'd is a Supplement to the Cypher made use of in *Jones* and *Illington's* Letters.

The Clerks of the Post-Office, who opened and copied these Letters, having been shewn several Papers sworn to be *George Kelly's* Hand-writing, have ⁱ deposed upon Oath, that the Letter to *Gordon junior*, signed *James Johnson*, as well as the three Letters enclos'd in it, directed to *Chivers*, *Musgrave* and *Jackson*, were all, to the best of their Knowledge and Belief, writ in the same Hand with those Papers; which join'd to ^k *Neynoe's* Information, that *Kelly* had told him, he was employ'd in writing Letters for the Bishop to the Pretender's Agents abroad; that the Bishop never let him carry a Bit of his Hand-writing out of the Room; and that *Kelly* made use both of a numerical Cypher, and a Cypher of fictitious Names, for managing this treasonable Correspondence; appears to be a strong Confirmation that these three Letters were dictated to *Kelly* by the Bishop, and that the Bishop is the Person denoted by the Names of *Jones* and *Illington*, and by the Cypher 1378.

In what manner these Letters were convey'd to *Paris*, will be observ'd in that part of the Report which relates to *Kelly*. The Correspondents at *Paris* own the Receipt of the Packet from their Cousin *Jones*; and on the 7th of *May*, *Kelly* ^m writes *Dillon* word, that *Illington* is glad to hear his Letters came safe, and wishes his next be more to *Dillon's* Satisfaction.

Your Committee having thus laid before you the Grounds they have to be convinced, that these three Letters were sent from the Bishop of *Rochester* to General *Dillon*, the late Lord *Marr*, and the Pretender; they think it their Duty to make some Observations on the Contents of them.

They observe from his Letter to *Dillon*, that he has contracted a great Intimacy and Familiarity with a profess'd *Roman* Catholick, who appear'd openly in Arms against the late King *William* in *Ireland*, and being obliged to leave that Country so long ago as the Capitulation of *Limerick*, has ever since adher'd to the same Cause in foreign Parts, and is at present more active and industrious than any other of the Pretender's Agents in exciting a Rebellion in these Kingdoms. He is at this time a Lieutenant-General, and has the Com-

^a E. 42.

^b E. 71.

^c E. 37. 41.

^d Not decyphered.

^e C. 51.

^f C. 41.

^g L. 9.

^h F. 11. 2.

ⁱ E. 19.

^k E. 10.

^l E. 37. 38.

^m E. 41. 2.

mand of one of the *Irish* Regiments in the *French* Service.

Your Committee observe, That as the different Professions of these two Persons could lay no sort of Foundation for any Intimacy or Intercourse between them, so the long Absence of General *Dillon* makes it highly probable, that their Acquaintance could not be commenced before his leaving these Kingdoms; and that it can only have proceeded from their being long united and confederated in the common Support of the same wicked Cause.

Yet their Intimacy is such, that the Bishop acknowledges the Receipt of several Papers from *Dillon*, together with Directions of communicating them, which the Bishop owns he obey'd as far as he judg'd it proper for the Service. Some of these Papers appear to have been from the late Duke of *Ormond*, who is attainted; and others probably from the Pretender, whom he has so often abjured.

He advises *Dillon* to press the soliciting Supplies; and owns he has been desired to undertake that Province himself, but that he had hitherto declin'd it; not from such Restraints as should naturally have arisen in the Mind of one of his Character and Function, but merely on account of some former ill Success and Mismanagement, in which he owns he had been deeply concern'd.

He afterwards advises *Dillon* to use the same Caution which he himself intended, of not trusting any thing of Importancé to the Post, endeavouring to act within the Shelter and Safeguard of the Laws for subverting our happy Constitution.

This great Caution, which (as *Neynoe* said *Kelly* told him) the Bishop used, made him so extremely careful, as not to let even the Man he trusted most, have one Line of his own Hand-writing; and shews that he was wonderfully solicitous, not to avoid the Guilt of Treason, but only to escape the Punishment due to it, by saving himself from the Danger of legal Conviction.

Another of his Letters is to the late Lord *Marr*, who so lately appear'd in Arms against his Majesty, and has since had a Post of the greatest Confidence and Trust near the Pretender.

In this Letter he owns the Receipt of one from *Marr* by *Kelly*, together with verbal Instructions; which, to cut off all Excuse of Surprize or Inadvertency, he says he carefully consider'd, and yet entirely agreed to.

He then mentions his present sad Circumstances, but comforts himself, that as they will not permit him soon to act openly; so neither is there, he thinks, any immediate Occasion for it, some Time being necessary towards ripening Matters. So that when a proper Opportunity should have offer'd, the Mask was to have been thrown off, and then he was openly to have avowed the Cause, which he has hitherto supported only in Disguise.

The other Letter of the Bishop's is to the Pretender himself, in defiance of that Law which makes the holding any Correspondence with him, or his Agents, High-Treason. In this Letter he owns the Receipt of one from the Pretender; and to shew how well he deserved that Confidence, he himself, who best knows the Thoughts of his own Heart, declares, that if the Pretender

guess'd at his right Mind, he dares say it is agreeable to the Pretender's own.

He then encourages the Pretender to hope for a second Opportunity, tho' not every Way so favourable as the first, which was elapsed.

This favourable Opportunity appears to have been that of the Elections; and your Committee cannot but observe, that the two most riotous Elections of any throughout the Kingdom, were that of *Westminster*, a Place under the immediate Influence of the Bishop of *Rocheſter*; and that of *Coventry*, which appears by this Report to have been animated by *Carte*, an Agent of the Bishop's, and one employ'd by him in managing his treasonable Correspondence.

He afterwards takes to himself the Merit of some Writing, which he had drawn up and transmitted to the Pretender, after it had first passed the View and Approbation of the Persons concern'd: Tho' he says it had been kept back a great while, in hopes that *Deeds* might have accompanied *Words*. Which again shews his treasonable Intentions to have been the Result of mature Deliberation; and that tho' he had hitherto dealt in Words, yet other Acts of Treason were what he hoped for, and was aiming at.

As soon as God should restore him to his Health, he promises to abuse it towards the Prosecution of his Treasons, and in the mean Time desires leave to withdraw himself seemingly from any Engagements of that Kind, that he might return with greater Zeal and Activity to destroy this Church and State, by placing a Popish Pretender on the Throne, in violation of the most sacred Oaths so frequently taken by him.

Your Committee will now proceed to shew what farther Part the Bishop appears to have had in the treasonable Correspondence and Negotiations carried on with the Pretender's Agents in *France*.

On the 11th of *May*, *Motfield* answers *Illington's* a Letter sent to *Musgrave* (*Marr*) the 20th of *April*. This was inclos'd in a Letter to *Kelly*. The Substance of the Answer is to condole with *Illington* on his Loss, and to express great Satisfaction on finding him in the same Sentiments with *Marr*, in Relation to their old Friend and Acquaintance (*Hacket*) and in another d Letter, to *Kelly*; he lets *Illington* know how agreeable this Reconciliation would be to *Farmer*, and how much to *Farmer's* Interest.

Your Committee see Reason to believe from Passages in several of the Letters, that *Farmer* means the Pretender.

It has been observed above, one of the Periods of Time, fixed by the Conspirators for putting their Design in execution, was the Beginning of *May* 1722.

On the 1st of *May*, *Dillon's* Secretary e writes to *Kelly*, 'that Mr. *Jones* cannot take a better Time to have himself fitted with an easy Saddle, 'there being a Number of Saddlers idle in *France* 'at present, who in case of Wars would be so 'very busy there would be no coming at them.' This is explain'd by what d *Neynoe* said, that in *Kelly's* Cypher *Sadlers* stood for *Irish Soldiers*, tho' he did not know any Letters had been intercepted where that Term was made use of, and in e *Plunket's* Cypher *Saddles* stands for Regiments, and Girt for one hundred Men.

a D. 24.

b D. 13.

c D. 17.

d E. 10.

e C. 51.

On the 2d of *May*, *Dillon* himself ^a acknowledges the Receipt of his Cousin *Jones*'s Letters of the 20th of *April*, and 'expresses much Concern for that *Lady*'s ill State of Health, being much afraid his own small Concerns can hardly be settled to Satisfaction, till she is able to solicit in his Favour.'

On the 7th of *May*, *Kelly* ^b writes to *Musgrave* (*Marr*) 'that he had communicated his Letter to Mr. *Jones*; and that Mr. *Jones* desir'd a Letter from *Musgrave* or *Farmer* (the Pretender) to *Hacket*, to bring him to Town, without which it would be impracticable for them to do Business together. That *Jones* finds *Armstrong* and *Company* very loth to be any way concerned, having no Opinion of the present Hands; however that it is still necessary to make the most of them.'

Who is meant by *Armstrong* and *Company* does not appear to the Committee.

On the 9th of *May*, *Dillon*'s Secretary ^c writes to *Kelly*, 'That if this Post had not brought an Addition of three to the six formerly come from *Repney*, it is easy for Mrs. *Jones* to see what is still wanting for the Purchase she intends to make.' Who is meant by *Repney* is not certain, but in the following Part of this Report there will appear Grounds of a probable Conjecture.

This Passage relates to a Bill of Exchange (of six thousand Pounds probably) sent over to *Calais*, and thence to *Waters* the Pretender's Banker at *Paris*, on the 16th of *April*; the Receipt of which is acknowledged in several Letters both to ^d *George Kelly* and ^e *Dennis Kelly*. This Paragraph, which says, 'That if three more are not come, besides the six from *Repney*, it is easy for Mrs. *Jones* to see what is still wanting for the Purchase she intends to make;' shews plainly, that *Jones* was at least privy to that Remittance: which agrees with what *Pancier* ^f has deposed upon Oath, that he was told by *Skeene*, among other Particulars relating to the Conspiracy, that a large Contribution had been raised and put under the Management of the Bishop of *Rochester*, which was called their military Chest.

On the 10th of *May* (three Days after the Encampment) ^g *Kelly* writes to *Dillon*'s Secretary, 'That it was reported the King had absolutely refused to put off his Journey, and intended to set out early next Month; and that if they could then compass *Barrels* enough, the sooner the Wine comes, he believes, the better. He adds, that *Jones* promises to be a good Customer, and that he hopes *Hacket* and *Jones* will give them the finishing Stroke.' The Time of Year in which this Letter was writ, and the absurd Supposition of its being more difficult to find *Barrels* than *Wine*, shew sufficiently that these Words are not to be taken in their literal Sense.

Your Committee are inform'd, that *Wine* was explain'd by *Neynoe* to mean *Invasion*, tho' he had never been told that any such Word had been made use of in these Letters, nor had been asked any Question about it; and in ^h *Plunkett*'s Cypher, *Barrels* is explain'd *Army*, and *Vines*, *one thousand Men*.

On the 19th of *May*, *Dillon*'s Secretary ⁱ writes to *Kelly*, 'That he is assured by good Hands, *Hacket* and *Jones* are the best-able to

adjust his particular Concerns; that he does not question their good Dispositions, and that doing it timely will be a double Merit.'

On the 19th of *May*, *Kelly* was taken into Custody, about the 7th of *June* he was admitted to Bail, and on the 11th he ^k writes an Account of his Examination to one *Gerrard*, whom your Committee believe to be Sir *John D'Obryan*, whom *Kelly* ^l owned to be employ'd by *Dillon* in writing for him. In this Letter *Kelly* says, 'He was chiefly questioned about a little Dog he got from *France*, and about five or six cant Names, which were *Illington*, *Jones*, *Cane*, *Howell*, *Quitwell* and *Hacket*, and that whoever *Illington* is, he was the Person chiefly struck at.'

On the 18th of *June* ^m he writes to *Dillon*, 'That it is absolutely necessary to make no more use of their present *Account-Book*, since those that have got part, may by the same Method have got the whole; and that it will be highly improper for him to meddle with Business, at least for some Time.'

From this Time forward your Committee observe, that the Names of *Jones* and *Illington* are no more heard of in the intercepted Correspondence; neither does *Kelly* so frequently write Letters of great Business, but in his stead *Thomas Carte*, Clerk, takes up the Management of the Bishop's Correspondence.

The Letters from *Carte* are signed, and those to him directed by the Name of *George Williams*; and Mrs. *Harbin*, to whose House they were directed, having been examined before some Lords of the Council, ⁿ has deposed on Oath, that *Carte* desired her to take in Letters so directed, and that she delivered one so directed into his own Hands.

And in the ^o Cypher taken among *Dennis Kelly*'s Papers in *George Kelly*'s Hand-writing, Mr. *Carte* is designed by the fictitious Names of *Thomas* and *Trotter*, who appear, by comparing several Passages in the Letters, to mean the same Person with *George Williams*.

From the Time of *George Kelly*'s being first taken up, the Bishop of *Rochester* is denoted by the Names of *Rig* and *Weston*, as will appear from the following Circumstances.

On the 30th of *August*, *Kelly* ^p writes to *Dillon* a long Letter, which contains the Particulars of the Bishop's being taken into Custody, examined and committed. On the 14th of *September* *Dillon*'s Secretary ^q writes to *Kelly*, 'That his Letter on the 30th of *August* came safe, and that the Particulars he gave of Mr. *Rig*'s Case were very acceptable to *Dillon*, whose Concern for a true and worthy Friend and Relation cannot be doubted and a longing Desire to know her entirely clear of her Distemper.' In the same Letter he desires to know what is become of *Carte*.

That *Rig* denotes the Bishop, is farther confirmed by these Particulars: *Kelly* in his first ^r Letter after his Enlargement, writes word to *Gerrard*; 'All I can do now, will be only to deliver to your Cousin *Rig* any Goods that you can send by private Hands: He is determined not to receive them any other Way, and indeed I cannot say he is in the wrong. How far this late Affair may affect him, I cannot tell.'

^a E. 38.^b E. 42.^c E. 43.^d E. 31.^e F. 19. 21.^f D. 1.^g E. 44.^h C. 51.ⁱ E. 46.^k E. 47.^l E. 81.^m E. 49.ⁿ D. 4.^o F. 11. a.^p D. 45.^q D. 46.^r E. 47.

Now since it appears that *Kelly* was formerly employed in conveying Letters to and from the Bishop (which are often called *Goods* in the intercepted Correspondence) since the Bishop himself had desired in his Letter to *Dillon*, that no more Letters of Consequence might be trusted to the Post; and since *Kelly's* Examination about the Dog could affect no one but the Bishop, it may justly be concluded that *Rig* and the Bishop are the same.

That *Weston* is the Bishop, will appear from the following Circumstances.

On the 7th of *June*, *Dillon's* Secretary ^a writes to *Carte*, and acknowledges the Receipt of a Letter from him of the 28th of *May* (which was soon after *Kelly's* being taken up) and after expressing great Satisfaction, 'That the late Rumours of a Plot had not occasioned a total Interruption of *Commerce*, nor obliged any of their Correspondents to go aside;' he adds, 'That *Dillon* desires to be most kindly remember'd to his good Friend Mr. *Weston*, for whom he was in the greatest Concern, on account of a Story that his *Clerk* had been laid up for *Debt*; but that he hopes *Carte's* next Letter will put him at full Ease in this Matter.'

This plainly has reference to *Kelly's* being taken up; and his relation of *Clerkship* to the Bishop, has been fully explain'd by what goes before.

On the 14th of *June*, *Carte* ^b writes to *Dillon's* Secretary, and endeavours to put him at full Ease in relation to Mr. *Weston*, by telling him, 'That Mr. *Weston* is in the Country, that he saw him two Days ago; that he is perfectly well, and as easy in all his Affairs as any Man alive, and very much *Dillon's* humble Servant.' It appears by Depositions ^c annexed to this Report, that the Bishop was in the Country at that Time.

On the 14th of *July*, *Dillon* ^d writes to *Weston*, under Cover to *Carte*; and desires he will admit one *Skinner* (sent over from *France* express) to receive his Commands.

On the 26th of *July*, *Kelly* ^e writes word that *Rig* and *Skin* had been lately together; and that before they met, *Rig* sent to him to know how *Skin* stood with *Dillon* and his Partners.

On the same Day, *Stanley* (who appears by the Matter of his Letter to be the same with *Skinner*) writes ^f to *Dillon*, 'That he had been with the Correspondent, to whom the Letter of Credit was sent, and had partly engaged him in his Arrack Affair.' On the 30th of *July*, *Carte* writes ^g word, he had the Honour of introducing *Stanley* to Mr. *Weston*, and mentions the Arrack Affair, of which notice will be taken in its Place.

From these Passages it appears, that *Weston* (the Name made use of by *Carte*) means the same with *Rig* (made use of by *Kelly*) which last was shewn before to mean the Bishop of *Rockester*.

Rig therefore, and *Weston* being made use of to denote the Bishop; it remains to be considered what Part *Rig* or *Weston* appear to bear in the Sequel of the intercepted Correspondence.

It appears by the ^h Letter from *Dillon's* Secretary of the 7th of *June*, that they apprehended in general, on *Kelly's* being taken up, that some of their Correspondents would be obliged to go aside; but that their greatest Pain was for Mr. *Weston*, whose Intimacy with *Kelly* was such, that *Kelly* is

styl'd his *Clerk*, which is no improper Name for one that kept the Cyphers, which are styl'd throughout the intercepted Letters, *Books of Accompts*; and in *Layer's* Cypher are call'd *Renials*. If *Kelly* had had no Secrets to reveal, the Pain for Mr. *Weston*; and the Fear of other Correspondents going aside, would not have been so considerable.

On the 14th of *June*, ⁱ *Carte* sets them at ease in relation to *Weston*, who was, he says, as easy in his Affairs as any Man alive: Which might be the Cause, *Kelly* having burnt his Papers; being bailed out, and at Liberty to assure his Friends that the Lords could get nothing out of him at his Examination, where he strenuously denied his having ever heard of the Names of *Jones* or *Illington*.

On the 11th of *June*, *Kelly* ^k sends his Friends at *Paris* an Account of his late Misfortune; and after complaining of their Neglect, in not bailing him out sooner, and intimating that such Usage might have provoked a passionate Man to betray their Secrets; he says, your old Friend *Rig*, indeed, offered all that could be expected from the poor Man. This Passage proves pretty plainly, that *Rig* was one of those whose Secrets it was in *Kelly's* power to have betrayed; and who therefore thought himself principally concerned to keep *Kelly* in good Temper, by all possible offers of Assistance.

Kelly in his next ^l Letter of the 18th of *June*, says, 'The Occasion of my Misfortune I will lay at no body's Door in particular; tho' your old Friend *Rig* seems to believe, it has rather proceeded from some pretended Friend than any real Enemy: And as his Conjecture lies on this side, you may easily guess the Point it tends to.' This Passage shews that the Discoveries made, were known by *Rig* to be well founded; since no one could be led to suspect, that an Information entirely false should proceed from some Friend entirely in the Secret: besides, it shews *Rig* had Friends, in whose Power it was to betray him; and that those Friends were known to the Correspondents in *France*, since *Kelly* says, they are able to guess who it is that *Rig* suspects on this side. This is a farther Intimation, that *Rig* had Friends on the other side of the Water, in whose power it was equally to have betrayed the Secret.

Kelly then tells *Dillon*, 'That it is absolutely necessary to make no more use of their present Accompt-Book; since they that have got part, may by the same Method have got the whole.' This is a direct Confession, that the Names of *Jones* and *Illington*, and others on which *Kelly* was questioned, were really a Part of the Cypher in use between him and his Correspondents in *France*: And as *Kelly* writ Word that *Illington* was the Person principally struck at, and knew very well by Mrs. *Barnes's* Confession about the Dog, who *Illington* was understood to be; it amounts to a Confession, that that Exposition of the Name of *Illington* was true.

He then adds, 'All that lies in my Power now, will be to deliver to your Cousin *Rig* any Goods you can send by private Hands; he being determin'd not to receive them any other way.' So that by private hands *Rig* was still willing to receive them.

^a D. 27.^b D. 29.^c D. 47. 48.^d D. 35.^e D. 41.^f D. 40.^g D. 42.^h D. 27.ⁱ D. 29.^k E. 47.^l E. 49.

However *Kelly* says, ‘ If your Business can be conveyed any other way to him, you cannot do me a greater Favour: For to tell you the Truth, it is against my Opinion and Inclination to have any farther Dealing that way.’ This shews what Dealing *Kelly* had hitherto had; and at the same time explains how *Carte* comes to be employed in managing the Bishop’s Correspondence for the future.

Kelly adds, ‘ That he does not know how far this late Affair may affect *Rig*.’ This shews that he knew *Rig* was engaged in some criminal Correspondence; since the receiving a Dog from *France*, or being called by a fictitious Name, could not otherwise have affected him.

On the 16th of *July*, *Carte* writes a long Letter about some MSS. and *Weston*’s Opinion of them, as also that of *Finch*. What is meant by *Manuscripts*, does not appear; neither is it certain who *Finch* is, but he is spoke of as being in high Repute with *Weston*.

On the 1st of *August*, *Dillon* writes to *Carte*, ‘ That he cannot apply to a more sufficient Judge than *Weston* about his Concern with Mr. *Finch*.’ And he often repeats, ‘ That he makes a most particular Case of Mr. *Weston*’s Judgment; and that he relies entirely on *Weston*’s Friendship and Advice;’ and other Expressions of the like nature.

On the 14th of *July*, *Dillon* writes a Letter to *Weston* (the Bishop) enclosed to *Carte*, in the following Words.

To Mrs. *Weston*, inclosed to Mr. George Williams, at Mrs. Harbin’s over-against Somers-et-House.

Dear Madam, Saturday 25 July 1722.

I cannot on any reasonable Grounds complain of your Silence, tho’ long it appears, because I am informed of the Situation of your Health, and the Concerns your Family are in, by Bankrupts and Law-Suits. Permit me, however, to fulfil a part of my Duty in presenting you my best Respects, and unalterable Attachment to you and yours. I wish this may find you so far recovered from past Mischances, as that you may be once more in a Humour of affording me a comfortable Line. I have all the Stock I bought lying by, and I intend it shall remain so, until you advise me of the proper Time to dispose of it: being fully convinced, that in the slippery Age we live in, I cannot confide to any better than you. I hear many say, that our Stocks will infallibly rise again to a good height, by Mr. *Walpole*’s wife and able Management; from whence I should hope not to be so much a Loser in reserving mine. Still my Lights at this distance can be but very imperfect: therefore, Dear Madam, I will earnestly pray your Direction, when you find leisure to grant me this Favour, as also of forgiving this Trouble, for which I offer amends in any manner I can be of service to you. The few Acquaintances of yours I converse with in these Parts, are well; and rely, as I do, on your friendly Advice in a most particular manner, about their Concerns in the Funds. They desire you will be pleased to admit Mr. *Skinner* to receive your Commands, who is directed to call upon you, and explain some Particulars too tedious for a Letter. He seems to be very ready at Business, and will

obey your Orders punctually. I am, with the greatest Esteem and Sincerity,

Dear Madam,

Your most humble, and most

Obedient Servant,

Digby.

On the 16th of *July*, *Dennis Kelly* writes word to *France*, that *Skinner* arrived in Town the Night before; that he had been to wait on him, longing much to know how the Fall of Stocks affected his Friends.

On the 26th of *July*, *Kelly* writes to *Dillon*’s Secretary, ‘ That *Rig* and *Skin* had been lately together; and that before they met, *Rig* had sent to him, to know if *Skin* stood well with *Dillon* and Partners.’ He adds, ‘ that *Rig* still seems to promise his Assistance, if he can get the better of his Suspicions: and that *Rig* went into the Country, the day after *Skin* and he had been together.’ It appears by a Deposition annexed to this Report, that the Bishop came to Town on the 19th, and return’d to *Bromley* on the 21st of *July*.

On the same Day that *Kelly* writ, *Stanley* (who is the same with *Skinner*) writes to *Dillon*, ‘ I have been with your Correspondent to whom the Letter of Credit was sent, who has partly answered my Demands, and promises to comply in all Points with your Directions.’ He then adds, ‘ I must now give you an Account of what Product may be hoped for from the Publick Funds.’

Then follows a Paragraph, some few Letters of which are in Cypher, but as your Committee is informed, in such an easy and obvious one, that any one that reads it, may with the least Attention decypher it. In this Paragraph, instead of saying a word about the Funds, he acquaints *Dillon*, ‘ That they are certainly betrayed by some one entirely in the Secret, who has given such Light into all their Affairs, that the most minute Circumstances are perfectly found out; that therefore he must caution him, as he is requested, to be very careful who he converses with, even at *Paris*, without excepting any one.’

This Paragraph explains sufficiently what is meant by *Stocks* and *Funds*; and it is remarkable, that in *Plunket*’s Cypher, *Brokers* is explained *Agents*. The owning themselves discovered by some one entirely in the Secret, proves there was a Secret, and that the Discoveries of the Government were well founded.

He then adds, ‘ I have partly prevailed with the Correspondent (*Weston*) to undertake what he had firmly resolved against, which is the procuring *Arrack*, which cannot fail succeeding by that Channel.’ And on the 30th of *July*, *Carte* writes to *Dillon* in the following Words:

‘ I had the Honour of introducing Mr. *Stanley* to Mr. *West*, who received him in the best manner, and assured him of his Readiness to serve him in what he could. Mr. *St.* was much pleased with him, but did not engage him to solicit in his *Arrack* Affair, which yet is of the greatest consequence to him, and Mr. *W.* is most capable of serving him in, because in the Esteem of all the Commissioners in whose Power it is to relieve him in the Case. And as Mr. *W.*

^a D. 36.

^b D. 40.

^c D. 43.

^d D. 35.

^e D. 37.

^f D. 41.

^g D. 48.

^h D. 40.

ⁱ would

‘ would do it effectually, if engaged in it, so Mr. Stanley desires me to beg the Favour of you, to request the Favour of Mr. W. in a Letter from you to Mr. Stanley, which he is sure would fortify the good Inclinations Mr. W. has already to serve him, and effectually engage him in the Thing.’

The Original of this^a Letter being stopped, is, as your Committee are informed, in *Carte’s* own Hand-writing.

What is meant by these mysterious Passages about *Arrack*, must be left to the Conjecture of the House.

If this be compared with the Bishop’s^b Letter to *Dillon*, and with *Pancier’s* Deposition, it is not improbable that by *Arrack* may be meant Contributions of Money.

But whatever is meant by it, the Committee observe, that it was a Point of the greatest Importance to the Conspirators, since it was thought necessary to be laboured by a Person sent from *France* on purpose; and the Bishop’s Reluctancy to come into it argues it to have been something very dangerous, and beyond the ordinary Lengths of his Compliance.

And they observe that the principal Direction of the Conspiracy under all the Disguises of *Stocks*, *Manuscripts* and *Arrack*, is submitted to the Bishop’s Judgment, on which, it is often said, they do entirely rely.

Your Committee having thus laid before you the principal Matters in the intercepted Correspondence, that relate to the Bishop of *Rocheſter* more immediately, will now proceed to state to you what they find in the same Correspondence, relating to *George Kelly*; who, as has been shewn before, acted so much under the Direction and Influence of the Bishop, that it cannot be supposed he would take any Step of Consequence in an Affair of this Nature, without the Bishop’s being at least made privy to it.

The Committee forbear repeating what was mentioned before, about the Heads of Memorials to the Regent, brought by *Kelly* to *Neynoe*; but they find some farther Particulars^d in *Neynoe’s* Papers, relating to *Kelly* alone.

‘ That *Kelly* had owned to him his having been formerly at *Avignon* while the Pretender was there; that at his Return from *France* last Winter, he brought over several Papers and Letters, and among the rest, one in *French*, in the Hand-writing of *Dillon’s* Secretary, intitled, *Reasons humbly offered to Cardinal Du Bois, proving that the establishing the House of Stuart on the Throne of England, preferably to that of Hanover, is the real Interest of the Crown of France, or to that Effect.* That this Piece was brought to *Neynoe* to be translated, which being written by a Papist, and turning much on the Advantage that would accrue to Popery, *Neynoe* advised against publishing it.

‘ That *Kelly* told him at other Times, that one Hundred Thousand Pounds, nay, fifty Thousand Pounds would be sufficient for bringing in the Pretender; and that he would warrant that Sum would be found.

‘ That whenever there happen’d to be a Stand made for the Pretender, great Numbers of Volunteers from *France* would appear for him.’ Which agrees with the Accounts sent from

thence, and with the Letter from *Dillon’s* Secretary about securing *Sadlers*, which *Kelly* explained to *Neynoe* to mean *Irish* Soldiers.

Neynoe farther said, ‘ That *Kelly* propos’d to him to go over to *France*, and to settle in Lord *Landsdown’s* Family, where he said he might be of Service, and promis’d to make his Reception easy.’ And your Committee observe, that the very Time when *Neynoe* was taken going to *France*, *Kelly* writ to *Dillon’s* Secretary, ‘ That he would soon see a young Fellow, whom he had mentioned to him some Time before; and that he might rely on his Honesty.’

Neynoe farther declared, ‘ That *Bingley* his Fellow-Traveller (now in Custody) lodging in the same House with *Kelly*, when *Kelly* was first taken up, burnt a Bundle of Writings he had that Day received from *Kelly*.’

John Malone (formerly Servant to Mrs. *Barnes*) who waited on *Kelly* at his Lodgings, has deposed, that this *Neynoe*, *John Plunket* (now in Custody,) *Carte* and *Dennis Kelly*, often visited *George Kelly*.

As *George Kelly* is frequently design’d by a great Variety of fictitious Names, in the intercepted Correspondence, the Committee think it proper first to apprise the House what Reason there is to assert that those Names do really belong to *Kelly*, and then to shew the Nature and Import of the Correspondence carried on under those Names.

It appears to your Committee, that since the Beginning of *April* 1722. (the Time of *Kelly’s* last Return from *France*) a great Number of Letters going to *France* were by Order of the Government opened, and Copies of them taken; and that several of those Letters, tho’ sign’d by different Names, were^h observ’d by the Clerks who copied them, to be all in the same Hand-writing; andⁱ one of the Originals having been stopped for a Specimen of the Hand, and having been shewn to *John Malone*, he has^k deposed upon Oath, that he had often seen *George Kelly* write, and that he believes it to be his Hand. Three other Papers, seiz’d at Mrs. *Barnes’s*, having been shewn to *Malone*, he has sworn them severally to be *Kelly’s* Writing; and the same three Papers having been shewn to the Clerks of the Post-Office, they have sworn, That to the best of their Knowledge and Belief, as well the original Letters stopped, as the others sent forwards, which were signed, some of them *Johnſon*, others *Hatfield*, *J. J. G. H.*, and *Wilkins*, were all in the same Hand with those three Papers so attested.

This general Proof fixes several of the Names to belong to *Kelly*; and it is remarkable that if any one of the Names above-mentioned be allowed to belong to *Kelly*, all the rest by which he signs, or is directed to, may, by the Series of his Correspondence, be shewn to belong to the same Person.

But your Committee farther observe that almost every individual Name he makes use of is attended with some particular Proof, which determines it to belong to him; of which Notice will be taken as the Names are mentioned.

It has been observ’d already, that he came from *France* about the Nineteenth of *December*, N. S. 1721. and that a^m Letter was found a-

^a D. 42. ^b D. 10. ^c D. 1. ^d E. 7. 8. 9. ^e E. 37. ^f E. 73. ^g E. 14. ^h E. 19.

ⁱ E. 21. ^k E. 20. ^l E. 9. ^m D. 6.

mong the Bishop's Papers, dated the 16th of December, in which mention is made of a Letter received by *Johnson*, and an Answer returned some Time before in *Johnson's* Hand.

Neynoe^a declared, that the last Memorial to the Regent, which *Kelly* employed him to draw up, was in December 1721, and that it contained a Demand of five Thousand Men for the Assistance of the Conspirators. In February following^b *Kelly* went again to France, and towards the End of April, the Government received unquestionable^c Accounts, that repeated Application had been made to the Regent for such a Body of Forces.

The Bishop in his^d Letters (writ soon after *Kelly's* Return from France) acknowledges the Receipt of a Letter, and verbal Instructions from *Marr*, by *Hatfield*, and of a Letter from the Pretender by the same Hand, and mentions *Hatfield* as knowing his present Unfitness for Business.

But the Letters signed *Hatfield*, which were copied at the Post-Office, are^e sworn to have been in the same Hand with other Papers which are sworn to be *Kelly's* Hand-writing. And it appears by a^f Letter from *Marr* to *Hatfield*, that he was the Person to whom the Dog was sent for *Illington*; which shews *Hatfield* to be *Kelly*, and confirms *Neynoe's* Information, that *Kelly* received Letters directed by the Name of *Hatfield*: And it appears that he not only brought over Letters from France, agreeably to what was told^g Mrs. *Levett* by Mrs. *Barnes*, and confirmed by *Neynoe*; but that he was trusted with a Letter to the Bishop from *Jackson*, the Name made use of for the Pretender in^h *Plunket's* Cypher; which Cypher it is evident *Kelly* was no Stranger to, since he makes use of several otherⁱ Names found in that Cypher, to denote the very same Persons that are there expressed and defined by those Names.

On the twenty first of April, *Dillon's*^k Secretary writes to *Joshua Vernon* (which will be shewn to be another of *Kelly's* Names) congratulating his safe Return, and tells him, 'That his first Letter was very pleasing to Mr. *Lane* (which is explained Lord *Marr* in *Plunket's* Cypher) who waited with much Impatience for those of Monday, hoping to receive a more particular Account of his Bills, which he daily becomes more pressed for; the Prospect of a good Vintage increasing by late Showers which had dropped there, and raised the Spirit of the Labourers. He adds, that it seems more plain, that on Advances of ready Money, good Bargains may be proposed.'

He afterwards tells him, 'That *Dillon* advises, the Money which *Kelly* mentioned in *Clynton's* Hands, should be equally divided between *Medley* and the Pretender.' Who *Clynton* is does not appear to the Committee; but they see Reason to believe, from Passages in other Letters, that *Medley* means the late Duke of *Ormond*.

He then tells *Kelly*, 'That *Farmer* and Family are well, and that Mrs. *Hughes* became so very uneasy she was dismissed, and is on return.'

This Passage shews that *Farmer* means the Pretender, it being well known that Mrs. *Hughes*

was Nurse to the Pretender's Child, and was on her Return to England about this Time.

From this Letter your Committee observe, that *Kelly* was employed by *Marr* and *Dillon*, in soliciting Supplies for the Service of the Conspirators; and that he had acquainted them of a Sum of Money lodged in the Hands of one, whom they call *Clynton*, which they advised should be equally divided between the Pretender and *Ormond*. Whether *Kelly* was considerable enough to have this Advice sent him for his own Government and Direction, or was only to be the Channel for conveying it to some other Person of greater Distinction, is left to the Consideration of the House.

On the twenty third of April (as has been observed above) *Kelly* sent the Bishop's Pacquet of Letters under Cover to *Gordon* at *Boulogne*, with^l Orders to him to deliver it to a tall black Man, who would soon call on him for it.

This Person is in other Letters called *Crow*, and appears to your Committee by several concurrent Proofs, to be *James Talbot*, an Irish Papist, concerned in the *Preston* Rebellion, and now in the *Spanish* Service.

Kelly, in his^m Examination before the Committee, owned his being intimately acquainted with this *Talbot*, and his having seen him the Morning he left England; and aⁿ Letter signed *J. Talbot*, was seized among Mrs. *Barnes's* Papers, in the same Hand with a^o Letter sent from France to *Kelly*, signed *J. T.* which is an Answer to^p one writ by *Kelly* to *Crow*.

On the twenty ninth of April^q *Gordon* acknowledges the Receipt of a Pacquet (already proved to be the Bishop's) and says he delivered it to the Gentleman as he was directed, who set out for *Paris* on the thirtieth of April. On the first of May, *Dillon's* Secretary^r writes to *Kelly*, 'Your Friend *Crow* is arrived safe, and delivered the three Books you gave him, as directed.'

On the second of May, *Dillon* himself^s writes to *James Baker* (which will be shewn to be another of *Kelly's* Names) and says, 'I saw your Acquaintance *Crow* two Days ago, who delivered me a Present from my Cousin *Jones*.'

And on the same Day *James Talbot*^t writes to *Kelly*, 'That Mr. *Gordon* gave him the Pacquet at *Boulogne*, which he delivered safe on Monday last, as directed. He adds, the Person received me very obligingly, and was much more open to me than I expected. Then, and since, he let me know he does not despair of doing his Business.'

On the seventh of May, *Kelly*^v writes to *Dillon*, 'That *Illington* was glad to hear he had received his Letters by *Crow*, and wished his next might be more to *Dillon's* Satisfaction.'

From these Passages it appears at one View, that the Bishop's Letters were sent by *Kelly* to *Boulogne*, by the Post; and thence conveyed to *Dillon* at *Paris*, by *Talbot*, *Kelly's* intimate Friend.

On the twenty fourth of April, *Dillon's* Secretary^u writes to *Kelly* a long Account of one *Xoland* (*Nicholas Wogan*) who was to command one of the Ships that was to be hired of some *Swedish* Merchants at *Cadiz*.

^a E. 10.^b E. 17.^c A. 2.^d D. 11, 12.^e E. 19.^f E. 32.^g E. 6.^h C. 51.ⁱ Lane, Howel, Xoland, Cane.^k E. 30.^l E. 26.^m E. 81.ⁿ E. 3.^o E. 62.^p E. 55.^q E. 34.^r E. 37.^s E. 38.^t E. 40.^u E. 41. a.^v E. 31.

This agrees with Mr. *Craufurd's* ^a Letter of the twenty fifth of *July*, N. S. 1722. in which he says that *Nicholas Wogan* was to have the Command of one of the Ships under *Morgan*, one of which having been lately taken at *Genoa*, the Commander (as your Committee are informed) has writ ^b over hither, that she was hired of some *Swedish* Merchants at *Cadiz*, with several other Circumstances, which agree entirely with this Letter to *Kelly*, and shew for what Use those *Swedish* Ships were hired.

In the same Letter *Dillon's* Secretary takes notice 'How kindly *Freeman* (the Pretender) had ^c spoken of *Kelly* in his last.'

On the 30th of *April*, *Kelly* ^c answers this Letter, but calls *Nicholas Wogan* by the Name of *Moore*, and says, 'I wish his Chief may succeed in his Journey.' Which being compared with the Accounts ^d sent about that Time from Mr. *Davenant* at *Rome*, that the Pretender was preparing to embark, makes it more than probable that he is the Chief, to whom *Kelly* wishes Success.

Kelly then gives an Account of a very important Conversation he had with one *Hore*: Who is meant by *Hore*, your Committee will not take upon them positively to determine, but by comparing several Passages of the Letters together, it appears to them highly probable, that it is Sir *Harry Goring*; in which Opinion they are the more confirmed by *Hore's* being mentioned as ill of the Gout in *France*, on the 14th of *September*: And *Kelly* takes notice in his ^e Pocket-Book, that Sir *H. G.* went to *F.* the 23d of *August*, which was the Day before the Bishop was taken up.

In this Letter *Kelly* says, '*Hore* is most impatient to have a more satisfactory Account from your Side; and hopes there may be room now to expect it, since there was nine remitted by *Repney*: he will soon, as he tells me, send you two more, which with the Twelve thousand Arms provided by *Mansfield's* (*Ormond's*) Relations, and which are now ready to be sent wherever design'd, and paid for too, will, he hopes, bring Matters to some Prospect of bearing.'

Your Committee observe, that this Impatience of *Hore* falls in, in point of Time, with the Account ^f Lord *Orrery* gave *Layer*, that Lord *North* and *Grey*, Sir *Harry Goring*, Lord *Strafford* and others, were going to do a rash thing in favour of the Pretender. That it likewise agrees with the ^g Letter to *Dodsworth*, mention'd in the former Part of the Report; where it is said, 'That the Hopes given by *G.* to expect a great Sum, and by *N.* that he had raised Twenty thousand Pounds, induced *Ormond* to supply *Morgan*, and to make other necessary Provisions;' part of which Provisions appear to have been the Twelve thousand Arms mentioned in ^h *Ormond's* Letter of the 27th of *April*, in ⁱ Mr. *Stanhope's* the 8th of *June*, and again in this Letter of *Kelly's*.

Kelly adds, 'That he hears *Ormond* continues still upon the old String, that he can get no Officers, and says, I wish the sending over *Hore's* &c. Commissions may not do more hurt than good; for that Affair is already become no Secret, and may pique some Friends, as well as put Ill-wishers on their guard.'

This Passage shews that the Scheme for an Insurrection was at that time in such Forwardness,

that Commissions were actually sent over; and confirms the Account of the late Duke of *Ormond's* being expected with Officers and Arms to support it.

On the 1st of *May* *O. S.* *Dillon's* Secretary writes ^k to *Kelly*, 'That he believes they have a sufficient quantity of *Barrels* bespoke, for the *Wine* they intend to buy; and that he hopes *Clynton* and Company have sent *Malcom* half Money, which *Hore* said he had, to pay for the *Barrels* which *Jacobs* has at his disposal.'

It has already been shewn that *Malcom* means the Pretender, and as *Clynton's* Money, which was before to be divided between *Ormond* and *Jackson*, is now to be sent half of it to *Malcom*: This is a farther Confirmation that *Jackson* means the Pretender; and agrees with the ^l Intelligence from *France*, of Sums sent about this time to *Ormond* and the Pretender.

In a Letter to *Kelly* of the 2d of *May*, was inclosed one ^m from *Dillon* to *Femison*, who appears to be some intimate Friend of *John Plunket's*, and ⁿ was present in *France*, when the Cyphers were settled between *Dillon* and *Kelly*; but his real Name is undiscover'd.

In this Letter *Dillon* acquaints *Femison*, 'That *Mrs. Freeman* intends to bring her Cause to a Trial as soon as possible; and that he believes *Mr. Abel's* Departure will be no Detriment to her Pretensions.' This Passage, compared with other Letters, shews that by *Freeman* is meant the Pretender, and by *Abel* his Majesty; and confirms the Design of an Insurrection at the beginning of *May*.

Dillon then desires *Femison*, 'To assure his Cousin *Rogers* (*John Plunket*) of his best Respects, and how much he depends on her friendly and kind Offices in his Family-Concerns, which have great need of so good Assistance.'

Plunket being ^o examined by the Committee in relation to this Letter, denied his knowing any such Person.

On the 7th of *May*, *Kelly* ^p writes to *Dillon*, acknowledging the Receipt of the Letter for *Femison*, mentions a long Discourse he had with one whom he calls Mr. *Fox*, who repented his being put out of the Pretender's Service by *Dillon*; but *Kelly* endeavour'd to convince him that *Dillon* had no hand in it, and laboured to regain him. Who *Fox* is, does not appear to your Committee.

Kelly then takes notice, 'That the Pretender's Favours to *Hore*, &c. had given great Offence; and that *Rogers* (*Plunket*) hearing of the Freedom which *Hore* and some of his Partners took with him, is much disoblige'd at it, and order'd *Femison* to tell *Dillon* so.'

Your Committee observe from this Passage, that *Plunket* is treated as one whom it was thought of consequence not to disoblige; and that *Kelly* was apprised of his Intimacy with *Dillon*.

Kelly then gives an Account of his having called on Mrs. *Medley's* (the Dutches of *Ormond's*) Chaplain. The Letter which desired him so to do, was directed to *James Baker*; and this, in which he says he has called upon the Chaplain, is signed *J. J.* which shews that *James Baker* is the same with *J. J.* which are the initial Letters of *James Johnson*.

On the 10th of *May*, *Kelly* ^q writes to *Dillon's* Secretary an Account of the Discoveries made by

^a A. 32.
ⁱ A. 15.

^b A. 45.
^k E. 37.

^c E. 35.
^l A. 6.

^d A. 3.
^m E. 39.

^e E. 17.
ⁿ E. 57.

^f B. 10.
^o C. 73.

^g AA. 6.
^p E. 41. 4.

^h AA. 5.
^q E. 44.

the Government, and the Encampment of the King's Forces; but your Committee observe his Assurances of Success were so strong, that in the same Letter he says, 'The King will go abroad next Month, and if you can then compass *Barrels* enough, the sooner the *Wine* comes, I believe the better.'

On the 19th of *May* he was taken into Custody; and it appears to your Committee by the Deposition ^a of one of the Messengers who seized him, that when he was seized he offered to draw his Sword, but was prevented. That the other Messenger being called out of the Room to rescue one of their Companions, who was in danger of being murdered in the Street, *Kelly* called to the People of the House to lock the Door; and seizing his Sword, which had been laid by in the Window, drew it, and made a Pass at the Messenger, who verily believes he did it with an Intention to murder him: That he afterwards made a second Pass, and swore if he came in again he would stab him; and said, that if the Secretary of State who signed the Warrant had been there, he would have done the same. That the Messenger going out to call for help, and returning within a Minute, was told, that *Kelly* had in the mean time burnt one of the Papers seized upon him.

Another of the Messengers ^b has deposed, that before *Kelly* offered this Violence, he had been shewn by the Messengers the Scutcheons or Badges of their Office, and likewise had been shewn their Warrant signed by one of the Secretaries of State: That the Warrant was also shewn to a Person present in the Room, who perused it, and declar'd to *Kelly*, that it was a sufficient Authority for apprehending him.

Your Committee think it unnecessary to make any Observation on a Behaviour, which implies his having so strong a Sense of his own Guilt, that he rather chose to stand all the Consequences of resisting and assaulting his Majesty's Messenger in the Execution of his Office, than to let his Papers fall into the Hands of the Government; fearing (as may justly be concluded) that such a Discovery might prove fatal to himself as well as others.

But your Committee find, that however careful he was to destroy all his Papers, yet one was seized upon him and preserved, which is of itself sufficient to prove him concerned in the treasonable Correspondence above set forth.

It was a List of Directions, in the following Words:

To Anthony Saunders *Esq;* or Mr. Joshua Vernon at Will's Coffeehouse Covent-Garden, London.

To Mr. James Baker, or Arthur Stephens *Esq;* at Burton's Coffeehouse in King's Street, near St. James's London.

By the three first of these Names, most of the Letters to him above mentioned came directed; and your Committee find, that a Person having been employed to watch at *Burton's* Coffeehouse, who should take up Letters directed to Mr. James Baker at that House, has ^c deposed upon Oath, That on the 14th of *May*, a Letter so directed being left there by the Postman, *George Kelly* came in and took the same, opened and read it, and went out of the House with a Letter in his Pocket to Mrs. *Barnes's*.

It appears to your Committee, that when he was ^d examined before the Lords, the 21st of *May*, 1722. he endeavoured to account for his receiving Letters by various Names, by saying, That one Mr. *Talbot*, who was under a Cloud, and who went for *France* or *Spain* about a Week before, had desired him to call at Coffeehouses for Letters directed to the said *Talbot* by several Names; and particularly that the Letter directed to *Baker*, which he own'd he took up, was for the said *Talbot*. Yet your Committee observe, that the said *Talbot* ^e arrived at *Boulogne* on the 25th of *April*, and did himself send a ^f Letter from *Paris* to *Kelly*, on the 2d of *May*, signed *J. T.* directed To Mr. James Baker at *Burton's* Coffeehouse aforesaid; and Letters ^g continued to be sent by that Direction from *Paris*, till the time that *Kelly* was taken into Custody, tho' *Talbot* was all that time in *France*.

Kelly being ^h examin'd by your Committee in relation to these Letters, persisted in the same Account, that they were for *Talbot*, and that the Occasion of *Talbot's* going abroad was, that *Talbot* had received an Account of General *Crofton's* being dead, and of his having left him what he had. Which Particular, your Committee observe, agrees in part with *Neynoe's* ⁱ Account, that *Kelly* had shewn him a Letter at *Burton's* Coffeehouse from *Dillon's* Agent or Secretary, in which it was said, that the Death of General *Crofton* would be a great Loss to *Mansfield*, which Name *Kelly* explain'd to him to mean the late Duke of *Ormond*.

Kelly farther ^k owned to your Committee, 'That he went to *France* the beginning of the Winter 1721. and again the Spring following, on account of Transactions he had in the Stocks there. That he was desired by a Brother of the Lord *Dillon's* to carry over to General *Dillon* an Act of Parliament relating to the Estate of that Family, but that this was the only Paper he carried' That he saw *Christopher Glascock*, who is a Captain in *Dillon's* Regiment, and knew Sir *John D'Obryan*, who is *Dillon's* Secretary, and had likewise seen *Colin Campbell* of *Glenderoule* at Coffeehouses, but had never spoke to the latter.

Yet your Committee observe, that as in his Letters he often sends Services to Sir *John* and *Christy*, he does also to *Glen* and *Collins*, which last Name is explain'd *Glenderoule* in his own Cypher ^l taken among *Dennis Kelly's* Papers. And when he was examined before the ^m Lords, he own'd his having receiv'd Letters from one *Glasgow* at *Paris*, which Name in *Plunket's* Cypher is expressed by the fictitious Name of *Howell*, and has been shewn above to mean the same with *Quitwell*, *Querry*, *Bonnarville*, and other Names which belong to *Dillon's* Secretary, and are subscribed to several treasonable Letters from *France*.

Kelly denied to your Committee his being at all known to the late Lord *Marr*, or *Alexander Gordon* of *Boulogne*; tho' he own'd his going by the Name of *Johnson*, by which Name the ⁿ Letter to *Gordon* was signed, and the ^o Answer from *Gordon* directed: And the ^p Letter from *Marr* was directed to *Hatfield*, which Name has been shewn to mean the same Person as *James Johnson*, and has been proved by other Circumstances to belong to *Kelly*.

He own'd his writing to a broken Banker at *Paris* by a fictitious Name in relation to Stocks, but said he had forgot the Name, and that

^a E. 5. a. ^b E. 5. b. ^c E. 36. ^d E. 1. ^e E. 34. ^f E. 40. ^g E. 46. ^h E. 81. ⁱ E. 10.
^k E. 81. ^l F. 11. a. ^m E. 1. ⁿ E. 26. ^o E. 34. ^p E. 32.

he never received a Letter in his Life signed by a fictitious Name.

But your Committee had reason to believe from the whole Tenour of his Behaviour at his^a Examination, that he grossly prevaricated with them; for at his first coming in, before he would make any Answer, he very formally insisted that nothing he should then say should be made use of against his own Life, nor as Evidence against any other Person: And upon these Conditions he promised to answer directly to all Questions that should be ask'd him.

Your Committee seeing some Reason from the manner of his insisting upon these Conditions, to believe that he was dispos'd to act ingenuously with them, order'd him to withdraw, that they might consider amongst themselves, how far it was in their Power, or proper for them to agree to Conditions, which would have made his Examination of no Effect; and upon his being called in again, and receiving such Answer as the Committee thought it in their Power to give, he deny'd his knowing any thing at all of the Conspiracy. This your Committee apprehend to be altogether inconsistent with the Conditions he insisted on, which manifestly imply'd that a Confession of all he knew, might endanger his own Life, as well as affect other Persons. But in the Course of his Examination he owned to them, that the Promise they had given him, was not satisfactory, tho', as he pretended, he could not have answer'd their Questions in any other Manner, if their Promise had come up to the Conditions he insisted on.

Your Committee observe, that *Kelly* was admitted to Bail from his first Confinement about the seventh of *June* last, and they conceive it to be a great Aggravation of his Guilt, that he immediately took advantage of this Enlargement to resume the same treasonable Correspondences, and to send triumphant Accounts to *France*, of his having baffled the Government by the harden'd Obstinacy of his Behaviour; thereby improving, as far as in him lay, the Liberty granted him by the Favour and Indulgence of the Laws, to the Subversion of our happy Constitution. For on the 11th of *June*, but a very few Days after his being out on Bail, he sent a long^b Letter to *Gerrard*, (whom your Committee believe to be Sir *John D'Obryan*, as has been already observ'd) in which, the better to disguise the Matter, he gives an Account of his Cousin's late Misfortune, as from a third Person; but in a^c subsequent Letter to *Dillon* the 18th of *June*, he owns the writing this Letter himself.

In this Letter to *Gerrard* he says, ' That he was bailed the *Thursday* before, and that the Judges were never known so severe in any Case of the like Kind: That most of the Questions ask'd him at his Examination were about a little Dog which he got from a Surgeon when he was last in *France*; that they mention'd no Persons to him but General *Dillon*, and one Mr. *Morgan*: That to the first he owns he is a little known, having carry'd over an Act of Parliament to him that concerned his Family, but that the latter he never saw: That Lord *Carteret* had a List of five or six Cant Names, as he call'd them, which were, *Illington*, *Jones*, *Howel*, *Quitwell* and *Hacket*, and what he never heard

of before; that however they would persuade him he knew some Persons that were meant by those Names, which he vows he never did, and whosoever *Illington* is, he was the Person principally struck at. That he is not at all satisfy'd with the Behaviour of his Friends: that *Gerrard's* old Friend *Rig* indeed offered all that could be expected of the poor Man; but others in whose Power it was to do more, shew'd no Concern at all for his Misfortune. That he lay ten Days in the closest Confinement, without so much as a Message from any of those he depended most upon; that it is well he had no Secrets to reveal, since such Usage might provoke a passionate Man; and that the World is pretty well convinc'd that he had not; since no Persons seem'd to be the least apprehensive that he could do them any Mischief.

' That this shews what the Friendship of some People is; but whilst there is one righteous Person, we must, for his sake, overlook greater Misfortunes.

' That he is very well, and under no great Concern for any thing as to himself but the Expence, having more than his own to answer.

' He concludes, with desiring *Gerrard* to direct under Cover to Mr. *Andrews* at the *Dog and Duck* in *St. James's-street*?

Your Committee find, that after this Time several Letters did come from *France*, directed to Mr. *Andrews* at the *Dog and Duck*, and that the Master of that House having been examined, has deposed on Oath, ' That one *Andrews* order'd him to take in Letters that should come by the foreign Post so directed, and that three of those Letters were directed to the *Dog and Duck* in *King-street*, by Mistake; but were afterward brought to his House in *St. James's-street*, and taken up by *Andrews*, who happen'd to be there when they came in.'

It appears farther to your Committee, that the said *Andrews* having been examined, has deposed on Oath, ' That Mr. *Johnson* alias *Kelly*, desired him to take in some Letters directed to him, *Andrews*, at the *Dog and Duck* Ale-house in *St. James's-street*; that he received in the whole four or five, in the Months of *July*, *August* and *September* last, to the best of his Remembrance; that they appeared by the Charge of Postage to be foreign Letters, and that he delivered them unopened to the said *Johnson* alias *Kelly*, who paid him the Postage; that he, *Andrews*, knew nothing of the Contents, nor ever returned any Answer to them.'

On the 18th of *June*, ^e *Kelly* writes to *Crow* (*James Talbot*) giving him an Account of his late Misfortune, and the Reasons of his Silence, and mentioning his Design of going over into *France*, as soon as his Appearance in *Westminster-Hall* should be over.

' He then sends his Service to all Friends, particularly to Sir *John* and *Christy* (Sir *John D'Obryan* and *Christopher Glascock*,) and desires *Talbot* to tell the latter he must find out some other Address for him to write by, since he has good Reasons for not using the former, which have prevented him from writing to him these ten Days past, and that if it were to a *French* Person, it would be so much the better.'

^a E. 81.^b E. 47.^c E. 49.^d E. 50.^e E. 51.^f E. 48.

Your Committee observe, that soon after, a *French* Direction to Monsieur *Maisonnewve* ^a was sent over to *Kelly* by *Christopher Glascock*, which *Kelly* made use of for some Time, and the ^b original Letter in *Kelly's* Hand stopt at the Post-Office, is so directed. They likewise observe the Reasons which *Kelly* says he had, not to make use of the old Directions, appear evidently to have been, that he was questioned before the Lords on the Names of *Howell* and *Quitwell*, which were the Names made use of for *Glascock*.

He concludes his Letter to *Crow*, with desiring him to direct to him by the Name of *Wilkins* at *Will's* Coffee-house; and your Committee observe, that not long after ^c a Letter came signed *J. T.* and so directed; which was stopt, and is in the same Hand with the ^d Letter signed *J. Talbot*, seized at *Mrs. Barnes's*; which confirms *Talbot* to be *Crow*.

In this Letter to *Crow* was enclosed one from *Kelly* to *Dillon* by the Name of *Dixwell*; the Substance of which has been partly set forth in that Part of the Report, which relates to the Bishop of *Rocheſter*. In this Letter 'he desires to be excused from meddling in Business for some Time; but says, it does not proceed from any Change of Opinion, or Repentment of the little Concern that has been shewn him; but from a Conviction, that without changing both their Method and their People it will be impossible to make any Thing of it.'

Kelly adds in this Letter: 'Your Correspondents at *Will's* and *Burton's* are gone, and desire you may write no more that Way; and when you do me that Favour, please to address under Cover to *Mr. David Wilkins* at *Will's* Coffee-house, *Covent-Garden*, and not to *Andrews*, as I desired.'

This Passage confirms the List of Directions to *Will's* and *Burton's*, found in *Kelly's* Pocket; and shews that the Letters to *Wilkins*, as well as *Andrews*, were for *Kelly*, tho', as is before observed, 'he denied the having ever received any Letter under a fictitious Name.'

On the twenty-eighth of *June*, *James Talbot* ^e writes to *Kelly*, congratulating him on his Enlargement and Behaviour, and expressing his Surprise, that he should at such a Juncture have Reason to complain of want of Friends.'

On the same Day *Glascock* ^f writes to *Ireton* under Cover to *Andrews*; and as *Andrews* delivered these Letters unopened to *Kelly*, this shews that *Ireton* is another Name for *Kelly*, of which the Matter of the Letters furnishes abundant Proof.

In this Letter *Glascock* takes notice, that *Kelly's* Letter to *Chitwood* came safe. This refers to *Kelly's* Letter of the eighteenth to *Dixwell*, and shews *Chitwood* to be another Name for *Dillon*.

'That what he had recommended in relation to the New Book of Accounts would be observed, and that *Forrester* had the same Advice given to him and *Ormond*.' Who *Forrester* is does not appear to the Committee, but, as he is mention'd here with the late Duke of *Ormond*, he is probably the Person who wrote the Letters to *Dumville* and *Dodsworth* above-mentioned.

Glascock then tells him, 'That *Ormond* had expressed much Concern for what had befallen *Kelly*. He afterwards desires the Particulars of

his Case, and to know what is wanting for paying off the Doctor's and Apothecary's Bills, acknowledges the Receipt of a Letter from *Rogers*, and inquires after *Jemison*.'

On the twenty-eighth of *June*, *Kelly* ^g writes to *Talbot* 'of the Neglect that had been shewn him, and the Reasons that he had to decline any farther Traffick with the Merchants here; he says, if *Talbot* perceives no likelihood of a sudden Change for the better, he must retire to some cheap part of the Country, if *Dillon* allows of it; expresses his great Obligations to *Dillon*, and his Readiness to execute any private Commands of his;' and adds, (what appears to your Committee very remarkable) 'If I were in a Condition to bear the Weight of publick Business, *Dillon* should never be at the Trouble to employ another, but that he is heartily sorry *Dillon* himself has done it so long, for ungrateful People on this Side; says, he never intended to trouble his Friends on this Side on his own private Account, but publick ones of this Nature are what he thinks they ought to take care of, since they are best able to do it, and expect the best Returns for it.'

Your Committee observe from Passages, that tho' *Kelly* would have it believed he only corresponded with Persons in *France* on private Affairs, relating to the Stocks, yet he here owns in Effect, that he had been trusted with Affairs of a publick Nature, and that those Transactions having brought on him the Displeasure of the Government, it was reasonable for him to hope for Support from those in *England*, who expected the best Returns from his and *Dillon's* joint Labours.

Your Committee farther observe, that this Letter was directed to *Crow*, and yet in it was enclosed one from *Ireland*, relating to Family Affairs, directed to *James Talbot*. Etq;

On the fourth of *July*, *Glascock* ^h writes to *Kelly*, 'That *Dillon* intended to have sent him a Letter of Credit by the Post, drawn on *Mr. Harrold*, but kept it back till he heard from him, for fear, by removal into the Country, or by any other Accident, it should be lost.'

On the eleventh of *July*, *Glascock* ⁱ repeats the same, and his Suspicion that the Letters to *Andrews* had miscarried. Then acquaints *Kelly* with kind Expressions that he had seen from *Dr. Freeman* and *Mrs. Malcom* (the Pretender and his Spouse) in relation to *Hawksby's* first Operation in his late violent Distemper.

Your Committee observe from what follows in this Letter, that, tho' in *Plunket's* Cypher *Hawksby* stands for King *George*, yet in the Pretender's Cypher it stands for *George* without any Addition, and appears for that Reason to be made use of to denote *George Kelly* in this Place. Be that as it will, it is evident from what follows, that *Kelly* is the Person here meant.

The Pretender's Words mention'd in this Letter are as follows:

Hawksby's steddly and resolute Behaviour in the first Operation, answers the good Opinion I have long had of him; I am fully persuaded that all the Surgeons will do hereafter shall not be able to alter his Temper, and I hope he will come off with Patience and a short Confinement, by which his Health will become more perfect and satisfactory to his Friends.'

^a E. 54.^b E. 21.^c E. 62.^d E. 3.^e E. 53.^f E. 54.^g E. 55.^h E. 56.ⁱ E. 57.

Glascock then adds, ‘ Mrs. *Malcum* (the Pretender’s Spouse) in her short way of Expression, says, *I am truly glad that honest Hawksby is recover’d, for I take him to be a very valuable Man.*’

Then he says, ‘ I know these Compliments will be comfortable to a sick Person from his Friends, for which reason I trouble you with them, as a Proof of my Attention towards one I wish so well.’

These last words shew, that this Comfort was intended for *Kelly*, to support him under his Trouble, which is disguis’d under the Notion of Sickness; and your Committee think it unnecessary for them to make any Observation on a Passage, which shews so plainly *for whose sake* it was understood he had brought this Trouble on himself.

Glascock next tells him, ‘ That as he is upon regulating his new Book of Accounts, he should be glad to know whether *Kelly* and *Jemison* had those by them, they and *Glascock* rectify’d together.’

This shews that *Kelly*’s Journeys into *France* were not wholly on private Affairs, and confirms ^a *Neynoe*’s Account of his having seen Cyphers in *Kelly*’s Hands, and is again confirm’d by the ^b Cypher found among *Dennis Kelly*’s Papers, which is in *George Kelly*’s Hand-writing.

Glascock then sends him the *French* Direction he had desired.

On the seventeenth of *July*, *Glascock* writes again to *Kelly*, to let him know why the Bill was not sent, and to desire a sure Address. He likewise cautions *Kelly* not to draw any more on *Digby*, but on Messieurs *Chitwood* and *Dupleffis*, at Mr. *Hues* Banker *rue de la Monnoye*. Your Committee observe, that this was about the time that Mr. *Crawford* ⁴ made the Discovery above related about the Name of *Digby*; and that for some time after, *Kelly* directs his Letters for *Dillon* to *Dupleffis*, till a new Cypher, which he, *Kelly*, sent over afterwards came to be made use of.

On the 19th of *July*, *Kelly* writes to *Glascock*, that Mr. *Andrews* received the several Letters from *Glascock* all together; which was occasioned by a Mistake in directing them to *King-Street*, instead of *St. James’s*; which agrees with *Andrews*’s ^c Deposition above-mention’d.

He then returns Thanks for the Letter of Credit intended him, and says it will come safe either to Mr. *Wilkins* at *Will’s* Coffee-house, or to Mr. *Andrews* at the *Dog and Duck*. This, compared with *Andrews*’s Deposition, shews that the Bill was for *Kelly* himself: which Observation the Committee think it proper to make, because, when he was examined before them in relation to the Letters directed to *Andrews*, tho’ nothing was said to him about the said Bill, he immediately endeavour’d to explain away that Matter by the following ^e Prevarication.

He said, ‘ He had been desir’d by one Mrs. *Oxburgh* in the City, Daughter to him who was executed, to receive some Letters for her from abroad, and that he did not know but he might employ one *Andrews*, or some other Friend to take up such Letters. That he had likewise received some Money on a Bill for the said Mrs. *Oxburgh*, of a little Man, a Banker in *Lotbbury*,

‘ or somewhere behind the *Exchange*, and that he had endorsed the Bill with his own Hand.’

Your Committee observe that this last Circumstance makes it probable the Bill was for himself, since his Endorsement on a Foreign Bill (which is not usually made payable to the Bearer) would not have entitled him to have received the Money, nor have been a sufficient Discharge except the Bill had been made payable to him.

They likewise observe, that Mr. *Martin Harold*, on whom the Bill was drawn, whom *Kelly* avoided to name, does live behind the *Exchange*, tho’ not in *Lotbbury*; and in *Glascock*’s ^h Letter of the Twenty-fourth of *July*, *Kelly* is particularly directed to endorse the Bill on *Harold* with his own Name. Your Committee submit it to the Consideration of the House, whether it is not evident from these Circumstances, that *Kelly* received the said Money for his own use, as a Reward for his Sufferings, and an Encouragement to persist in his Obstinacy.

On the 23d of *July* *Kelly* writes to *Talbot*, ‘ That this Bill and the hopes of Success in another Particular, when the Term is over, makes him a little easy.

‘ That as to what they had so often talk’d about, he did not know what to say to it, and that *Nicholas Wogan*’s Return gave him the less hopes of it; but that he heard the *Beautiful Squire* was certainly determin’d on something, but when, and in what manner, is what he knows nothing of.’ Who is meant by the *Beautiful Squire*, the Committee cannot take upon them to determine; but they observe this Letter was writ the Day after *Layer*’s return by *Epping* from *Norfolk*, at which time he told ^k *Plunket*, ‘ That the Pretender’s Friends would run down the Ministry and King *George* in a little time, and bring the Law-Suit to bear on their own bottom, independent of the Regent, or any Body else;’ as is related in *Plunket*’s Letter of the same Date with this of *Kelly*’s.

On the 2d of *August*, *Kelly* writes to *Glascock*, ‘ That he had received the Bill. That his Letter of Licence is not out till the end of *October*, and that his Creditors threaten then to shew him no mercy: In the mean time he must hope the best, and wish that some good Turn of Fortune may enable him to do them justice.’

He adds, ‘ That he expected to have sent the State of their Accounts before now, but that the Gentleman who was to carry them, met with an Accident the other Night, which prevented him; therefore he cannot do it till he recovers, or some other Opportunity offers.’ Then sends a long Account of *Dennis Kelly*’s being taken up.

On the 6th of *August* ^m he sends the same Account to *Dillon*, and mentions the great Terror the Guards are under from Informers; which Intelligence your Committee observe, was thought considerable enough to make an Article in the Pretender’s late Declaration.

On the same day he sends ⁿ *Glascock* an account of *Sample*’s, *Cotton*’s, and one *Campbell*’s being taken up; ‘ That there were Reports of one Sir *Harry Goring*’s being taken, and of Forces being sent for the Lord *North* and *Grey*,

^a E. 10.^b F. 11. a.^c E. 58.^d A. 31.^e E. 59.^f E. 51.^g E. 81.^h E. 61.ⁱ E. 60.^k C. 63.^l E. 66.^m E. 67.ⁿ E. 68.

‘ Lord

‘ Lord *Strafford*, and other Persons of Quality; but that he finds there is no Truth in them, and is told that the two last are come to Town. He then desires to know *Dillon's* private Thoughts from whence the ill Report of his Cousin's Circumstances comes, which has occasion'd this Severity from his Creditors, and says, he hopes soon to send the State of their Accounts, which has hitherto been delay'd for want of a proper Hand.’

On the 9th of *August*, *Kelly*^a writes to *Glascock*, ‘ That *Den* is come to Town, and behaves like a Friend; but that *Rep* is still in the Country, and so is *Ho*; and that the latter had earnestly desired *Kelly* to go to him for a few Days, which he had hopes of doing, but intended to make but a short stay.’

Your Committee see reason to believe, that by *Ho* is meant *Hore*; and they find an Entry in *Kelly's* Pocket-Book of his having been at Mrs. *H's*, and another Entry in these Words; *To enquire for Mr. — at Mr. William Bayning's at Horn-Dean*, which is a House much frequented by Sir *Harry Goring*, as appears by a^b Deposition annexed to this Report.

Who are meant by *Den* and *Rep* your Committee will not take upon them to determine, tho' they think this Letter compared with that writ three Days before, may lead to a Discovery of the Persons meant.

On the 13th of *August*, *Kelly*^c writes again to *Glascock*, ‘ That he intends to visit *H*. who being at a pretty good Distance in the Country, he cannot return under four or five Days. Which agrees with the Circumstance of his going down as far as *Horn-Dean* near *Petersfield*.

He afterwards adds a very remarkable Paragraph in these Words: ‘ what would you advise poor *Trotter* to do, he is ready to take a Voyage any where, and is, you know, an honest and fit Person for that Business; he has wrote very earnestly to me for my Advice, which I told him I could not give till I heard from you.’

Your Committee think it their Duty to observe to the House, that in the^d Cypher found among *Dennis Kelly's* Papers, in *George Kelly's* own Hand-writing, *Trotter* is one of the fictitious Names set over against the Name of *Carte*, and that on the Day this Letter was writ, His Majesty had issued his Royal Proclamation for apprehending the said *Carte*, against whom it is there set forth a Warrant had been issued by one of the Secretaries of State for Treasonable Practices, and that he had absconded and fled from Justice.

Yet it appears from this Letter, that *George Kelly*, far from discovering where the said *Carte* was conceal'd, was desirous to promote his Escape, by getting him invited to undertake a Voyage into foreign Parts; and that notwithstanding the treasonable Practices alledged against him, he here gives him the Testimonial of an honest Man, owns his having had Communication with him by Letter, after the Time of his Escape, solicited *Glascock* in his Favour, and undertakes to aid and assist the said *Carte* with his Advice, as soon as he should have an Answer from *Glascock*.

On the 13th of *August*, *Glascock*^e writes again to *Kelly*, in relation to the Bill on *Harold*, and mentions his expecting the Gentleman soon that was to clear Accounts.

He afterwards tells *Kelly*, ‘ That Mrs. *Musgrave* had received Advice from her Father, that she is not to expect a Farthing of the Allowance due to her for the Time past, or to come, which *Allen* had procured a seizure of, on account of her Husband's Debts and Mismanagement.’

Your Committee, from comparing this Letter with others, where *Musgrave* is mentioned, and from observing the Date, see reason to believe, that this Passage relates to the stopping a Pension, which the Committee are informed by his Majesty's singular Bounty and Indulgence, and upon Application from the late Lord *Marr*, and Promise of Services, was allowed to him; and they cannot reflect, without Indignation and Astonishment, on the black Ingratitude of Persons, who, while they were in a great measure subsisted by his Majesty's unexampled Liberality, were labouring by the most wicked and unjustifiable Practices to dispossess him of his Crown, and to destroy his sacred Life.

On the 17th of *August*, *Glascock*^f writes again to *Kelly*, and among other things says, ‘ He is contriving to get at *Barker* for a Relief in favour of *Farmer's* (the Pretender's) Children, in case their Step-Father should pretend to deprive them of their Due.’ It appears by another^g Letter, *Barker* means some considerable Person in *France*; but what this Passage particularly relates to, your Committee cannot with certainty determine. However they have thought it their Duty to lay this and other obscure Passages before the House, that it may be seen how much it is in the power of Persons now in custody to discover; and of what Importance it is to the Safety of his Majesty's Government, that such Discovery should be required at their Hands.

On the 20th of *August*, three Days before the Bishop of *Rocheſter* was taken into custody, *Kelly*^h writes to *Glascock* (the Original of which Letter is stopp'd, and sworn to be his Hand-writing;) and says, ‘ Your Cousins *Ireton* and *Wilkins* are both gone into the Country, and earnestly beg the Favour of you not to write to them any more for which you will soon know the Reasons.’

On the 30th of *August* heⁱ writes to *Dillon*; and after giving a very long and particular Account of all the Circumstances of the Bishop's being taken up, examined, and committed to the Tower, he says, ‘ You are by this satisfy'd of the Reasons of my late Silence.’ Your Committee observe, That these Passages shew the Connection which *Kelly* thought there was between the Bishop and himself.

In the same Letter of the 20th of *August* your Committee observe another very remarkable Circumstance; *Kelly* says, that he is going to the Country that Day, and he had said^k before that he was going to Mr. *Hore's*.

In his^l Pocket-Book notice is taken, that Sir *H. G.* went to *F.* on the 23d.

On the 14th of *September*, *Glascock*^m writes him word, ‘ That Mrs. *Hore* was under a Fit of her old Sickness at *Rouen*; but that it was not safe, for many good Reasons, to have her transported to *Paris*, there being abundance of Quacks going about, which cause much Mischief.’

^a E. 69.
^h E. 21.

^b E. 80.
ⁱ D. 45.

^c E. 70.
^k E. 69.

^d F. 11. a.
^l E. 17.

^e E. 71.

^f E. 72.
^m E. 74.

^g E. 71.

From this Time forwards *Kelly* makes use of a new Cypher of Names, and new Directions to his Letters.

On the 27th *Kelly*, ^a writes again and says, 'That since Mr. *G. Sampson* went, he has not heard a Syllable from his Correspondents in France, which has been a great Detriment to several of their Friends.'

On the 9th of *October*, ^b *Glascock* sends him word, 'That all the Letters he wrote by the Post, came safe; but that he had not yet seen the Person who was to deliver him the particular Instructions and Address he was to make use of, that Person being still detained in the Country; but that he had taken Measures to get from him the Memorandum *Kelly* had given him.'

On the 17th of *October*, *Glascock* ^c sends *Kelly* word, That the Book of Accounts sent by *G. Saunders* is at last come to hand, tho' the Person that brought it is still in the Country, so that they are now in a Condition to settle Accounts with *Kelly*. And from this Time forward the Correspondents in France make use of a new Cypher of Names, and new Directions to their Letters.

From all these Circumstances, your Committee see reason to believe, that *Kelly* sent over a new Cypher, and a new List of Directions to France by Sir *Harry Goring*; in which they are the more confirm'd, by observing that this new Cypher appears fram'd in such a Manner, that the initial Letters of the real Names are always prefixed to the fictitious ones, which last are frequently varied, but the initial Letter never. This will be more clearly understood by instancing in one of the Names.

The Person who carried over the Cypher and List of Directions from *Kelly*, is in some Letters call'd *G. Sampson*; in others *G. Stephenson*, *G. Saunders*, and *G. Sandford*; and appears to be the same with Mrs. *Hore*, who was observed before to be probably Sir *Harry Goring*.

Your Committee farther observe, That all the Names made use of in the new Directions, were enter'd by *Kelly* in the ^d Pocket-Book that was taken upon him when he was last seiz'd, with such Marks and Observations before them, as need no great Explanation. Over-against the Names of *Bonnawille* and *Disode*, is writ the Abbreviation *Glas.* and a ^e Letter signed *Disode*, having been stopped at the Post Office, appears to be in the same hand as those signed *Howell*, *Quitwell*, *Querry*, &c. which were shewn above to have been writ by *Glascock*. Over-against *Brisac* and *Du Puy*, is writ *Stur*; and your Committee find that Letters came for *Kelly*, directed by these Names to *Stur-gis's* Coffee-house. Over-against *Contade* and *Lunelle*, is writ *Slau*; and your Committee find, that Letters thus directed were left for him at *Slaughter's* Coffee-house.

The Committee are sensible, that their entering into so minute a Detail, must be tedious to the House; but as the Conspirators have been no less industrious than they are obstinate in concealing their Teason, your Committee have thought it their Duty to trace it thro' every Disguise, as near as they could, and to lay before the House every Circumstance which may any way tend to a Discovery so necessary for the Safety and Quiet of these Kingdoms, and yet so little to be hoped for

from the present Temper and Disposition of the Conspirators themselves.

The first ^f of *Kelly's* Letters, writ in this new Cypher, is of the 10th of *September*, directed to *Bonnawille (Glascock)* under Cover to *Hues*, Banker at *Paris*.

In this he says, 'I hope you have seen *G. Stephenson* before now,' and mentions a Trunk that he is soon to send to him; which Circumstance shews he is the same Person meant by *G. Sandford* in other Letters.

He then takes notice of a young Fellow that he had recommended, (which was observed before to be probably *Neynoe*) 'and earnestly begs the Goods he carries with him may be disposed of at any Rate; and, if possible, without Mr. *L. Crawford's* or his Partners being concerned in the Bargain.' Your Committee observe from *Neynoe's* Informations, that he was to be recommended by *Kelly* to Lord *Lansdown's* Family. They likewise observe from several other Letters, that *Dillon*, upon the Caution given him by *Skinner* from the Bishop of *Rocheester*, was grown very jealous of his former Friends at *Paris*; from which Circumstances, they think it probable, that by *L. Crawford*, is meant Lord *Lansdown*.

He then adds, 'Your Cousin *C. Saunders* is well, and with a Friend in the Country, who will take particular Care of her, till a better Service can be got for her.'

This compared with what he says in his Letter of the 13th of *August*, of *Trotter's* having writ to him for Advice, and wanting to be employ'd in a Voyage or other Business, makes it probable, that by *C. Saunders* is meant *Carte*.

He then adds, 'Your Relations, *N. Crone* and *S. Farrel*, have made several Bargains for ready Money in the third Subscription; and as the Time allow'd by Parliament for Non-prosecution will be out as soon as it sits, their Creditors will then fall upon them and all their Friends, and put them in Jail, except you can send them some Relief: And tho' your Actions are at a very low Price, however, I believe, they would be extremely pleased to have them sold at any rate, to enable them to pacify their Creditors on this Side, and to put them in a state of Safety.'

It has been observ'd that the Conspiracy is often treated of under the Cant of *Stocks*; and whether this third Subscription may not mean the third Period of Time fix'd by the Conspirators, and the Relief desired be not some Assistance from Abroad, is submitted to the Consideration of the House.

That this Passage cannot be understood in the literal Sense, is evident from its being said, that the Time of Non-prosecution expires at the Sitting of the Parliament; but your Committee apprehend, that the Meaning of this Paragraph is fully explain'd by another in the same Letter, in which *Kelly* says, 'There is no Prospect of the State Prisoners getting out till next Term, and if the *Habeas Corpus* Act be suspended at the Meeting of the Parliament, they will remain during the Government's Pleasure, and perhaps have Company enough.' Who are meant by *N. Crone* and *S. Farrel*, is submitted to the Conjecture of the House.

^a E. 75.^b E. 76.^c E. 78.^d E. 17.^e E. 78.^f E. 73.

His next ^a Letter to *Glascock* is of the 27th *Sept.* in which he complains, ' That he has not heard a Syllable from *D. Gainer* (*Dillon* probably or *G. Roberts* (*Glascock* probably) since Mr. *G. Sampson* (*Goring*) went; which has been no small Detriment to some of their Friends.' He adds, ' The Term being soon at hand, we shall be much at a Loss how to manage without their Advice; which *G. Sampson* positively promis'd to send a speedy Account of.

' The Situation of your Friends stands much as it did, and nothing has happened of late in your Family to ease their Losses, or mend their Condition.'

He then gives a long Account of the Lord *North and Grey's* being seiz'd at *Portsmouth*, and of his being to be brought to Town that Night; and concludes thus:

' I must now plainly tell you, that I am afraid your Cousin *N. Clifton* is in a very bad Way, and a Person (whom he lately employed to manage some Things for him, particularly to compound some *S. Sea* Bargains) has not been true to him: For his Creditors have actually put him in Jail, and except you can contrive to send him some Relief from what *Effects* he put into your *Mississippi* (for I don't find he has any other Prospect) his Confinement will prove fatal to him. You know his Worth, and for Heaven's sake don't forsake him.'

This Letter being mentioned to be writ on the Day Lord *North and Grey* was brought up in Custody, your Committee cannot but be led to conjecture, that by *N. Clifton* is meant the said Lord, and that the Person said to be employ'd by him, and suspected of being false to him, is either *Lynch* or *Layer*; and if this Conjecture be admitted, it is not improbable that by *N. Crone*, in the former Letter, may be meant the said Lord *North*.

On the 20th *October*, *Glascock* ^b writes to *Kelly*, ' That *D. Gainer* (who in another Part of the Letter is call'd *D. Gregory*, and is probably *Dillon*) thinks very seriously of the Commissions with which *Kelly* had charg'd him for his Friends, and does not refuse to employ his whole Credit in that Affair; but that one single Article had consum'd the Bill of Exchange, which *N. Cleaton* sent, and that there is not any other come that *Dillon* knows of.'

Here *N. Cleaton* means evidently the same as *N. Clifton* in *Kelly's* Letter; and it appears he had sent a Bill of Exchange to *France*, which was all consum'd in one single Article of Expence. In former Letters notice was taken of a Bill of Exchange sent over by *Repney*, and of 20000*l.* raised by *N.*

In the same Letter, *Glascock* takes notice of some Goods sent by *Contade* and *Lunelle* for *Kelly's* Use, which he desires *Kelly* to send for, and to acknowledge the Receipt of them carefully.

It appears to your Committee, that these Goods were the Pretender's Declarations, which came inclosed that Post, or the next, under blank Covers to *Contade* and *Lunelle* at *Slaughter's* Coffee-house, agreeable to the *Memorandum* in *Kelly's* Pocket-Book.

In another Part of the foregoing Letter, it is

said, that Mr. *G. Sampson* has sent over his *Project of Accommodation*, and waits the Event of it, which it is probable relates to the same Declaration.

Kelly being examin'd by the Committee in relation to the Names in his ^d Pocket-Book, said, ' They were Names of Persons, with whom he had transacted Stock-Affairs in *France* several Years ago. He own'd he had seen Letters at *Slaughter's* and *Sturgis's* Coffee-house, directed by some of those Names, but that it might easily happen, that there might be Persons in *England* of the same Names with others in *France*; and that it was his Misfortune Letters should come directed by those Names. He insisted, that his Pocket-Book, tho' taken upon him, was an old one, that had lain by neglected these three Years: Yet your Committee observe, the *Memorandums* in it were of a late Date, and contain'd a particular Account of the Time of his Journeys to and from *France*, and of the Days on which he and *Dennis Kelly*, and the Bishop of *Rocheſter*, were taken into Custody.

The House will observe, that this long and particular Account of *George Kelly* is extracted out of such Papers and Informations, as were in the Hands of the Government, relating to him, supported by such Explications as seem to the Committee naturally to arise from comparing the several Parts of them together; but that he himself upon his Examination refused to make the least Discovery that might give light to any part of this treasonable Correspondence, tho' he plainly intimated he had it in his Power to do it. And if in some Particulars, the Committee should have fallen short of the true and genuine Explanation of the Names, or other Facts, which may easily have happen'd in unfolding such Variety of Matter, so industriously wrapt up in the utmost Obscurity; yet they conceive it will not lessen the Credit of those Facts in general relating to him, which are supported by unquestionable Evidence, notwithstanding his denying of them, and his prevaricating so grossly with the Committee.

Your Committee will now proceed to lay before you such Particulars, as they have collected from the Papers referred to them, relating to *Dennis Kelly* Esq; who appears to them, from several Passages in the intercepted Letters, to have acted in Concert with the other *Kelly*, and behaved himself with the same Obstinacy on his ^e Examination before them.

Your Committee see Reason to believe, that the several fictitious Names of *Kirton*, *Killegrew*, *Sandford*, *St. George*, and *Hubberts*, are made use of in the intercepted Letters to express one and the same Person: And as this Person is frequently spoken of as living at the *Cockpit*, as being himself ill of a Fever and Ague part of last Summer, as having a Daughter who was troubled with Returns of spitting Blood at particular Times there mention'd, and as being to set out with his Family for *France* by *Diepe*, the latter end of *July*; these several Circumstances being confirmed to your Committee by the written ^f Examinations of Mr. *Dennis Kelly's* Servants to have been true of him, and being in the Opinion of the Committee applicable to no one else, they see Reason to conclude, that what is affirmed in the intercepted

^a E. 75.^b E. 75.^c E. 23, 24.^d E. 17.^e F. 33.^f F. 2.—8.

Correspondence, of the Person designed by the Names above-mentioned, is affirmed of him.

Your Committee have likewise been ^a informed, that Enquiry having been made at the *British Coffee-House*, who took up Letters directed thither by the Name of *Sandford*, it was found that one Mr. *Kelly*, who frequented that House, took them up. And a Letter from *France* so directed, having been copied at the Post-Office, and then delivered out, the ^b Original of the said Letter, signed *M. Digby*, was found in *Dennis Kelly's* Pocket, when he was taken up, as appears by the ^c Affidavit of the Messenger who seiz'd him.

In this Letter *Digby* sends his Service to his Cousin *Ireton*, which has been shewn above to be one of the Names belonging to *George Kelly*; and also mentions *Hore*, who has been already explained to be probably Sir *Harry Goring*.

Your Committee observe, that the said Letter was writ in the same Hand with another ^d signed *J. Gerrard*, which was likewise found among *Dennis Kelly's* Papers, and has been observ'd above to be probably the Name made use of by Sir *John D'Obryan*, whom *George Kelly* declared to be Secretary to *Dillon*.

They farther observe, that both these Letters, signed *Gerrard* and *Digby*, were in the same Hand with ^e others found in his Custody relating to *Dillon's* private Affairs; which confirms *Digby* to be *Dillon*, and *Gerrard* to be one whose Hand *Dillon* makes use of for his Dispatches.

Another ^f Fragment of a Letter was found among his Papers, mentioning the Names of *Ireton* and *Hore*; which is in the same Hand with the Letters to *Plunkett*, signed *Dixwell* and *Howell*, and is therefore probably the writing of *Christopher Glascock*, *George Kelly's* Correspondent.

Some other ^g Papers were also found in his Custody, mentioning others of the fictitious Names used in *George Kelly's* Letters, as also a long ^h List of Names, with fictitious Names over-against them, and a ⁱ Cypher of Figures, which appear to be *George Kelly's* Hand-writing, and are sworn, by the Clerks of the Post-Office, to be the same Hand in which the Letters signed *Johnson*, *Hatfield*, &c. were writ. It has already been observed, that this Cypher of Figures is found to be a Supplement to the Cypher in which the Letters of the late Duke of *Ormond*, and the Bishop of *Rocheſter* were writ; and that the said Cypher last mentioned is made use of in ^k one of the intercepted Letters from *Dillon* to *Dennis Kelly*.

There was also found among his Papers, an exact ^l List of the quartering of his Majesty's Forces a little before the time of the Elections, and a ^m Scheme for erecting By-Boats between *London* and *Boulogne*, which seems referred to in the ⁿ Letters between *George Kelly* and *Gordon* of *Boulogne*.

There was also taken among his Papers a ^o Fragment of a very treasonable Letter, signed *F. M.* which your Committee conjecture was from one *Francis Macnamarra*, a Person concerned in the former Rebellion, there being ^p another Letter among his Papers, with the Name at length, in the same Hand.

Your Committee have laid together these several Circumstances, that it may appear *Dennis Kelly* was concerned in the treasonable Correspondence,

which is confirmed by ^q Mr. *Crawford's* Letter from *Paris*, ^r $\frac{1}{2}$ of *May*, in which he says, 'There is one Captain *Kelly*, who frequents the *Cocoa-Tree* and *Will's* Coffee-house, who is much in the confidence of *Dillon* and Lord *Lansdown*, he was here some Months ago, and is at present very active in *England*.'

Your Committee find, that he was abroad for several Months the latter end of the Year 1721, and that some of the Letters sent to him by fictitious Names from *France*, were directed to *Will's* Coffee-house and the *Cocoa-Tree*.

The Matters which they find him principally concerned in by the intercepted Letters, are the ^s Remittance of the Bill of Exchange sent over from the Person called *Repney*, the Receipt of which is acknowledged in several Letters to him, his being present at a ^t Consultation with the Persons called *Rep. Ho.* and *Den.* and his being to carry over to *France* their final Answer, together with a new ^u Cypher, List of Directions, and other verbal Instructions, from *George Kelly*, for *Dillon*, *Glascock* and *Talbot*.

As *George Kelly's* Correspondence was closely connected with that of the Bishop of *Rocheſter*, *Thomas Carte*, and *Dennis Kelly*, and as he appears to have been privy to *Plunkett's*; so your Committee see reason to believe, that he was not a Stranger to that of *Sample*, who appears to be mentioned in a ^v Letter from *Gerrard* to *Kelly*.

Your Committee find, that *John Sample*, being examined before the Secretaries of State, and two of your Committee ^w, owned, that *Francis* Son of the Lord *Sempill*, commonly so called had been in *England* that Summer, and returned to *France* about three Weeks before his Examination, which was taken on the 4th of *August* last.

That during his Stay in *England*, he (*John Sample*) was twice in company with him, and that two Letters found in his Trunk were received by him from the said *Francis Sempill* before his coming to *England*.

In the ^x first of these Letters, dated *June* ^y $\frac{2}{3}$ 1722. *Fr. Sempill* tells him, 'That they are daily confirmed Mrs. *Hews's* Distemper is but imaginary or counterfeit.' By Mrs. *Hews*, he said, was meant the King, and by his *Distemper* the late Disturbances.

Fr. Sempill then tells him, 'That this has put a Stop to Mr. *Standwell's* Proceedings (*Standwell* he owned to mean the Pretender) but that this cannot disconcert *Standwell's* Measures, nor even delay any thing above a few Weeks.'

'That perhaps he may soon produce himself, to their Cost, but it is not yet full time to give him (*Sample*) hopes of that kind. He adds, that they have not yet heard from Mr. *Houlder*,' whom *Sample* explained to be the late Duke of *Ormond*.

Your Committee observe, That this agrees with the Accounts given in the former Parts of their Report, of the Attempts that were to have been made in *England* about the beginning of *May*, which were prevented, tho' not entirely discontinued, by the Discoveries made here, and by the Encampment.

Sample being shewn the Copies of several Letters, taken at the Post-Office, directed to Mr. *Sempill* at *Paris*, and enclosing others, owned, as appears by his ^z Examination, the writing of

^a F. 30. ^b F. 29. ^c F. 29. ^d F. 14. ^e F. 15. ^f F. 18. ^g F. 13. ^h F. 11. a. ⁱ F. 19. ^k F. 9.
^l F. 10. ^m E. 26, 34. ⁿ F. 16. ^o F. 17. ^p A. 10. ^q F. 19, 21. ^r E. 59. ^s E. 59. ^t E. 33.
^v G. 1. ^w G. 2. a. ^x G. 1.

them

them all, and gave Explications of the Names made use of in them. ^a One of these Letters is to *Standwell*, whom he owned to mean the Pretender, and ^b another is mentioned to be for *Glasgow's* Master which is probably General *Dillon*. He likewise owned his having writ to the late Duke of *Ormond*, and to *Kennedy* his Secretary; and while he was in Custody of the Messenger, he begun to put down in writing a Confession of his Crimes, ^c which was found in his Room after his Escape. But tho' some of his Letters appeared dictated by him to other Persons, your Committee do not find he would discover who those Persons were.

Your Committee will next proceed to lay before you the Substance of the several Papers and Examinations refer'd to them, relating to Mrs. *Spelman*, alias *Yallop*; in doing which, they find themselves indispensably obliged to mention a Person of high Rank and Distinction, *Thomas Duke of Norfolk*, among others concern'd in the treasonable Correspondence convey'd thro' the Hands of the said Mrs. *Spelman*.

It appears to your Committee, that Mrs. *Spelman* being examined on the 19th of *October*, concerning several Letters from abroad, directed to her by the Name of Mr. or Mrs. *Burton*, has ^d declared upon Oath, 'That Mr. *George Fernegan*, (who as your Committee are inform'd, is a Roman Catholick, and appears to have been long employ'd by the Pretender) 'being in *England* about six Months before her Examination, did, 'upon his going for *France*, leave Orders with 'the said Mrs. *Spelman* to send to the Duke of ' *Norfolk* such Letters as she should receive from 'him, *Fernegan*, directed to Mrs. *Jones*; and to Mr. ' *Harvey of Combe*, such as she should receive from 'him, directed to Mrs. *Williams*, in *Newgate-street*, ' *Norwich*; and to Mr. *William Moor* (who lives, 'or did live in *Brownlow-street*) such as she should 'receive from him, directed to Mr. *Frampton*: 'and that it was agreed between her and *Fernegan*, 'that he should direct to her by the Name 'of *Burton*, when he did not do it by her own 'Name.

'That she did accordingly send (as had been 'agreed between them) the Letters that came 'to her with the Directions abovemention'd, 'having first enclosed them under new Covers, 'which she herself directed; that she sent them 'by common Porters, who always brought her 'back an Account of their having delivered them, 'or of the Person's not being at home; that 'particularly one to the Duke of *Norfolk* was 'brought back again by the Porter, his Grace 'not being in Town, which Letter she kept till 'he came to Town, and then sent it to him. 'That she once received a Message from the 'Duke of *Norfolk* by Mr. *Edward Fernegan*, that 'his Grace could not answer a Letter she had 'convey'd to him from *George Fernegan*, because 'he, the Duke of *Norfolk*, had not the Key of 'the Cypher, it being in his Brother's hands; 'she likewise own'd her receiving several Cyphers and Keys of Cyphers from *George Fernegan*, which she burnt between the time of 'her first and second Examination.'

Copies of these Cyphers having been taken at the Post-office, it appears that ^e one of them

was mark'd, *A Key and Cypher*, with Mr. *Farmer and Jerry*; and ^f another, *D, O,* and *J*; the first of which is probably a Cypher between the Pretender and *Fernegan*, and the latter between him and the late Duke of *Ormond*.

It farther appears to your Committee, that *Edward Fernegan* being examin'd in relation to the Message from the Duke of *Norfolk* abovemention'd, has ^g deposed upon Oath, 'That about 'a Fortnight before the Duke went to the *Bath*, 'being inform'd that his Grace had enquired for 'some of their Family, he, *Fernegan*, went to 'wait on him, and his Grace told him, that he 'had received a Letter from *George Fernegan*, who 'was then abroad, but that he could not answer it, Because his Grace's Brother had the 'Key of the Cypher, in which it was written; 'and that he, *Fernegan*, delivered this Message 'to Mrs. *Spelman*.

The first Letter directed to Mrs. *Jones*, (the Duke of *Norfolk*) of which a Copy was taken, is dated, *Cambray*, 12th *July*, 1722. and is partly in Cypher, but has been decypher'd in the manner following:

S I R,

'Various Considerations, which obliged me 'to submit, deprived me till now the Honour of Writing to you; therefore I flatter myself, you incline to favour me with opinion, that my Zeal and Attention are above falling into any Negligence, where your Sollicitude or private Satisfaction is concern'd. You have been in some manner a Witness of the late turn in Affairs, and undoubtedly know so much of them, that I fear it will prove superfluous to trouble you with the Particulars which I have: after several Meetings with some of our Friends at *Paris*, was of opinion, that the whole should be communicated to the Regent; which being agreed to, that *Lord* was deputed to wait on him: they met, and parted in appearance the best Friends in the World, notwithstanding immediately by the Regent's Orders the Secret was discovered to King *George*. How is it possible to arm one's self with sufficient Prudence against such a Conduct? These being our private Concerns, I leave 'em, to divert you with the publick News: the Over-ture of the Congress seems now in the way to be deferred to the K. of *Fr.* Majority, who, since his Removal to *Versailles*, is in a manner solely in the Hands of the Regent. His Coronation remains still fix'd to the 15th of *October*; so, in all appearance, this Year produces no Disturbance to the present Peace of *Europe*. The Emperor grows daily more powerful in *Italy*, by the Pope's falling into that Interest; he has lately seiz'd the Fortrefs of *Massa in Florence*, and promises the Investiture thereof, with that of *Parma*, to the Prince of *Baviere*, upon his Marriage with the Princess *Josephina*. *Spain* will be under great Difficulties to find means to support their claim to these Provinces, especially at a time that *France* seems negligent of every thing that concerns them. There is no Appearance likewise that the Affairs in the North produce any thing material this Season: the pacifick Temper of the K. of *Prussia* secures every thing on that side, and has probably

^a G. 6.

^b G. 9.

^c G. 3.

^d H. 3. 4.

^e H. 37.

^f H. 35.

^g H. 7.

^h prevented

prevented the Disturbance threaten'd in those Parts. Thus at present are the Affairs of Europe.

I did not fail to repeat my usual Solicitations in favour of your Brother, and to add what in Justice I thought you merited: This I did upon the first Occasion, after my coming over; to which, from the King, I have this Answer:

June the 15th.

No body has a better Opinion than I have of the great Person you mention; nor does his Character more Justice: I shall be always desirous to do what is in my Power to convince him of my Regard for his Brother, who now is in the Country with me; but I fear it will not be time to move in the Particular you mention of some Years yet, which will be the Case of all others who pretend to the same Right as I do.

Thus far was his. There is a Pleasure to see with what generous Virtue he repays all who consider his Misfortunes.

I presume to mention one Thing more, being moved to it out of a pure Consideration to the Credit it will give to your Name. Dr. Witham finds himself under the Necessity of building the old House, being ready to fall; and next Spring they begin, but upon so small a Fund as will never finish the Work, as it ought to be; the Consequence of which must necessarily oblige them to beg the Assistance of their Friends. I should be sorry upon this Occasion, that any other Person should distinguish himself so, by a Donation, as to merit his Arms to be placed in the Front, where I could wish to see your own. I have not spoke one word of this to any Person in the House, thinking it would look more generous in you, if dispos'd to take the Credit of laying the first Stone, to move and offer it yourself. As to other Matters, if I can be serviceable in these Parts, either in your particular, or to the Interest of the Party, you know me faithfully devoted to both. I have obtain'd leave to return by the end of the Summer, finding it inconvenient to my private Situation to remain longer Abroad: I hope then to present you with fresh Proofs with what Zeal and Respect I've the Honour to be,

Sir, your most Obedient and
most humble, Servant.

Be pleas'd to address to me,

à Monsieur Hooker under Cover à Monsieur Pigault Banquier à Calais.

Your Committee observe from this Letter, that *Jernegan* supposes the Duke of *Norfolk* already acquainted with a Design, on which Application had been made to the Regent, and with the Causes of its Miscarriage; that however, in order to shew his Zeal and Attention in any Thing, where he thought the Duke's Solicitudude concern'd, he sends him an Account of what had happen'd to their common Friends at *Paris*, and of the Secret's being communicated to King *George* by the Regent's Order; and then laments the impossibility of arming themselves with sufficient Prudence against such a Conduct, which, supposing it to have been such as they represent, yet could not possibly have appear'd blameable to any but the Enemies of our present happy Establishment.

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He then shews from the Situation of Affairs in Europe, there is but little Prospect of any Rupture, which may be favourable or advantageous to their Designs.

He afterwards acquaints the Duke, that he had repeated his Solicitations to the Pretender in favour of his Grace's Brother, and had also added what in Justice he thought His Grace himself merited; to which he received an Answer from the Pretender (whom he styles the King) acknowledging his great Opinion of the Duke, and the Justice he does his Character, and his Readiness to convince his Grace of his Regard, by any Kindness he can shew his Brother.

And the Inference, which *Jernegan* makes from the Regard express'd towards the Duke in this Letter of the Pretender's, is; That there is a Pleasure to see with what generous Virtue he (the Pretender) repays all those, who consider his Misfortunes.

He concludes with telling the Duke, that if he can be serviceable in those Parts; either in his Grace's own Particular, or to the Interest of the Party; his Grace knows him faithfully devoted to both.

On the 23^d of August, *Jernegan* writes a second Letter to the Duke, as follows.

S I R,

THE Vicissitude in our Affairs being a perpetual ebbing and flowing, 'tis extremely difficult to assure any thing with certainty: In my last of the 12th I mention'd how Things had happened; and altho' the Fact was true, yet the Consequence did not answer what we apprehended: It was a politick Necessity; which urged and demanded that Conduct, and it appears now to have succeeded so well, that every Hand is at work, as before, to draw Things to a right Conclusion; brief's, we are flatter'd that the Regent is cordially in our Interest, and disposes every Thing to undertake the Work, which according to some Accounts will be put in execution within two Months; those, who are serious and make due Reflection on these Matters, know how far they may be useful to the Cause, and with timely and prudent Precautions may dispose their Friends to act a lively Part; whilst they themselves keep retired, till the Success one Way or the other determines what is necessary to be done.

I have Opportunity, by being in these Parts, of picking up several good Officers, and with a little Trouble as many as would compleat an entire Regiment, into which any Gentleman might enter himself, and do his Duty with Honour. This is what I thought fit to propose on this Occasion, and should be glad to know, if solely upon your own Bottom this may be thought on. I shall take all necessary Precaution, and shall first know certainly what there is to depend upon. Your Opinion on these Matters, with the Assistance of your Advice, will lay a most sensible Obligation on him, who entirely devotes himself,

Sir, your most Obedient and

most Humble Servant.

Let the Conveyer of these furnish you with my immediate Address.

Your Committee observe, that in this letter, *Jernegan* does, with an Air of great Satisfaction, try to lessen the Apprehensions and Discouragements, which he supposed his former Account of the Regent's having betray'd the Secret might have rais'd in his Grace, and says that every Hand is now *at work as before* to draw Things to a *right Conclusion*, without explaining what that former *Work*, or the *right Conclusion* hoped for is; which Particulars, it appears, he thought so well known to the Duke, as not to need the least Explanation.

Then after telling his Grace, *We* are flatter'd the Regent is cordially in *our* Interest, and is disposing every Thing to undertake *the Work* within two Months Time, he intimates, that from this Hint, one of his Grace's Seriousness and Reflection might be useful to the Cause, by disposing *his Friends* (who may justly be understood to be the Roman Catholics) to *act a lively Part*, while he himself lies retired, waiting till the Event should determine what part it was proper for him to take.

He then makes the Offer to his Grace of raising an entire Regiment of Officers in *Flanders*, into which *any Gentleman* might enter himself, and do his Duty with Honour; and desires to know, whether on his Grace's own Bottom such a Thing might be thought of.

This treasonable Offer, from an humble Servant of his Grace's, shews that *Jernegan* was at least persuaded it would not be ill received; which could only proceed from a thorow Assurance of the Duke's Inclinations to the Pretender's Cause, and of his Intentions to support it with Men and Money, whenever a Probability of Success should make it safe and proper for him to espouse it openly.

Your Committee farther observe, that this letter was writ about the same Time, that *Plunket* was so busy in pressing *Dillon* to solicit the Regent's Assistance; and that the Term for putting the Design in execution, which is mention'd in *Jernegan's* letter to be within two Months from the Beginning of *August*, has an evident relation to the third Period pitch'd upon by the Conspirators, which, as has been observed before, was the breaking up of the Camp. And it appears to your Committee, by several concurrent ^a Advices from *France, Spain, and Italy*, during the Months of *July* and *August*, that the Design, which had been suspended upon the first Discovery of the Plot, was again resumed, and Preparations made for the Pretender's leaving *Italy* about the Beginning of *September*; for which purpose the Ship *Revolution* (since taken) set sail for *Italy* the latter End of *August*, having on board near two hundred Men and a great Number of Officers.

Mention is made, in *Jernegan's* letters to Mrs. *Spelman*, of a great Number of letters written to and received from Mr. *Harvey* of *Combe*, by the Name of Mrs. *Williams*; and in ^b one of his letters to Mr. *Harvey* he says, 'The Regent plays a Game a-part, and confides in none but *Britain*, and has sacrificed *Us* to make a firm Friend of King *George*. The late Disappointment in *our* Affairs has given a surprizing Power to the Court of *France*: They silence all other Princes in regard to *Us*; none now dare look that way, or undertake the least trifling Service in *our* favour.'

On the 20th of *July*, Mr. *Harvey* sent an Answer to this letter, the Original of which is stopp'd, and is ^c sworn by Mrs. *Spelman* to be his Hand-writing; but it contains such an odd Heap of low and virulent Scandal, that the Committee do not think proper to trouble the House with any Extract of it, but have ^d annexed it entire to their Report.

Your Committee have already taken Notice, that the treasonable Correspondence, above set forth, was not confined to *England* only, but was carried on in *Scotland*, under the same Cant Expressions of *Wine, Trade, Goods, &c.* And it appears that the Pretender's Agents were equally busy in disposing Matters for an Insurrection in that part of the Kingdom, at the same Periods of Time as were fix'd on in *England*.

They find that the Government has receiv'd ^e Information upon Oath from one *Lodowick Anderson*, 'That on the 28th of *January* 1721, *Bri-gadier Mackintosh* was seen by him (*Anderson*) at the House of Sir *John Mackenzie* of *Coul*, and told *Anderson* that the Pretender design'd to have ^f on the Crown of *Scotland* before Midsummer, and that he was to be assisted from *France, Spain, and Muscovy*; that General *Gordon* and Captain *Tulloch* were to land at the *Loach Elch* with Arms for this Purpose.'

That *Mackintosh* was then in *Britain*, agrees with ^f *Pancier's* Deposition.

^g *Anderson* farther deposed, that on the 15th of *February* he met the Lord *George Murray* at a place not far from the Earl of *Kintore's*, who confirm'd to him what *Mackintosh* had said, with several other Particulars; that two Days after, he met Mr. *James Keith*, Brother to the Earl of *Marishall*, who after having told him that there would be a Descent in favour of the Pretender, named to him several Persons (specified in his ^g Deposition) that were come over to get Matters in a readiness.'

This, your Committee observes, answers to the first Period of Time for beginning an Insurrection with the help of foreign Forces during the Time of the Elections.

About the Beginning of *May* a ^h letter was intercepted, directed to Mr. *Peter Smyth* at *Boulogne*, and inclosing ⁱ another to *De Martin*: Which letters, as your Committee are informed, are in the Hand-writing of Mr. *Cochran*. Who is meant by *De Martin*, does not appear.

In this letter *Cochran* says, 'Our Customers, on this Side the Water, are as fond of taking *our* Goods, as you are of sending them; but I am afraid if they are not sent soon, the Market will be forestall'd, for our Enemies begin to be upon their Guard. He adds, that their Friends in *England* are willing to send Money to pay for them *per Advance*, and that they in *Scotland* are not backward, but hope, in a few Days to remit as much Money as will be sufficient for their Country. He then desires to know how soon they may expect their Wines on this Side the Water, that they may put themselves in a ⁱ sufficient Posture for receiving them.'

Your Committee likewise find that *Christopher Glascock*, *Dillon's* Agent, carried on ^j Correspondences to the same Effect, with one who went by the Name of *James Johnston* at *Edinburgh*; and

^a A. 24. 25. 29. 31. 33. 41. 42. 43.

² I. 3.

¹ I. 16.

^b H. 19.

^c H. 4.

^d H. 16.

^e I. 2.

^f D. 1.

^g I. 3.

that ^a George Kelly corresponded with the same James Johnston, and owned to the Lords at his ^b Examination, his having sent the said Johnston a Paper from Glascock, which he pretended related only to the Mississippi.

Letters were likewise intercepted going from Edinburgh, directed to Collins at Mr. Waters's, Banker at Paris; which Collins appears, by Kelly's ^c Cypher, to be Colin Campbell of Glenderoule.

In ^d one of these Letters to Collins, mention is made of a Person of great Consequence and Distinction, lately regained to the Pretender's Party, who insisted on a Sight of the Contract of Copartnery, which Collins is desired to send over by the first sure Hand; and Collins, in his ^e Answer, signed R. Broun, promises it shall be sent over.

Your Committee observe, that this Particular agrees with ^f Fairfax's Deposition upon Oath, That Loyer told him, The People of England were backward, but that those of Scotland had already entered into an Association.

In the same ^g Letter to Collins it is said, That the Person of Consequence, who had insisted on a Sight of the Contract of Copartnery, desired an Order from Mr. Malcom for raising one or two Battalions, but was told those Orders might come time enough by the hands of those who happened to come first to open the Commerce; which shews of what nature that Commerce was.

In the same Letter Application is made to Mr. Malcom for a Patent for Knight Baronet; both which Circumstances confirm Malcom to be the Pretender.

Your Committee observe, that these Letters, and ^h some others, which appear to have been intercepted about the Month of May, and are annexed to this Report, fall in with the second Period of Time fixed by the Conspirators in England.

And on the 18th of August, O. S. Mr. Stanhope ⁱ writes word from Madrid, that he had received Intelligence, that the Scotch had engaged to bring 22000 Men into the Field in ten days time, in case the late Duke of Ormond would come over with Arms to head them, and that they daily sent most pressing Messages to Ormond on that Subject; which shews that the Design was reassumed a third time in Scotland, as it was in England.

Your Committee farther observe, that agreeably to what was promised in Mr. Cochran's Letter of the 28th of April, ^k Mr. William Erskine did on the 3d of May, remit Two Thousand Pounds Sterling to Mr. Gerrard, Dillon's Secretary at Paris, and owned his so doing on his ^l Examination before the Lord Justice Clerk, but refused to discover who Gerrard was, or from whom and for whose Use the said Sum was remitted.

When he was taken into Custody, a Letter was seized in his Pocket, which, as your Committee is ^m informed, is all in the late Lord Marr's own Hand-writing, dated Paris, February the 9th, 1722. in the following words.

Paris, February 9. 1722.

I Have, William, yours of the 7th, for which I am obliged to you, and take all you say, as I ought, from the good Heart from whence I know it comes, tho' at the same time you put a greater Value on your Friend than he deserves:

But be that as it will, I am fully persuaded, as you may be, that he will never fail an Occasion for what you mean, nor neglect endeavouring to bring it about, where he sees it can be of Advantage to his Country; and his Friends and Countrymen may depend on it, when they see him engaged again, that the retrieving of it from the low Condition it is now in, and otherways ever like to be, is the chief Motive that induces him, and he hopes in that way he will not be without the Assistance of all who wish the same thing; and the more, that he will take all the care he can not to expose them for serving that of others, if at the same time he be not pretty sure of its doing effectual Service to their own, and putting it on a better foot than it has been these hundred years past. If he looked but to his own private Interest, he could perhaps find a way, which could conduce more to it: but he hopes, by his former Actions, it appears that he never put that in competition, with what he thought was the Interest of his Country, tho' in which he owns he was once mistaken, as many others may have been; but as he never scrupled owning his Fault, since he found it by Experience to be one, so he has ever since endeavoured to make amends, and will as long as he lives.

Things are in such a Situation at present over all Europe, that there appears little if any Opportunity of doing what is to be wish'd upon that Account; but things of this kind are very uncertain, and an Opportunity may come, or be brought about, when least expected; and you may believe it will not be neglected when it does: nor will any Endeavours be wanting to bring it to that pass. Hush! tho' must be the word, and Friends must not take amiss their not being acquainted previously to the Execution, in which it is to be hoped they will not fail.

You see I make no scruple in writing freely to you, but you know the Consequence of this coming into wrong hands, and those it is fit and of use to be told to, you know too: So I leave it to your own Discretion, of which you have given me many Proofs. I have been much out of use of writing to H. S. for some Years past, and I have not yet got a return of one I wrote him last Summer; but I shall write to him of what you mention in yours.

As to M——y, I care not to say more about him, and were it not that I think it for the good of a certain Person and Cause, I should not even wish to have all the truth told of him, since his being abroad. I cannot answer for what handles may be given him for his Justification; but let honest Men, who wish right, tell the Truth, where they know it and that it is necessary, and shame the Devil.

I wish you a good Journey and good Luck with all my heart, and that we may soon have an Opportunity to meet merrily, and be of use to our Country. My Compliments to my Friends, and I hope we shall never have cause to be ashamed of other.

I shall long impatiently to hear from you after your getting to London and Edinburgh; and pray do not fail writing after your coming to both Places, and have seen People.

^a I. 1.

^b E. 1.

^c F. II. a.

^d I. 9.

^e I. 17.

^f B. 36.

^g I. 9.

^h I. 10.

ⁱ A. 42.

^k I. 7. 8.

^l I. 10.

^m I. 10.

‘ Send me your Address, and you may be sure
‘ of hearing from me, when it can be of any
‘ use. Pleasure it would be always to me, but
‘ that must yield sometimes to Circumstances.

‘ My Family salute you, and wish you all Hap-
‘ piness, as I do, who am sincerely and affectio-
‘ nately yours, &c. *Adieu.*

‘ I wish you may have something agreeable to
‘ tell me of your Brother and Uncle, when you
‘ have seen them, and remember me kindly to
‘ your Father-in-law. Sure we must all wish
‘ the same way to our Country.

‘ What is become of our Cousin *Will*, who I
‘ hear is still where you have been for some
‘ time?

Your Committee likewise find evident Footsteps
of this treasonable Correspondence ^a from *Ire-*
land; but having already shewn sufficiently the
Extensiveness of the Conspiracy, they forbear to
tire the House with any further Particulars.

Your Committee have now gone thro’ the fe-
veral Matters, that appear’d to them from the
Examinations of the Persons or Papers refer’d
to them; and they are in hopes, that in report-
ing every Circumstance, that seem’d material,
they have strictly comply’d with the Intentions of
the House in appointing them.

If the frequent Repetitions of the same Matter
have swell’d the Report into too great a length,
they are persuaded the House will excuse it, since
it was, in all the Places where they have done it,
necessary to explain the Passages related, or else
to shew the Connection of the Treasons, as well
as the Co-operation of the Conspirators in their
wicked Design of dethroning his most sacred Ma-
jesty, and overturning our present happy Estab-
lishment in Church and State.

ON *March* 8. The House proceeded to take
the said Report into consideration. Where-
upon the House came to the following Resoluti-
ons, *viz.*

‘ That upon Consideration of the Report, and
‘ the several Papers and Examinations relating to
‘ the Conspiracy, it appears to this House, That
‘ a detestable and horrid Conspiracy has been
‘ formed and carried on by Persons of Figure
‘ and Distinction, and their Agents and Instru-
‘ ments, in conjunction with Traitors abroad,
‘ for invading these Kingdoms with foreign For-
‘ ces, for raising Insurrections and a Rebellion at
‘ Home, for seizing the Tower and City of *Lon-*
‘ *don*, for laying violent Hands upon the Person
‘ of his most sacred Majesty and the Prince of
‘ *Wales*, in order to subvert our present happy
‘ Establishment in Church and State, by placing
‘ a *Popish* Pretender upon the Throne.

‘ That it appears to this House, that *John*
‘ *Plunket* has been a principal Agent and Instru-
‘ ment in the said horrid and detestable Conspi-
‘ racy, and has carried on several treasonable
‘ Correspondences, to procure a foreign Force to
‘ invade these Kingdoms, and to raise Insurrec-
‘ tions and a Rebellion at Home, and was en-
‘ gaged with others in the villainous and exe-
‘ crable Design of laying violent Hands upon His
‘ Majesty’s most sacred Person.

‘ That it appears to this House, that *George*
‘ *Kelly*, alias *Johnson*, has been a principal Agent
‘ and Instrument in the said horrid and detesta-

‘ ble Conspiracy, and has carried on several
‘ Treasonable Correspondences, to raise Insurrec-
‘ tions and a Rebellion at Home, and to pro-
‘ cure a foreign Force to invade these King-
‘ doms from Abroad.

‘ That it appears to this House that *Francis*
‘ Lord Bishop of *Rochester* was principally con-
‘ cern’d in forming, directing and carrying on the
‘ said wicked and detestable Conspiracy, for in-
‘ vading these Kingdoms with a foreign Force,
‘ and for raising Insurrections and a Rebellion at
‘ Home in order to subvert our present happy
‘ Establishment in Church and State, by placing
‘ a *Popish* Pretender upon the Throne.’

In Pursuance of these Resolutions, it was or-
der’d by the House, that Bills of Pains and Pe-
nalties should be severally brought in against the
said *John Plunket*, *George Kelly*, and *Francis* Lord
Bishop of *Rochester*.

March 14. The House came to a Resolution
to communicate their Report to the Lords at a
Conference, and also (*having obtained the King’s*
leave) the Letters and Papers relating to the Con-
spiracy.

March 16. The House of Lords chose the fol-
lowing Peers to be a Committee to enquire
into the said Conspiracy.

His Grace the Duke of *Dorset*.

His Grace the Duke of *Montrose*.

The Earl of *Scarborough*.

The Earl of *Lincoln*.

The Earl of *Illy*.

The Lord *Lonsdale*.

The Lord *Torrington*.

The Bishop of *Lincoln*.

The Bishop of *Salisbury*.

This Committee made their Report on *April*
23d, which was as follows.

THE Committee to whom the Report and
Original Papers relating to the Conspiracy,
delivered by the House of Commons at several
Conferences, were referred; and who were im-
powered by your Lordships to examine *Christopher*
Layer, and such other Persons as they from time
to time should think proper; having carefully
compared the said Report with the Original Pa-
pers referred to them, and having examined se-
veral Persons in relation to the Treasonable Prac-
tices and Correspondences therein set forth, are
fully satisfied and convinced, That a detestable
and wicked Conspiracy has been formed and car-
ried on for soliciting a Foreign Force to invade
these Kingdoms, for raising a Rebellion and in-
citing Insurrections in *London*, and divers other
Parts of *Great Britain*, and even for laying vio-
lent Hands on the sacred Person of His Ma-
jesty, and on His Royal Highness the Prince of
Wales, in order to destroy our Religion and Con-
stitution by placing a *Popish* Pretender on the
Throne.

And the Lords Committees think themselves
obliged in Justice to observe, that the extraor-
dinary Vigilance and Application which has been
shewn by the House of Commons in detecting
this Scene of Iniquity, and laying its most hidden
Springs in so full and clear a Light, as it has
greatly contributed to the Publick Safety, by
opening the Eyes, and awakening the just Re-

^a K. 1—3.

ment of an injur'd Nation; so it cannot fail to excite a proportionable Zeal and Emulation in your Lordships, for concurring with that House in the no less necessary Work of bringing the Authors of these wicked Designs to such exemplary Punishment as may be a lasting Admonition to Posterity, that Artifice and Disguise can no more lessen the Danger, than mitigate the Guilt of Treason; and that they act under a fatal Delusion, who hope to abuse the lenity of our Laws to the Ruin of our Constitution.

The Lords Committees think it a strong Confirmation of the Truth and Exactness of the said Report, that several material Observations which are there advanced as grounded on probable Conjectures only, have since been amply verified and supported by fresh Discoveries arising from the Papers lately refer'd to them by your Lordships; which Papers are contain'd in an ^a Appendix annex'd to this Report.

The Intelligence sent by Colonel Stanhope, and Sir Anthony Westcombe, in relation to the Pretender's Ships under Morgan, as well as the Explication given by the Committee of the House of Commons to several of the fictitious Names in the intercepted Correspondence, is very much illustrated and confirmed by papers seized on board the *Revolution*, and by the Examinations of some of the Prisoners belonging to that Ship.

It appears by ^b those papers and Examinations, that Morgan, who went by the Name of Walton, and Gallwey (an Irish Roman Catholick) who went by the Name of Gardiner, with others acting under their Direction, have for several Years past been employ'd in fitting out Ships under English Colours, which were ready on all Occasions to attend the Motions of the Pretender, who in ^c several of the letters is stiled *their King*, and *their Royal Master*. That the Money for these Ships was supply'd ^d partly by Persons in England, ^e partly by Waters the Banker at Paris, and ^f partly the late Duke of Ormond. That one of these Ships, in the Year 1719, ^g was sent by Morgan to the Groyne, with an Express to fetch the late Duke of Ormond to England; at which time it appears, ^h that Morgan and Gallwey were promis'd a Supply of fifty thousand pounds from Friends in England; that others of these Ships lay hovering about the Coast of Brittany, from the Year 1718, to 1721, ⁱ expecting to be employed either by Cane and Chivers (General Dillon) or ^k by Hore, (Sir Harry Goring) in what they call their *Home Trade*. That in the Year 1721, despairing of any Employment of this kind, on account, as is express'd in ^l one of their letters, of Hore and his Partners being Cowards in Trade, they engaged themselves in the Service ^m of the Swedish Madagascar Company, and in December 1721, rendezvouz'd in the Bay of Cadiz for this purpose; but this Project likewise failing, on account of some Deficiency on the part of the Swedes, Morgan waited on the late Duke of Ormond at Madrid, and was by him supplied with twelve thousand Pieces of Eight, for fitting out the Ships *Lady Mary* and *Revolution* ⁿ for the Pretender's Service; ^o soon after Morgan's Return to Cadiz, the Arms and Ammunition which had been prepared for the Madagascar Voyage, consisting of two thousand Muskets, two thou-

sand Bayonets, one thousand Carbines, four hundred Barrels of Powder, and a proportionable Quantity of Match, Flints, &c. were consign'd to Morgan, and by him put on board the Pretender's Ship called the *Lady Mary*, and Morgan having embarked on board the said Ship with several Irish Officers, set sail from the Bay of Cadiz the latter End of April 1722, and went first ^p to *Sancto Antonio*, and then to *Sancto Andero* in the Bay of Biscay.

The Committee having sent for Mr. Gustavus Bâbr, formerly a Captain in the Swedish Service, who being at Cadiz on account of the Madagascar Expedition, had occasion to transact several Affairs with Morgan, and the other Officers of the Pretender's Ships, they were informed by him, that the Arms above-mentioned were brought, part of them from *Gottenburg*, and part from *Hamburg*, by one of the Pretender's Ships, named the *Fortune*, commanded by one Butler. That two thousand of the said Arms belonged to the Swedish Madagascar Company, and were delivered by him, Bâbr, to Morgan.

That the Remainder, which belonged to Count *Rhenstierna*, a Swede, were also purchased by Morgan, but not till some Weeks after the first two thousand. That Morgan went to Madrid, and returned with twelve thousand Pieces of Eight in Bills and Money, which Sum he, Bâbr, saw in Morgan's Hands. That Baron Seebach, and one Osthoff (who are frequently mention'd in Morgan's letters) as also Count *Rhenstierna's* Agent, who delivered the Arms to Morgan, declar'd to him, Bâbr, since his Return to *Gottenburg*, That Morgan was supplied with these twelve thousand Pieces of Eight from the late Duke of Ormond, and that the Arms were paid for out of the said Money. And Morgan's Son being examined by the Committee, owned that his Father went at that time to Madrid, that the late Duke of Ormond was then there, and that his Father did there receive Bills for fitting out the Ships, but from whom he cannot tell.

Bâbr farther declared, That all the Swedish Officers at Cadiz looked on Morgan's Ships as belonging to the Pretender, and spoke of them in all Conversations as such, which was confirmed to him expressly by Baron Seebach and Osthoff. And one of the Sailors of the said Ships owned to the Committee, That they went from port to port without taking in any Cargo; That they had sometimes but sixty, and sometimes one hundred and thirty Men on board the *Revolution*, and often received Orders for sailing with all possible Expedition, which Orders were afterwards countermanded, without any apparent Reason for one or the other; and that this unaccountable Proceeding satisfied him the said Ships were engaged in some unwarrantable Design. Bâbr farther declared, That Osthoff told him, the Ship *Revolution* was at first purchased in England, for transporting the late King of Sweden in Person, in his projected Descent on Scotland; and that he, Bâbr, saw the Name *Carolus* still standing in the Cabin of the said Ship, when he was last on board her. And Morgan's Son owned, That he had observed the Arms of the Crown of Sweden in the said Cabin, which he supposed were placed there as a Token that the said Ship was engaged in the

^a Number'd from 1 to 48 inclusive.

^b 17—48.

^c 19, 20, 21, 25.

^d 23, 29, 31.

^e 17, 21, 22.

^f 17.

^g 36.

^h 23.

ⁱ 22, 24, 27, 31, 32, 34.

^k 27, 31, 32.

^l 32.

^m 17.

ⁿ 47, 48.

^o 17.

^p 47, 48.

Service of the *Swedish Madagascar Company*; tho' he owned that the other Ships engaged in the same Service had no such Token.

Some of the Particulars above related, do very much explain and confirm ^a O——'s Letter to L—— of the 27th of *April*, as also ^b those to *Dumville* and *Dodsworth*, in which it is said, That the Hopes of Remittances from Persons in *England* had induced O—— to supply M—— (which appears to be *Morgan*). That O—— could depend on two thousand Arms from M—— (which appear to be the two thousand Arms delivered to *Morgan* by *Bábr* ^c before the Date of O——'s Letter.) That M—— had writ from C—— (which appears to be *Cadiz*) that he could get more Arms if he had more Money; and accordingly the Committee find that a second Supply of Arms was purchased by *Morgan* from Count *Rben-ffierma's* Agent. O—— in his ^d Letter to L—— dated the 27th of *April* says, 'I have order'd ^e M——'s Ship to come to A——; and it ^e appears that *Morgan* did at that very time embark on board the *Lady Mary*, with the Arms above-mentioned, and ^f went first to *Sancto Antonio*, and soon after to *Sancto Andero*.

The Sailors on their Examination having mentioned one *Hilton*, as commanding a Ship under *Morgan*, and the Committee finding a ^g Letter from *Morgan*, directed to *Don Nicholas*, which in a subsequent ^h Letter is mentioned to have been writ to the said *Hilton*, they thought it probable *Hilton* might be a fictitious Name for *Nicholas Wogan*, in the same manner as *Walton* was for *Morgan*, and *Gardiner* for *Gallwey*. Having accordingly examined the Sailors as to this Particular, one of them said, he believed *Hilton* was a fictitious Name; and *Morgan's* Son owned that *Hilton's* true Name was *Nicholas Wogan*, and that he had been confined in *England* on account of the *Preston* Rebellion, as he was told by *Nicholas Wogan Jun.* who went by the Name of *Paterfon*: and one of the Sailors declared, that the said *Wogan Sen.* obtained the Command of one of the Ships under *Morgan*, after their Arrival in the Bay of *Cadiz*.

These Particulars agree with *Glascock's* ⁱ Letter to *George Kelly* of the 24th of *April*, O. S. in which he mentions *Nicholas Wogan* by the Name of *Xoland*, as being to have the Command of a Vessel at *Cadiz*, to cruize against the *Turks*, or for other Views, on which he will not pretend to decide; and *Kelly* ^k answering this Letter, wishes *Wogan's* Chief may succeed in his Journey. The same Particulars confirm Mr. *Crawford's* ^l Letters of the 18th and 25th of *July*, by which it appears, that the two *Nicholas Wogans* were at that time come to *Morlax*, expecting *Morgan's* Ships to follow them to that Port, in order to their setting sail for *England*; that the eldest of them was to have been Captain, and the other Lieutenant of one of those Ships, and that they owned the Project in *Spain*, by what they had learnt of it, was for the late Duke of *Ormond* to have landed in the *West* with *Irish* Officers and Arms.

On the 8th of *June*, N. S. Colonel *Stanbope* ^m writ Word that the late Duke of *Ormond* was preparing to embark with Arms and Officers for *England*. And your Committee find, that ⁿ about that time the Ship *Revolution* set sail from

the Bay of *Cadiz*: That the Sailors knowing the *Madagascar* Voyage to be dropped, refused to do their Duty till they were satisfied as to the Place they were designed for. That hereupon *Gallwey* assured them it was to *Gibraltar*, in order to clean the Ship; but having got them under fail, and satisfied them about their Wages, they proceeded to the Bay of *Biscay*: That they put in at *Sancto Antonio* to take *Morgan* on board, and then joined the *Lady Mary* at *Sancto Andero*. That upon their Arrival at this Place, the common Report on Shore was, That the late Duke of *Ormond*, and four Companies of Soldiers, were to be taken on board the *Revolution*: That Corn and Cattle were provided for the said Soldiers; and that the late Duke of *Ormond* was within a short Day's Journey of *Sancto Andero*: That hereupon the first and second Mate of the said Ship, suspecting *Gallwey* to be engaged in some unwarrantable Design, agreed not to serve any longer, unless *Gallwey* would give them a Note under his Hand that they were forced into the Service, and would also declare whither they were bound, and give them Security that they should not be employed in any other Voyage than such as he should declare to them; whereupon one of them was confined, and the other discountenanced by *Gallwey*.

But that *Gallwey's* real Expectations were to have come over with the late Duke of *Ormond*, appears to the Committee most evident from the ^o Copy of a Letter of his, dated the 16th of *June*, the Day before he set sail from *Cadiz*, in which are these Words, 'I hope the —— will set sail to-morrow; your not repeating Orders and Advice concerning the Business in hand, gives me a thousand Apprehensions; God send our Bankers and the rest of our Friends are safe, and stand their Ground. I intend to embark myself on board the —— for fear my dear Aunt should have any Occasion for Assistance, of whom I am so tender that I would not if possible have the Care of her put into any other hands.'

The Committee observe that the same Expression of *My Aunt* is used in the Letter to *Dodsworth*, with such Circumstances as make it highly probable, that in that ^p Letter, as well as this of *Gallwey's*, it denotes the late Duke of *Ormond*. They likewise observe, that the Names of *Mansfield* and *Medley* are used in *Morgan's* and *Gallwey's* Letters, in such a manner as confirms those Names to mean the late Duke of *Ormond*, agreeably to the Explication given them in the Report of the Committee of the House of Commons.

Gallwey in his ^q Letter of the 3d of *November* 1722, says, He has a couple of fine Grey-hounds, a Dog and a Bitch, for Mr. *Freeman*; the same Dogs are mentioned in ^r another Letter, and in the ^s Depositions of two of the Sailors, to have been a Present from the late Duke of *Ormond*, to the Pretender: which confirms the Explication of the Name of *Freeman*, mentioned in the said Report, to be true.

There was likewise seized on board the *Revolution*, a ^t Letter to *Gallwey*, signed *John Obrien*; which appears to be in the same Hand-writing with the ^u Letters signed *Gerrard* and *M. Digby*, taken among Mr. *Dennis Kelly's* Papers, and confirms *Gerrard* to mean Sir *John Obrien*, one of *Dil-*

^a A A. 5.
ⁱ E. 31.
^q 42.

^b A A 4, 6.
^k E. 35.
^r 19.

^c 17.
^l A. 30, 31.
^t 26.

^d A A.
^m A. 15.
^u F. 14, 28.

^e 17.
ⁿ 47, 48.

^f 47, 48.
^o 39.

^g 27.
^p A A. 6.

^h 28.
^{lon's}

lon's Secretaries, agreeable to the Conjecture in the said Report.

Gallwey, in a ^a letter dated from *Alicant Bay*, the 13th of *September* last, expresses his Concern for *Kelly's* Confinement, but hopes that is the worst that can befall him; and a ^b letter in *Kelly's* Hand-writing signed *Ja. Johnson*, directed for *Gardiner*, but enclosing a Note for twenty Guineas payable to *Gallwey*, was found on board the *Revolution*, as also a Direction entered with *Kelly's* own Hand in a ^c Pocket-Book, supposed to belong to *Morgan. Kelly* in his letters acknowledges the Receipt of one from *Sir John* (which is probably their common Correspondent, *Sir John Obrien*) and says their Friends in *Spain* are well, as one of the Family writes him word: which shews how extensive *Kelly's* Correspondences were.

Gallwey in a ^d letter from *Genoa* of the third of *November*, 1722, (which appears to have been writ to one of the Pretender's Family) says, he has acted for many Months past under the Direction of *Medley (Ormond)* who, he makes no doubt, has mentioned him to *Mr. Freeman* (the Pretender;) yet in his ^e letter to *Lord Carteret*, after his ship was taken, he has the Assurance to affirm, that he never saw the late Duke of *Ormond* since he left *England*, nor ever corresponded directly or indirectly with him or the Pretender, or any of their Adherents at home or abroad, but was always zealously well affected to his present Majesty and our happy Establishment.

Gustavus Bâbr above-mentioned ^f deposes among other Particulars, that he has been informed the Pretender's Agents had Arms for three thousand Men, lodged at a House belonging to the late Duke of *Ormond*, near *Morlaix* in *Britanny*; which port the committee observe was one of the usual Stations of the Pretender's Ships under *Morgan*. And it appears probable, that these three thousand Arms made part of the ten thousand mentioned in *O——'s* ^g letter to *L——* as provided by *D——*, who is supposed to be *Dillon*.

Robert Franklyn, second Mate of the Ship *Revolution*, ^h deposes, that letters directed to *John* or *James Jacobs* at *Genoa*, were taken up at the Post-house by *Gallwey*. The Committee observe, that *Jones* in his ⁱ letter to *Chivers*, mentions his having communicated the Copies of *Mansfield's* and *Jacobs's* letters; and *Glascock* in his ^k letter to *George Kelly* of the first of *May*, says, 'He hopes Money is sent to pay for the *Barrels* which *Jacobs* has at his Disposal.' In both which places it is probable, that *Jacobs* means *Gallwey*; and that *Barrels* mean Stands of Arms, is confirmed by a ^l letter of *Morgan's*, in which speaking of that very Ship that brought the Arms above-mention'd from *Gottenburg* and *Hamburg* to *Cadiz*, he says, 'She had received Orders for taking in nineteen *Barrels*, with every thing necessary to make use of them:' Which last Words seem to refer to the Bayonets, Flints, and powder. ^m The Intelligence sent by *Mr. Crawford*, on the 27th of *May*, That *Gordon* of *Boulogne* was to have a Ship ready to transport some of the Chiefs of the Conspiracy to *England*; is confirmed by the Deposition of *Roger Garth* (already published) who declares, 'That the said *Gordon* (whom he had good Reason to believe to be an Agent of the Pretender's) did some time last

' Summer endeavour to engage him to ply off of that Station with his Sloop, in order to carry over such Persons as he, the said *Gordon*, should recommend to him, promising him that he should have Employment enough.'

The Lords Committees conceive, that the several particulars above related, will appear to the House very much to corroborate the Accounts received from abroad, of Ships provided for transporting the late Duke of *Ormond* to *England*, with Arms and Officers, the beginning of last Summer; and that they also confirm the Decyphering of the letters, and Explication of the Names, contained in the Report of the Committee of the House of Commons.

The Lords Committees observing that some paragraphs of the letters refer'd to them were writ originally in Cypher, thought it proper to call the Decyphers before them, in order to their being satisfied of the Truth of the Decyphering. The Account they received from those persons, was, that they have long been versed in this Science, and are ready to produce Witnesses of undoubted Reputation, who have framed letters in Cypher, on purpose to put them to a Trial, and have constantly found their decyphering to agree with the Original Keys which had been concealed from them. It was likewise confirmed to the Committee, that letters decyphered by one or other of them in *England*, had exactly agreed with the decyphering of the same letters performed by persons in foreign parts, with whom they could have no Communication; and that in some Instances after they had decyphered letters for the Government, the Keys of those Cyphers had been seized, and upon comparing them, had agreed exactly with their decyphering.

With respect to the intercepted letters in question, they alledged that in the Cypher used by *George Kelly*, they find the Words ranged in an alphabetical Order, answering the progressive Order of the Figures by which they are expressed, so that the farther the initial letter of any Word is removed from the letter *A*, the higher the Number is, by which such Word is denoted: that the same Word will be found to be constantly denoted by one and the same Figure, except in the Case of Particles or Words of very frequent Use, which have two or three Figures assigned to them, but those always following one the other in a progressive Order. They likewise set forth, that in the Cypher above-mentioned, a certain Order is constantly observed as to the placing of the Words made use of, that under each letter of the Alphabet the first Cyphers are allotted to the proper Names of places, the next to the proper Names or Titles of Persons, the next to whole Words in common Use, and the last to denote single letters.

As to the Truth of the Decyphering, they alledged that several letters written in this Cypher had been decyphered by them separately, one being many Miles distant in the Country, and the other in Town, and yet their Decyphering agreed; that Facts unknown to them and the Government at the time of their Decyphering had been verified in every Circumstance by subsequent Discoveries, as particularly that of *H——'s* Ship coming in Ballast to fetch *O——* to *England*, which had been so decyphered

^a 40. ^b 46. ^c 45. ^d 42. ^e A. 45. ^f 17. ^g A. A. 5. ^h 48.
ⁱ D. 10. ^k E. 37. ^l 27. ^m A. 9.

by them two Months before the Government had the least notice of *Halstead's* having left *England*: That a Supplement to this Cypher having been found among *Dennis Kelly's* papers the latter end of *July*, agreed with the Key they had formed of that Cypher the *April* before: That the decyphering of the letters signed *Jones, Illington,* and 1378, being afterwards applied by them to others written in the same Cypher, did immediately make pertinent Sense, and such as had an evident Connexion and Coherence with the parts of those letters that were out of Cypher, tho' the Words in Cypher were repeated in different Paragraphs and differently combined. And they insist that these several Particulars duly weighed, amount to a Demonstration of the Truth of their decyphering.

As to the other Cyphers made use of by *Jernegan, Stanley,* and *Walter Grabame,* they consist only of twenty four Figures, for the twenty four letters of the Alphabet, and some other Figures for proper Names or whole Words, in the placing of which Names a certain Order is also observed.

These several Particulars they declared themselves ready to attest upon Oath, and to produce sufficient Witnesses to their Character and Integrity as well as their Skill.

The Committee being empowered by your Lordships to examine *Christopher Layer,* did accordingly spend some time in the said Examination, which produced a tedious Repetition of the particulars contained in his Examination before the Committee of the House of Commons, and some few Circumstances which they found he had recollected by reading the printed Report and Appendix.

All that he confessed to them which is new, was, that he did before his setting out for *Rome* acquaint *Plunket* with his Intentions of carrying over a Note of the Names of the Tory Gentlemen of *Norfolk,* if *Plunket* thought it would be acceptable; that during his stay at *Rome,* *Sir William Ellis* told him, that he had formerly corresponded with *Plunket* at the Request of the Lady *Middleton,* but that he had not, for some time past, corresponded with *Plunket,* or any one else, in relation to the Pretender's Affairs: for that from the time of the Action at *Dumblain* so many *Scottish* Noblemen and Gentlemen had come over to the Pretender, that he and all the rest of the old Servants had been forbid all Correspondence in *England,* or elsewhere. Upon *Layer's* desiring leave to correspond with him if it were practicable, he told *Layer,* that on Condition he would promise to write nothing but what might be shewn to the Pretender himself, he would settle a Correspondence with him; for that tho' he had followed the Fortunes of the late King *James* and his Family, ever since the Revolution; and had always been faithful to the Pretender, and for many Years his Cashier, yet if any of the *Scottish* Gentlemen that were about the Pretender, should know he received a letter without communicating it to him, it would cost him his place, and he should be in utter Disgrace: That *Layer* promising to write nothing but what might be shewn, *Ellis* gave him a Cypher of his own Hand-writing, as also another Cypher of cut paper for carrying on the correspondence; that he, *Layer,* likewise set-

tled a Cypher of fictitious Names with *Mrs. Hughes,* Nurse to the Pretender's Child, and received a letter from her in relation to the Christening of his Daughter. He would not own that he knew of any other Cypher, and persisted that *Mrs. Kinder* meant the said *Mrs. Hughes,* tho' in *Ellis's* Cypher it stands for *Mrs. Fox.* He said that the paper which he desired a Copy of from *Sir William Ellis,* and which is referred to in ^a *Ellis's* letter of the 30th of *January,* was a short Scheme relating to the *Preston* Affair, shewn him by *Ellis* while he was at *Rome,* of which he remembers no other particulars, but that Insurrections were to be begun in several Counties in a dark Night. That when he made Application to *Plunket* for the fictitious Names of *Burford, Steele,* &c. he was forced to acquaint *Plunket* with his having settled a Correspondence with *Ellis,* which *Plunket* resented, and said he thought *Ellis* had been forbid all Correspondence with Persons here. That the Reason of his asking *Plunket* for a fictitious Name for Lord *Orrery,* was, that he had occasion to mention to *Ellis* a Club which *Plunket* had often told him of; that *Plunket* once shewed him a List of this Club, of his own Hand-writing, which he read over two or three times, but that *Plunket* talked so inconsistently of them, that he, *Layer,* verily believes it was a mere Fiction of his own, and that there never was any such Club. That he, *Layer,* thinks Lord *Orrery* mentioned to him Lord *Strafford,* as one of those, who, with Lord *North,* *Sir Harry Goring,* and others, were (as Lord *Orrery* was informed) going to do a rash thing in favour of the Pretender: but that he cannot be positive as to Lord *Strafford.* That he, *Layer,* wrote himself to the Pretender, concerning the Difference of Opinion which he observed in Lord *North* and Lord *Orrery* about the Means of restoring him, and the Necessity there was that the Regent should permit General *Dillon* to come over here with some foreign Forces. That he also drew up a Scheme of a Lottery to have been opened here in favour of the Pretender, and enclosed the said Scheme in a parcel with some silk Stockings, which he sent as a present to the Pretender and his Spouse by *Andrew Hays,* who travelled to *Italy* with Alderman *Barber.* That he delivered this parcel to *Hays* with his own Hands, who promised to convey it to *Ellis,* and said he could do it with Safety. That *Hays,* as he believes, understood the Stockings to be for the Pretender and his Spouse: That he likewise had some Discourse with *Hays* about getting Copper-plates engraved at *Rome* in *English* and *Italian* for the Tickets of the said Lottery, and desired him to receive *Sir William Ellis's* Directions about it, which *Hays* promised to do. That while he, *Layer,* was at *Rome,* *Hays* asked him whether he would not see the King, meaning the Pretender; and that the said *Hays* went frequently to the Pretender's Family in the way of his Business, and was, as he believes, present while the Pretender's and his Spouse's Pictures were drawn.

Hays being examined by the Committee, owned the Receipt of the Stockings, but denied their being delivered to him by *Layer,* or that he knew who they were for. He likewise owned the carrying a Packet to *Belloni,* the Banker at *Rome,* which was brought to him by a Porter from *Layer,* as he supposed.

Layer owns, that *Haye* told him *Belloni* was the Pretender's Banker, but denies his sending any such Packet by *Haye*: And in several other Particulars of their Examinations they contradicted each other.

A Scheme of the Lottery above-mentioned (for raising 225,000 Pounds Sterling) having been found among the Papers of *Walter Jefferey's*, now in Custody, the Lords Committees thought proper to examine him how he came by it. He owned his being acquainted with *Layer* and *Plunket*, that he saw *Layer* about the Time of his going abroad, and helped him to a Bill on a Banker at *Antwerp*: But he denied his knowing from whom he received the said Scheme, or his having had any Conversation with any one about it; and said it might be put into his Hands by *Plunket*, for ought he knew, but that he was not sure he had ever read it; and if he had known such a paper had been in his Custody, he should have destroyed it.

The Lords Committees being informed that *Layer*, between the Time of his delivering the larger and lesser Bundle of Papers to Mrs. *Mason*, had deliver'd to her a large Parcel covered with blue paper and sealed in several Places, and that he did within a few Days after take it back again, telling her he wanted to carry it to Lord *North and Grey's*: They examined *Layer* particularly on this head, but he denied that he ever delivered her any such Bundle.

The Lords Committees next proceeded to the Examination of *John Plunket*, who began with large Protestations of his Innocence, and offered of himself to account for three Facts charged upon him in the Report, and to shew they were great Mistakes. The first was, his receiving a letter from *George Kelly*; the second, his receiving the letter at *Antwerp*, signed *Dixwell*; and the third, his receiving the letter from the Pretender, taken at Mrs. *Creagh's*. And as in his Examination before the Committee of the House of Commons he had fallen on the Expedient of substituting *Hugh Thomas* to personate *Rogers*, so now they found he had furnished himself with three different Persons, at different Places, all of the Name of *Plunket*, to whom he would have it believed these letters were written; without offering any the least Proof or Circumstance of Probability to shew that such Persons were at all concerned in those letters, or that there ever were any such Persons in being.

The letter from *George Kelly*, he said was not writ to him, but to one *Harry Plunket*, who delivered it to him at *Will's Coffee-House, Covent-Garden*, and that it related to some Money that was to be raised on a Security of Mrs. *Barnes's*.

As to the Letter signed *Dixwell*, he said, there were two Clergymen of the Church of *Rome*, one or both of which travelled with him and *Layer* from *Dover* to *Antwerp*; that one of them went by the Name of *Lloyd*, but his real Name was *Plunket*. That this Man dropped the letter signed *Dixwell* at a Coffee-House; and he, *John Plunket*, taking it up with a Design of restoring it to him in *Lorraine*, (to which place sometimes one, and sometimes both of these Clergymen were gone) shewed it to *Layer*, who took it into his Head that this letter had been writ to him, *John Plunket*.

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The letter from the Pretender, he said, fell into his Hands much in the same manner: That there is one Father *Plunket* at *Rome* to whom the Pretender always writes when any Body is to be introduced to him. Being asked whether Father *Plunket* travelled with *Layer* to *Rome*, (because mention is made in the Pretender's letter of a Companion of *Plunket's*) he said the Pretender always called the person that was to be introduced by Father *Plunket*, his Companion. That this Father *Plunket* happening to shew him this letter, and commending the Hand, he, *John Plunket*, said he had a Friend at *Rome*, that would be glad to see the Pretender's Hand-writing. And Father *Plunket* having accordingly left the letter with him, he shewed it to *Layer*, and forgot to return it to Father *Plunket*, who never called for it, having fifty more letters of the same kind by him.

Upon the Lords Committees asking him whether he went by the Name of *Rogers*, he said he went by several Names in his Travels, that he, might not be imposed upon in his Reckonings as the *English* generally are. Being asked whether he took the Name of *Rogers* to prevent his being thought an *Englishman*, he said that in *Italy* he was called *Rogieri*.

They farther asked him, whether he had dictated any fictitious Names to *Layer*, or had mentioned any Thing to him of a Club? To which he answered, That he had given *Layer* the fictitious Name of *Bedford*, or *Burford*, for Lord *Orrery*, which Name he had from *Neynoe*. That one Night being in company with *Layer*, and some Clergymen whose Names he has forgot, the Discourse turning on the Protests of the Lords, and the Names that were subscribed to them, one of the Company said, These are a Loyal Club; another said, They are Jacobites; and that he, *Plunket*, said, There was a Loyal Club of eighty or ninety Lords who would stand in Defence of their Country.

He farther observed to the Committee, that in the Bill now depending before your Lordships, he is not mentioned by the Name by which he was baptized and confirmed: He said, his Surname was *Plucknet*, but his Christian Name he declined telling; and seemed to place some Hopes and Confidence in this Subterfuge.

The Committee finding him trifle with them in this egregious manner, asked him in general, whether he had ever been in Conference with the Pretender, or had corresponded with him, or any of his Agents: To which he answered in the Negative.

The Committee next sent for *George Kelly*, who told them that the Affair being soon to be brought before your Lordships, he desired to be excused from answering any Questions; so that they had no Opportunity of examining him as to the new Matters alledged against him in the Depositions of Mr. *Philip Caryll* and others.

However they thought it proper to send for the said Mr. *Caryll*, and to ask him whether he had any thing to add to or retract from his former Accounts. His Depositions being read over to him, he expressed himself very angry and uneasy at their being made Publick; and told the Committee he was not disposed to answer any farther Questions, being sorry for what he had said already;

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ready; he likewise insinuated, that what he had said had not been taken down exactly as he dictated it, and seemed apprehensive that he was called upon to accuse himself of Matters that might be prejudicial to him. But upon the Committee's telling him that the most effectual Way he could take to do himself Service, was to make a candid and ingenuous Discovery of the whole Truth, he said he had already given a candid Account, and hoped he should not have been a Sufferer for his Candour. Being asked whether his Depositions had not been read over to him before he signed them, he said they were; but that he was in a great Confusion at the Time they were taken. Being then required by the Committee to read them over himself, and to shew in what Particulars they vary from his Sense and Meaning, he grew more composed; and having read over the first, dated the 27th of *March*, said, he believed it was right enough. In reading over the second (dated the 29th of *March*) he said it was not strictly true that Sir *Harry Goring* had told him what is there related, concerning an Invasion, Commission, &c. but that it was true, he had heard Sir *Harry Goring* say so; that as to Lord *Lansdown's* being to land in the *West*, he could not be positive, but he thinks Sir *Harry Goring* said so. He said, it was but a Supposition of his own, that the Discourse which occasioned the Bishop of *Rocheſter's* taking Sir *Harry Goring* by the Collar, related to the Pretender's Affairs: But that he remembers very well, Sir *Harry Goring* did affirm, that on his saying the Words there recited, (*this is Rocking the Cradle indeed*) the Bishop did take him by the Collar, and that he, *Caryll*, did apprehend the said Discourse to have Relation to the Pretender's Affairs. He said it was about two Years ago that being at Sir *Harry Goring's* he saw a letter lie on his Scrutore, directed to Mr. *Hore*, and upon his asking Sir *Harry* who the said letter was for, Sir *Harry* told him it was writ to himself. He said that the Words in his Deposition which import, that he, *Caryll*, had Reason to believe *Kelly* and Sir *Harry Goring* were settling together a Key at his House at *North*, by which they might correspond, are too strong; for that he, *Caryll*, did not see any such Key, only it was his Suspicion and Thought at that Time that they were framing such a Key.

He likewise said, that what relates to *Boyce* in the said Deposition is rather stronger than he meant it; for that *Boyce* only told him he was afraid the Servant, he, *Caryll*, had sent to him to help off, was *Sample*; alledging this Reason, that he had observed he was disguised, and that he was afraid he was somewhat like the Description given of *Sample* in the Proclamation. All the other Particulars of his Depositions he averred to be true, but said, he had nothing farther to add, and that he would rather a thousand Times die in *Newgate* than be an Evidence.

Boyce, being examined by the Committee, owned that Sir *Harry Goring* went to *France* in his Yacht, and that a Servant went over with him in a Black Wig, whom he had never seen with Sir *Harry Goring* before; but he utterly denied his having conveyed over any Person sent to him by Mr. *Caryll*, or his having had any Discourse with *Caryll* about any Person's answering the Description of *Sample*.

The Committee having summoned before them

William Beasing, of *Horn Dean*, and having read to him his former Depositions, find that he retracts what he had there deposed on Oath, of *Caryll* and Sir *Harry Goring's* being in Company at his House with the Person who had but one Hand: he says, such a Person was at his House with two other Gentlemen, but that he now recollects *Caryll* and Sir *Harry Goring* were not there at that Time. Being asked whether he had received any Letter or Message, since his being in Custody, which had helped to set him right in this Particular, he answered in the Negative.

The Committee observe from the Parts of Mr. *Caryll's* Depositions which he affirmed, that the Explication given to the Name of *Hore*, in the Report of the Committee of the House of Commons, as also the Decyphering of that part of *Kelly's* letter which mentions *Hore's* Commission, and the Conjecture of *Goring's* having carried over a new Cypher from *Kelly* to *France*, are very much confirmed. They likewise observe that what is said in *Glascock's* letter to *Kelly* of the 27th of *October*, concerning the Arrival of the little *French* Merchant, mentioned by *Kelly*, and the Precaution they intend to use in relation to him till some other appears with whom they may talk of Business more to the Purpose, has probably relation to *Sample's* being got safe to *France*. And the letters signed *Fra. Phillips*, which *Caryll* owns he received from *Kelly*, not only confirms *Kelly's* writing by fictitious Names, but is a strong Argument of his being the Person that writ the letter to *Bonnaville* of the 27th of *September*, and consequently the other letters charged upon him in the Report. For as in his letter to *Caryll*, he says: 'I have never heard a Syllable from your other Lawyer, (Sir *Harry Goring*) since you and I were with him, which you'll say is pretty surprising, and am afraid very detrimental.' — so in that to *Bonnaville* (writ within five Days of the other) he says, 'I have not heard a Syllable from *D. Gainer*, or *G. Roberts*, since Mr. *G. Sampson* went, which has been a great Surprise, and I may say no small Detriment, to some of their Friends.'

This Identity of Expression, in two letters writ so near the same Time, appears to be a farther Confirmation that the same Person writ them both, and confirms *G. Sampson* to be the same with the other Lawyer, which *Caryll* has explained to mean Sir *Harry Goring*.

The Lords Committees also find in the Papers referred to them new Evidence of *Kelly's* visiting, writing to, and receiving letters from the Bishop of *Rocheſter*, as appears by Affidavits from the Persons who carry'd *Kelly* to the Bishop's House, and who also delivered letters from him to the Bishop, and brought back the Bishop's Answers; and Mrs. *Levett* deposes on Oath, that Mrs. *Barnes* has told her, *Kelly* received in one Day as many letters from abroad as came to fourteen or fifteen Shillings, the Directions of which she, *Barnes*, saw, but they were in such odd fictitious Names, as no one could find out but *Kelly*, who had the Key; that among these letters there was one for the Bishop of *Rocheſter*, (as *Kelly* told her) which he was at that Time gone to deliver to the Bishop. And *John Malone* deposes, that among the letters which he carried from *Kelly* to the Post, there were some directed to *Waters* the

^a E. 35.

^b E. 79.

^c E. 75.

^d 13, 14.

^e 11.

^f 12.

Banker at *Paris*, under whose cover it appears that most of the Treasonable letters were sent; and the original^a letter in *Kelly's* own Hand stopt at the Post-Office was enclosed in a cover so directed. Mrs. *Levett* farther^b deposes that Mrs. *Barnes* told her, under Secrecy, that the Dog sent from *France* was a Present from the late Lord *Marr*, to the Bishop of *Rocheſter's* Lady; which is in some measure confirmed by the Draught of the Affidavit prepared for *Birmingham* at *Paris*, in which he is desired to swear that Lord *Marr* knew nothing of any such Dog. And tho' this Affidavit does not appear to have been sent over by *Kelly* directly, yet exprefs mention is made in the letter to *Gordon*, that the said Affidavit is the Copy of a Note from the Person concerned with the Substance of what *he* thinks requisite. This Circumstance of the Dog's having been sent by the late Lord *Marr*, which is not exprefsly alledged in any part of the Report of the Committee of the House of Commons, is a new Confirmation that the^c letter sign'd 918, which mentions the sending the Dog, is from *Marr*; and that *Musgrave*, to whom the Receipt of the Dog is acknowledged in^d two several Letters, is likewise a Name denoting *Marr*, agreeably to what is asserted in the said Report.

The Committee find by^e two Affidavits referred to them, that *George Kelly*, the last time he was taken into Custody, offered the Woman of the House a Gold Watch, forty Guineas in Money, and a Note for forty Pounds more, to let him escape.

The Committee have laid the Substance of these several Examinations together, as having some Reference to *George Kelly*.

They likewise examined Mr. *Dennis Kelly*, who utterly denied his being advised with, or knowing any thing relating to any Conspiracy. Several Papers found in his Custody being shewn to him, he denied his having ever seen them before, except when some of them were shewn to him, at former Examinations.

They next sent for Captain *Pancier*, and having ordered his^f former Depositions to be read to him, ask'd him whether he had any thing to add or retract; he affirmed every part thereof to be true, and said he had only this farther Particular to add, That having lately seen *George Kelly*, as he was brought down to the House of Commons; he recollects that he has often seen him at the Gaming-Tables with *Skeene*, and that *Skeene* and the said *Kelly* were intimately acquainted, as he is able to prove by several Witnesses of Credit. *Skeene* being call'd in, and having heard *Pancier's* Depositions read over to him, own'd that he was acquainted with *Pancier*, and had been in Company with him at several of the Times and Places mention'd in the said Depositions; That he was taken Prisoner in the *Preston* Rebellion, but is not related to *Marr*, nor has ever seen *Mackintosh* since he parted from him at *Highb-gate*. He own'd he had had general Discourse with *Pancier* relating to a Plot, and that *Pancier* had ask'd him several Questions about it, to some of which he (*Skeene*) assented and to others not; but he denied his having told *Pancier* any farther Particulars than were in the News-Papers, or in the current Report of the Town. As for Instance, when *Pancier* asked him where the late Duke of *Ormond* was, he told him the

News-Papers said he was at *Corunna*; but he positively denied his having ever mentioned to *Pancier* any Particular Persons as concerned in the Conspiracy, or any of the Particular Facts specified in his Depositions.

He farther said, he had reason to believe that *Pancier* had sent to him since his being in Custody, to advise him to make his Escape; for that one *Gerard Fitzgerald* having been walking with *Pancier* in the Park, came directly from thence to him, *Skeene*, at the Messenger's House, and advised him to make his Escape; tho' he own'd that *Fitzgerald* made no mention of *Pancier's* having sent him any such Advice.

Fitzgerald being sent for by the Committee, owned he had been to see *Skeene*, and finding no body at that time in the House but a Woman, told *Skeene*, it would be an easy Matter for him to escape; but he cleared *Pancier* from having sent any such Intimation or Advice. He farther said, that *Skeene* told him he did not know but he might have talk'd foolishly to *Pancier*, but that if he had, *Pancier* was but a single Evidence, or to that effect.

The Committee find, among the Papers referred to them, a^g Copy of the Orders which *Arnold* received from the Owners of the Ship *Pbineas*, requiring him to follow the Directions of *Roger Nowell* (*Halstead*) during the Voyage; as also an^h Affidavit, by which it appears, that the said *Halstead* was to visit the Bishop of *Rocheſter* and staid an Hour at his House, a few Days before his setting out for *Bilboa*.

They also find a very remarkableⁱ letter sent to one of the Secretaries of State, by an unknown Hand, dated the 12th of *February*, 1721-22, and inclosed in^k one, dated the 31st of *March*; which first appears to be the Letter referred to in^l one of *Neynoe's* Examinations, as drawn up by *Kelly* and himself, and brought back to him corrected, as he believ'd, by the Bishop of *Rocheſter*.

They likewise find a^m Paper taken in Lord *North and Grey's* Study at *Carlige*, which contains several very extraordinary Reasonings on the Nature of Oaths; tending to prove, That the Oaths to the present Government are not Obligatory; and that tho' the taking such Oaths is in itself unlawful, and a grievous Sin, as being inconsistent with prior Oaths, or Obligations, yet neither the taking nor breaking them can in strictness fall under the Denomination of Perjury.

This is the Substance of what the Committee have been able to collect from a careful Perusal of the Papers referred to them, and a long Examination of several of the Persons concerned; in some of whose Power they have Reason to believe it was to have made ample Discoveries, if they had been disposed to speak the Truth.

And tho' the Lords Committees cannot reflect, without Pity and Compassion, on the misguided Zeal, and wretched Infatuation of those Men, who rather chuse to expose themselves to the greatest Dangers, than to discover the Authors or Accomplices of their Treasons; thereby declaring to the World, that the Leagues and Confederacies of private Villany are dearer and more sacred to them than the strongest Tyes and Obligations of Society; yet the Committee make no doubt but the Matters contained in the Report referred to them, and corroborated by the Result of

^a E. 21.^b 11.^c E 32.^d E. 35, 42.^e 15 16.^f D. 1, 2.^g 7.^h 8.ⁱ 6.^k 5.^l E. 9.^m 2.

their present Enquiry, will appear to your Lordships so clearly made out, that the Conspirators, sooner or later, will have leisure to repent of the rash and impious Choice they have made, of being rather true to one another, than to God, their Consciences, and their Country,

ON *April 24* the House (according to Order) took into Consideration the Report from the Lords Committees, to whom the Report and Original Papers delivered by the House of Commons at several Conferences, were referred; and who were empowered by this House to examine *Christopher Layer* and such other Persons as they from time to time should think proper: And the said Report being read, It is resolved by the Lords Spiritual and Temporal in Parliament Assembled, That this House is fully satisfied and convinced, That a detestable and wicked Conspiracy has been formed and carried on, for soliciting a foreign Force to invade these Kingdoms, for raising a Rebellion, and inciting Insurrections in *London*, and divers other Parts of *Great Britain*, and even for laying violent Hands on the sacred Person of His Majesty, and on His Royal Highness the Prince of *Wales*, in Order to destroy our Religion and happy Constitution, by placing a Popish Pretender on the Throne.

Ordered, By the Lords Spiritual and Temporal in Parliament Assembled, That the Thanks of this House be given, by the Lord Chancellor, to the said Lords Committees, for their having discharged the Trust in them reposed, with great Exactness, Care, Fidelity, and Candour. Thereupon,

The Lord Chancellor addressing himself to the Lords of the said Committee, (*viz.* Duke of *Montrose*, Duke of *Dorset*, Earl of *Scarborough*, Earl of *Islay*, Lord Viscount *Lonsdale*, Lord Viscount *Torrington*, Lord Bishop of *Sarum*, Lord Bishop of *Lincoln*) gave them the Thanks of the House in the following Words:

My Lords who were of the Committee,

I Am commanded by the House to give your Lordships the Thanks of this House, for your having discharged the Trust reposed in you, with great Exactness, Care, Fidelity and Candour.

My Lords,

The Trust was as great as ever was reposed by this House in any of its Members. The Subject Matter of your Enquiry, a Conspiracy the most dangerous as well as detestable, big with Mischiefs of all kinds, and destructive of every thing that is valuable amongst us; carried on and managed in a new devised Method with the utmost Cunning as well as Wickedness, and covered with all the Disguises the most artful Dexterity could contrive: and which therefore required the greatest Penetration and Skill to lay open. And the Papers, some of them of such a Nature, that it was thought fit to refer them to your Lordships, lock'd up as they were, without reading them in the House.

My Lords,

Your Lordships have fully answer'd the Expectations the House entertained, when they pitched upon you for this Trust.

Your Application in going thro' so many Papers of affected and studied Obscurity, your Candour and Exactness in Examining the Persons concern'd, or any way capable of giving any Satisfaction, and

in representing what they said, the Accuracy and Judgment of your Remarks; the Light you have so happily given to several Passages in the Report of the Committee of the Commons, which, tho' in themselves just, were yet liable to Cavils, by such as were loth to have the Truth found out, give, I dare say, a sensible Pleasure to every Lord here, that has heard your Report read, and finds himself thereby enabled to form a Judgment with so entire Satisfaction to himself, concerning this abominable Work of Darknes, which the Actors have endeavoured to surround with impenetrable Obscurity.

This noble Pleasure of seeing the Truth, notwithstanding so many Contrivances to hide it, and of being thereby enabled to come to right Resolutions in a Matter of such Importance, has very naturally and agreeably broke out into so unanimous a Resolution of returning the Thanks of this House to your Lordships, to whom they so much owe it. And in Obedience to their Commands, I do, with particular Pleasure, give your Lordships the Thanks of this House, for your having discharged the Trust in your Lordships reposed, with great Exactness, Care, Fidelity, and Candour.

March 19. The Bill to inflict Pains and Penalties on *John Plunket* was brought into the House of Commons, to which *Plunket* making no Defence, it pass'd that House on *April 5.* and was sent up to the Lords, who after hearing Counsel for the Bill, and *Plunket* himself against it, pass'd the Bill; which afterwards obtained the Royal Assent, and was as follows.

An Act to inflict Pains and Penalties on John Plunket.

WHEREAS in the Years One thousand seven hundred and twenty one, and One thousand seven hundred and twenty two, a detestable and horrid Conspiracy was formed and carried on by divers Traitors for invading your Majesty's Kingdoms with foreign Forces, for raising an Insurrection and Rebellion against your Majesty, for seizing the Tower and City of *London*, and for laying violent Hands upon your Majesty's most sacred Person, and upon his Royal Highness the Prince of *Wales*, in order to subvert our present happy Establishment in Church and State, and to place a Popish Pretender on your Throne: And whereas for the better concealing and effecting the said Conspiracy, divers treasonable Correspondences were, within the time aforesaid, carried on by Letters written in Cyphers, cant Words and fictitious Names; which Conspiracy, had not Almighty God in his great Mercy disappointed the same, would have deprived your Majesty's Kingdoms of the Enjoyment of their Religion, Laws and Liberties, involved them in Blood and Ruin, and subjected your People to the Bondage and Oppression of *Romish* Superstition and Arbitrary Power: for which execrable Treason *Christopher Layer* hath been indited, tried, convicted and attainted. And whereas *John Plunket* hath been a principal Actor in the said horrid and detestable Conspiracy, by traitorously consulting and corresponding with divers Persons, to raise an Insurrection and Rebellion against your Majesty within this Kingdom, and

to procure a foreign Force to invade the same; with a Design to depose your Majesty, and to place the Pretender on your Throne, by traitorously corresponding with the said Pretender; and by engaging in a most execrable and villainous Design of laying violent Hands upon the Sacred Person of your Majesty (whom God long preserve.) Therefore to manifest our just Abhorrence of so wicked a Conspiracy, and our Zeal and tender Regard for the Preservation of your Majesty's Person and Government, and for the Protestant Succession in your Majesty's Royal Family, the solid Foundation of our present Happiness and future Hopes; and to the End that no Conspirator may, by any Contrivance or Practice whatsoever, escape Punishment, and that all Persons may be by the Justice of Parliament for ever hereafter deterred from engaging in any traitorous Conspiracys or Attempts, We your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal, and Commons in Parliament assembled, do humbly beseech your Majesty, that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in Parliament assembled, and by the Authority of the same, That the said *John Plunket* shall be detained and kept in close and safe Custody, without Bail or Mainprize, during the Pleasure of his Majesty, his Heirs and Successors, in any Goal or Prison within the Kingdom of *Great Britain*, to the Custody of the Goaler or Keeper whereof the said *John Plunket* shall from time to time be committed, in pursuance of this Act, by Warrant under the Hand and Seal of any Secretary of State of his Majesty, his Heirs or Successors: Which Warrant or Warrants any Secretary of State for the Time being is hereby authorized and empowered to make; and that the said *John Plunket* shall forfeit to his Majesty all his Lands, Tenements, Hereditaments, Goods and Chattles whatsoever.

And for more sure detaining the said *John Plunket* in safe Custody, be it further enacted by the Authority aforesaid, That if the said *John Plunket* shall break such Goal or Prison to which he shall be so committed, or shall escape out of the Custody of the Person in whose Custody he shall be, by virtue of such Commitment, That then the said *John Plunket*, and all and every Person and Persons whatsoever, who shall be aiding or assisting the said *John Plunket* in breaking such Goal or Prison, or in making such Escape, as aforesaid, or who shall by Force take or rescue the said *John Plunket* out of such Custody, Goal, or Prison, during the Continuance of his Imprisonment by virtue of this Act, being thereof lawfully convicted, shall be adjudged Guilty of Felony, and shall suffer Death as in Case of Felony, without Benefit of Clergy.

In pursuance of this Act, *John Plunket* was continued Prisoner in the *Tower of London*.

The same Day the Bill to inflict pains and penalties on *George Kelly* alias *Johnson* was brought into the House of Commons, who after hearing Counsel for the Bill, and *Kelly* and his Counsel against it, pass'd it on *April 6.* and sent it up to

the Lords, who heard Counsel for and against the Bill, when *Kelly* made the following Speech.

My LORDS,

SINCE my Counsel have so fully answered every Article alledged against me, it may seem unnecessary to take up your Lordships Time, by saying any thing for myself. And, indeed, it would be so, if my Charge were Ordinary or Particular. But, my Lords, I have been represented as a Person doubly guilty: First, In transacting Treason for myself: And, Secondly, In doing it for other People. These are Crimes, of the most heinous Nature; and if they were as clearly proved, as they have been strongly asserted, I should justly merit your Lordships highest Displeasure, and all the Pains and Penalties you could possibly inflict upon me.

And since my Charge is so very extraordinary; since these Proceedings seem to be without any Precedent; and, that the Innocence of other Persons calls upon me for publick Justice; I believe your Lordships will easily allow, That to be silent in such a Case would be truly criminal, and too justly censured.

To enter into all the Particulars of my Accusation, would take up more Time than is reasonable for me to ask, or for your Lordships to allow: And tho' the many Inconsistencies, Contradictions, and false Conclusions which appear in almost every Page of the printed Reports, plainly shew the Weakness, Absurdity and Sophistry of them; however, I shall only beg Leave to touch upon those material Parts which relate to myself, and my Defence to them.

The first Article which I find myself charged with, is, The employing of one *Neynoe* to draw up three Memorials to the Regent of *France*, to solicit Foreign Forces to invade this Kingdom. And for Proof of this, the Examinations of the same Person, which are neither upon Oath, nor so much as signed by him, (and whom the Committee of the Honourable House of Commons have represented as a very infamous Fellow) are the only Evidence assigned against me.

This, my Lords, is the Crime! and *This* the Proof!

And tho' the bare mentioning of it might be sufficient to convince your Lordships of its Weakness, however, since so great a Weight has been laid upon *this Kind* of Evidence in *another Place*, it will be necessary to be a little more particular about it.

The two first of these Memorials (*viz.* those before and after the *South-Sea Scheme*) are but slightly mentioned: But the One pretended to be drawn up in *December 1721*, (and containing a Demand of 5000 Men) and a letter said to be written the *March* after (to amuse the Government into a false Security) are the chief Things upon which any Strefs is laid. And how false both these Allegations are, has evidently appeared to your Lordships. For, had my Accuser been really employed to draw up any such Memorials, it is reasonable to believe, that he would have Copies of some, and especially of the last of them; since a Person who turned Informer so suddenly after, may very well be presumed to have had Thoughts of it

‘ for some Time before ; and such papers would,
 ‘ no doubt, give great Weight to his Information.
 ‘ But the Ministry have produced no such Copies ;
 ‘ neither do they pretend to have them : Which
 ‘ is a very great Indication, that there never were
 ‘ any such Memorials at all.

‘ Besides, There are no two of his Examinations of a piece. Nay ! he contradicts himself in almost every one of them. For in his second Examination he says, That these Memorials were all drawn up by the Order of one *Henry Watson* (whom he really did not know, but took to be the late Earl *Marisball*) without making the least mention of me. In his third Examination he says, They were delivered to me and *Watson* ; and in his fourth he says again, They were all drawn up by the Order of *Henry Watson* only. And in a few Lines after contradicts himself, and says, that the Heads of them were given to him by *me* and *Watson* : Which are such Inconsistencies, as (your Lordships will easily grant) are not to be reconciled : And if his Memorials were no better drawn than his Examinations, I believe they were not likely to meet with any great Success.

‘ As to the Earl *Marisball*, how reasonable it is to believe, that a person in his Circumstances should venture to come into *England*, and live so openly here, as to intrust himself, and a Secret of this Nature, to a Fellow, who (by his own Confession) did not know him, is humbly submitted to your Lordships. And as for my part, it is very plain that I could have no Hand in them, since the *Minutes* in my Pocket-book (in which I could have used no Disguise) agreeing with the concurrent Testimony of several *Witnesses*, plainly shew, That I was not in the Kingdom at the Times in which my Accuser pretends to have been so employed. For, by those *Minutes*, and *their* Testimony, it appears, That I went to *France* the 23d of *November* 1721, and did not return till the latter End of the next Month : And my Accuser himself owns in his first Examination, That he did not see me after my Return, till the *January* following ; which makes it impossible that he could have been so employed by me in *December*, since I was most part of that Month out of the Kingdom ; and the few Days of it that I was here, he owns he did not see me.

‘ Nor has the other part of his Information, relating to the letter (which he pretends to have drawn up in *March*) better Grounds — For, by the same *Minutes*, and by the same Evidence, it likewise appears, That I went to *France* the 22d of *February* after, and did not return till the middle of *April* ; which makes it as impossible that he could have been employed by me in *March*, since I was then likewise out of the Kingdom. Had this Examination been at any Distance of Time, it is possible he might be mistaken in it : But his first Information must have been about the middle of *April*, soon after my Return from *France* ; for he confessed to the person taken up with him at *Deal*, That he was the first who set the Ministry upon intercepting letters. And the first letters so intercepted are owned, in the 42d page of the Report made to the Lower house, to have been the 22d of *April*, 1722. — And, surely, he cannot be supposed to have forgot so soon what happened the very Month before ; especially

‘ since he has been so particular, as to name the very Day (*Saturday*) upon which he says this letter was so drawn up. By all which it plainly appears, That this Article is not only groundless, but evidently false ; and likewise, that he had no such Intimacy with me (as the Report pretends) since he has declared, That I never spoke to him of the Conspiracy ; and that I could be a Month *at one Time*, and Two Months at another, out of the Town, without his knowing any Thing of it. As to what is said of his coming sometimes to my Lodgings, I believe it may be true ; but it has been fully proved, That his Visits were never to me, but always to another Person who lodged in the same House. And I do solemnly affirm to your Lordships, that I never was acquainted with the late Earl *Marisball*, or with any such Person who went by the Name of *Watson* : That I knew very little of my Accuser ; so little, that I am confident, I never spoke to him Ten times in my Life ; nor ever employed him in this or any other Affair whatsoever.

‘ The second Article charged upon me, is, the carrying on a Treasonable Correspondence for the Bishop of *Rocheſter*. And for Proof of this, the Examination of the same Person is the only Evidence produced against me, wherein he says, That I frequently told him, the Bishop was concerned in such a Correspondence ; and that I managed it for him ; with other Particulars not worth mentioning. How reasonable it is, that I should tell such a strange Untruth to a Person that I knew so very little of, and what Credit ought to be given to his bare Assertion, who has affirmed such gross and notorious Falshoods in the former Article, must be submitted to your Lordships. And, in my present unhappy Situation, I cannot but think it a very great and singular Happiness, to have so publick and honourable an Occasion of purging myself from so vile a Calumny, and of doing Justice to that most worthy and learned Prelate.

‘ And I do solemnly declare to your Lordships upon the Faith of a Christian, That I never wrote or received a letter of any Kind for the Bishop of *Rocheſter*, or was privy to any Correspondence of his at Home or Abroad : That I never shewed him any letter that ever I wrote to *France*, or ever sent one there by his Privy or Direction : That I am very little known to his Lordship, went very rarely to wait upon him ; so rarely, that I am confident few of his Servants know either my Name or Face ; and I have not seen him above three or four Times these two Years past, and not above eight or ten Times in my whole Life.

‘ I do farther declare, That my Visits to his Lordship were always publick ; that I never went privately in a Chair to his House ; always found other Company with him, who were generally Strangers to me ; and never once mentioned his Name, upon this or any other Account, to the Person who thus accused me. Which, with the Evidence that has been produced of his own Confessions to that Purpose, is, I hope, sufficient to convince your Lordships of the Truth of it.

‘ And as for the Dog, which has been brought as a Circumstance to prove this Matter, I do in the same solemn Manner declare, That he was given to me by a Surgeon at *Paris*, (whose Affidavit

‘ *Affidavit has been offered to be produced*) and who, at that Time, I do verily believe, never heard of his Lordship’s Name; and that he never was design’d for any body but the Person I gave him to. And I appeal to the very Ministers themselves, if the *British* Resident at *Paris* (who is constantly attended by that very Surgeon, and examined him about it) has not confirmed the Truth of this Account to them. I do farther affirm, That the Bishop of *Rocheſter* never ſaw him; never received any letter or Meſſage by me, nor (do I believe) by any other Person, about him: Neither did I ever know or hear, That his Lordſhip had any Intercourſe or Correſpondence with the late Earl of *Marr*, or any other diſaffected Perſon abroad.

‘ *My LORDS,*

‘ It cannot be imagined, that I have any particular Intereſt or Concern in this Matter; for I never received any Favours from his Lordſhip; neither do I owe him any Obligations, but thoſe of common Juſtice: And thoſe I ſhould perform, where I have ſo much Truth of my Side, to the greateſt Enemy I have upon Earth. As for the other Circumſtances, which are brought to ſtrengthen my Accuſer’s Examinations, and are ſet forth in one *Pancier’s* Depoſition, They will appear, I don’t doubt, as groundleſs and inconſiſtent as the Examinations themſelves. For this Perſon ſwears, That another told him of this Conſpiracy; that ſix or eight Battalions of *Iriſh* Forces were to come from *Spain* to aſſiſt the Conſpirators; that 200000 *l.* were raiſed, and 800 Men regularly ſubſiſted for this Purpoſe in *London*. Theſe, *My Lords*, are called, in the 38th Page of the Report of the Lower Houſe, *The concurrent and Corroborating Proofs* of my Accuſer’s Examinations: And I humbly appeal to your Lordſhips, if any one of them carries the leaſt Colour of Reaſon or Probability with it. For can it be imagined, That ſuch a Force ſhould come from *Spain*, when there appears to be ſo ſtriſt a Friendſhip between the two Kingdoms? Or that 200000 *l.* could poſſibly be raiſed among all the diſaffected in *England*, in caſe there was a Licence for it? Or 800 Men regularly ſubſiſted in this City, without a Diſcovery? Theſe are ſuch idle inconſiſtent Tales, as (I am perſuaded) can never have any Weight with your Lordſhips. Beſides, *my Lords*, this is only bare Hear-ſay; and if the Hear-ſay of ſuch infamous Perſons (or, indeed, of any Perſons) be look’d upon as ſufficient Evidence, I believe no Man in *England* can be ſure of his Life or Liberty an Hour, ſince any two People may talk him into High-Treaſon whenever they pleaſe; and the greater the Perſon is, the greater his Danger always will be.

‘ The *Third Crime* which I ſtand charged with, is, the Writing of three treaſonable Letters for the Biſhop of *Rocheſter*, ſuppoſed to be to the Pretender, the late Earl of *Marr*, and General *Dillon*, which Letters are ſaid to have been ſent by me to Mr. *Gordon* at *Boulogne*, with Directions to be delivered to one Mr. *Talbot*: And for Proof of this, the Clerks of the Poſt-Office are produced, who ſwear, That thoſe Letters were (to the beſt of their Knowledge) written in the ſame Hand with an Original which was ſtopt as a Specimen of it: Which Original has been ſworn by two Perſons to be

‘ my Writing, and conſequently thoſe letters muſt be ſo too.

‘ *My LORDS,*

‘ Theſe letters are dated the 20th of *April*, and the Specimen ſo ſtopt the 20th of *Auguſt*, juſt four Months after. And how it is poſſible for People (who receive ſuch a Number of letters) to ſwear to a Likeneſs of Hands, at ſuch a Diſtance of Time; and what Weight ought to be laid upon this kind of Evidence; or upon that modern and myſterious one given by the Decypherers, in which they don’t pretend to a Certainty themſelves, muſt be ſubmitted to your Lordſhips. And as to the Perſons who have ſworn to my Hand, I hope it will be conſidered, That one of them is a Meſſenger, who never ſaw any of my Writing, but the Superſcriptions of a few letters, which (your Lordſhips may eaſily ſee) do not bear the leaſt Likeneſs with what he has ſworn to. Beſides, this very Perſon was turn’d out of his Employment upon my Account; and a few Days after he gave this Evidence in the Houſe of Commons, I ſaw a Paragraph in the News-Papers that he was reſtored to it again. And as to the other, it is to be hoped, That it will be likewise conſidered, that he is a Servant who attended me only about three Weeks, and was turned off for an infamous Action, which he has acknowledged himſelf to have been guilty of: Beſides he has confeſſed, That he never ſaw me write, but as he went backwards and forwards in the Room; and at ſuch a Diſtance as not to be able to diſtinguiſh one Character from another: And it has been proved by two Witneſſes, (one of which was a particular Friend of his own) That he declared he never knew any thing of my Hand; but was threatned by the Secretary, into the *Affidavit* which has been printed in the *Appendix*. And if that Paper had been my Writing, it is impoſſible they could be reduced to a Neceſſity of making uſe of ſuch improper Evidence, ſince no Pains have been ſpared to procure better; ſince Numbers of People have been taken up, confined and examined to this very Point; and *Newgate* ſent to, more than once, for Witneſſes to it. And tho’ it might be proved by the very Report of the Lower Houſe, that thoſe letters could not have come from the Biſhop of *Rocheſter*; however, my Buſineſs is only to convince your Lordſhips, That I was not the Writer of them, and of this, I believe it is impoſſible to give clearer Proofs than I have done: For if thoſe letters had been dictated to me the twentieth of *April* (as the Report pretends) it muſt have been at his Lordſhip’s Houſe in the Country; ſince it appears by the Depoſition of his Coachman, that he went there the 12th of that Month, and did not leave it till the 5th of *May*.

‘ But it has been proved, that I was in *London* all that time; and if it had been permitted, there is not a Perſon in the Biſhop’s Family but would teſtify, That I was not then at his Houſe in the Country; and conſequently could not have written any ſuch Letters for him. Beſides, I have brought ſeveral Perſons of Credit and undoubted Characters, who have all teſtified, that the Hand in which thoſe letters are ſaid to be written, is not mine, nor any thing like it.

‘ An Affidavit has been produced from Mr. Gordon, That he never received any such Letters from me, nor ever had any Correspondence, or even an Acquaintance with me.

‘ And it has been likewise proved, That Mr. Talbot, to whom those Letters are said to be delivered by Mr. Gordon, was in this Town the very Day upon which they are said to have been delivered to him at *Boulogne*: And if I had any such letters to transmit, can it be imagined that I would trust them to the common Post, when I had so good an Opportunity to send them by, or direct them to *Boulogne*, when the same Post might as well have carried them to *Paris*? These are such full, such evident Proofs, as, I hope, cannot fail of giving your Lordships the utmost Conviction in this Matter; and, consequently, that this Article is, like the rest, both groundless and manifestly false.

‘ But if any Credit is to be given to the Confessions which my Accuser made to the Person taken up with him, it is very plain that those letters must have come from *another Quarter*; and, to say no worse, were at least calculated to carry on his own *base and villanous Designs*.

‘ For it has been proved to your Lordships, that he confessed to have been employed by one of the Ministers; received 300 *l.* from him, and was to have 2000 *l.* more. That this Minister declared a personal Prejudice, upon some private Account, *to the Bishop of Rochester; was resolved to pull down the Pride of that Haughty Prelate, and to squeeze me* (as I think the Expressions were) *to that Purpose*.

‘ My LORDS,

‘ I say, if any Credit is to be given to this Confession, there can be no great Difficulty in tracing out the Source of *this Part* of the Conspiracy; and I am heartily sorry to say, That there are some Circumstances which seem to give but too great a Countenance to the Truth of it. For, my Lords, He made this Confession at a Juncture, when he may very well be supposed to have spoken in the Sincerity of his Heart; when he saw his Villany detected; believed himself to be in the greatest Danger, and depended upon the Person’s Assistance (to whom he made it) to help him out of his Misfortunes. — And how particular this Prosecution is, and how sufficiently I have been *squeezed*, are Things but too visible, and too well known to the World.

‘ Besides, the very Cypher by which those letters were written, (and which he owned to have received from that Minister) was actually caught upon the Person to whom he gave it; and he confessed, That he put a Paper of Directions into one of my Drawers, by which (the Report says) most of the treasonable letters were addressed. And it has been proved to your Lordships, that those Drawers were constantly open, and that he made some Pretext for being alone in my Lodgings, the very Night before I was first taken up. And since he was the first that set the Ministry upon intercepting letters, which he said were mine; it is very extraordinary, that such a material Part of his Evidence should be omitted in his Examination; or that the very first letters so intercepted, should be those alledged against the Bishop of *Rochester*: And if

the Originals of those Three Letters were stop’t, I don’t at all doubt, but they might be proved to be my *Accuser’s own Hand writing*. And how strong a Sense he had of his Guilt, by attempting an Escape which proved fatal to him; and how visibly the Hand of God has interposed in that eminent Prelate’s Favour, by taking one of the Persons (designed for his Destruction) out of the World, and giving the other *Grace and Virtue* enough to withstand all Temptations to his Prejudice, are Things highly worthy of your Lordships just and most serious Consideration, and no small Indication of his Innocence. And as to the Money which my Accuser owned to have received, That there was a very sudden and extraordinary Change in his Condition; that from the lowest State of Poverty and Want, he soon arrived to that of a vicious and most profligate Affluence, is a Truth sufficiently known to all those who were acquainted with him. But from whence this Change proceeded, or what real Grounds he had for aspersing that Honourable Person, I will not pretend to say: But if those Aspersions be false (as I wish they may) it may be justly inferred, That a Fellow who was capable of vilifying one Person, may very well be judged as capable of doing so to another: And if his Veracity is not to hold good in one Case, there can be no Reason for allowing it in the other.

‘ The *fourth Crime* alledged against me, is, a Number of intercepted letters, supposed to be written to, and received from the late Earl of *Marr*, General *Dillon*, and other disaffected Persons abroad. And for Proof of this a *Frenchman* has been produced, who swears, That he once saw me take up a letter at *Burton’s* Coffee-house, by the Name of *Baker*, which Name (it is said) some of the treasonable letters were addressed by; and was, in a Paper of Directions, found in my Lodgings. — How that Paper came there, has been already proved; and as to the Person who has sworn to this Particular, I must observe, that when he gave this Evidence to the House of Commons, he did not know me, tho’ he spoke to me, and look’d several times earnestly at me: and for the Truth of this, I can appeal to most of the Members of that honourable House, who were Witnesses of it: And he would still have probably continued in his Ignorance, if some private Hints (as I have been told) were not given him, or the same Method taken which has been done with a Number of other strange Fellows, who were frequently sent to the *Tower*, and had no other Business but to take a View of me. Besides the People of the Coffee-house have testified the contrary, and that no such letter ever came to their House. And tho’ it be set down in my Examination before the Council, That I confessed to have taken up such a letter, I humbly appeal to my Lord Chancellor (if it can be worth his Lordship’s while to recollect it) if he did not ask me that very Question two or three times? and if I did not as often deny it? Neither is this the only Particular that is falsely set down in that Examination. And I do solemnly affirm to your Lordships, That I never did receive any such letter, nor ever saw that Paper of Directions, till it was printed in the Report. And there is one Circumstance

‘ circumstance pretty remarkable in this Correspondence, That as it began with my Accuser’s Information, so it ended with his being taken up. For immediately, after a new Correspondence is pretended to be discovered; and to fix this likewise upon me, it has been suggested, that I sent Cyphers by Sir *Harry Goring* to *France*, and had letters directed by them to *Sturges’s* and *Slaughter’s* Coffee-house.

‘ But, my Lords, no such Cyphers were found in my Custody, nor any Papers relating to such a Correspondence: and the People of those Coffee houses have all sworn, That I never ordered any letters of *that kind* to be taken in, or received one, either by my own or any other Name from them. Nay! one of them has sworn, That no such letters ever came to his House at all; and the other says, That a Messenger from the Secretary’s Office, was the only Person that ever called at his House for those directed to it.

‘ As to the printed Examination of one Mr. *Carryl* to this purpose, it were to be wished, That this Gentleman’s Reasons had been published, as well as his Accusation. For I am confident, he will not pretend to say, that ever he saw me write a line in his life, or give a piece of paper of any kind to Sir *Harry Goring*; and what Reason he could have for believing that we settled a Key for such a Correspondence, is very extraordinary: Nor have the other particulars which he has affirmed, the least Foundation of Truth; for I do solemnly aver, That I never saw *Sample* in my life, or gave Captain *Bonin* any such letter of Recommendation; neither had I ever the Honour of speaking to my Lord *North and Grey*, or of being any ways known to his Lordship: And that I should mention him so familiarly by the fictitious Name of *Johnson*, (and which, of all Names, I should never make use of in that manner) will, I hope, appear very incredible to your Lordships; especially since Mr. *Carryl* himself has furnished so good a Reason for the Disbelief of it.

‘ For he has likewise affirmed, That my Examination before the Council was read at Doctor *Yalden’s* House: The Doctor has, indeed, already done me Justice in that Point; and Mr. *Tucker* (who was all the while in company) will, I am very sure, do the same. And since Mr. *Carryl* appears to be so plainly mistaken in this particular, surely he may very well be supposed to be so in all the rest; especially since he has not assigned the least Reason for any of them.

‘ As to the rest of the intercepted letters, the people of the several Coffee-houses have likewise cleared me from them; and all testify, That they never delivered me any such letters, or received any Directions from me about them; which I hope will be sufficient to convince your Lordships, that I was not concerned in any such Correspondence; especially since no letters of this kind were found in my possession, nor any other papers relating to the Conspiracy.

‘ There are two other Crimes, in which I most humbly crave your Lordships patience to be heard, because they are the blackest that can be imagined, and seem to be personal. The First is a letter directed to Mr. *Gordon* at *Boulogne*, with two Affidavits, which have been printed, and are suggested to be sent by my Directions,

‘ in order to have him and one *Birmingham* perjure themselves upon my Account:—For in this letter it is said, *That the Inclosed is a Copy of a Note from the person concerned, with what he thinks requisite.*

‘ My LORDS,

‘ This letter is dated the 20th of *March*, at which Time, and for five Months before, I never was allowed the Use of Pen, Ink, or Paper, or the liberty of seeing any person that could possibly have conveyed such a Note for me; for I have been guarded in a different manner from other people in the *Tower*: My Warders were put into the very Room with me, and ordered never to stir a Moment, Night or Day, out of it; which Orders they punctually obeyed, and were constant Witnesses to all my Actions.

‘ And those Warders will depose, that they believe it was impossible for me to have written or sent out any such Directions; the Officers, I don’t doubt, will do me the same Justice. And when my Solicitor was admitted, finding that Mr. *Gordon’s* Affidavit might be of use, if allowed as Evidence, a person was immediately dispatched, and who brought it in a different Form from those which have been printed. And my Solicitor can testify, That no Draughts were sent by him; which, with the gross Management of the persons concerned in this Affair, is, I hope, sufficient to give your Lordships the clearest Conviction of my Innocence in it. And I do solemnly affirm, That I never knew any thing of them; never heard of the Name of *Aikenhead* before; nor can I find out any person (besides the Master of that Vessel) that ever did.

‘ The other Crime is set forth in one *Levett’s* Deposition, in the Report made to this most Honourable House: wherein (among a great many other most notorious Falshoods) she swears That one Mrs. *Barnes* told her, that I was instrumental in, or privy to, the shutting up of a person in a Dungeon, for fear of his turning Informer; and not only of him, but of 200 more upon the same Account. Which, I believe, is the most surprizing Crime that ever yet was alledged against any Christian. Mrs. *Barnes* denies every Syllable of this Conversation; and if the person that swears this against her had been produced, she would be proved to your Lordships to have been a vile infamous Creature all her life. And if she is to be believed, or that your Lordships can think it possible there can be the least Truth in her Deposition, it will be a Sin to let me live, and impossible to find out a punishment too cruel for me.

‘ These, my Lords, are the chief Crimes which I am charged with; and very great ones they are, had they been in any degree made out against me. I am a Stranger to the Methods of legal proof, but have been told by Counsel, That the greater a person’s Crime is, the clearer the Evidence ought to be against him; and how weak and insufficient the proofs produced for this purpose are, and how clear and convincing those which have been offered in my Justification, has, I hope, evidently appeared to your Lordships, and given you entire Conviction of my Innocence; and that all the Crimes alledged against me, are without the least Colour or Foundation of Truth. But how much

‘ I have suffered for these supposed Crimes; and
 ‘ what extraordinary Means have been made use
 ‘ of against me, are things much worthier of your
 ‘ Lordships judicial Consideration. To be taken
 ‘ up, and held to exorbitant Bail, without ever
 ‘ assigning any particular Crime against me; to
 ‘ suffer a long and close Confinement, where the
 ‘ Expence bears no proportion to my Circum-
 ‘ stances: To have Numbers of people, and
 ‘ some of them Creatures of the meanest Rank
 ‘ and Condition, taken up, examined, and tam-
 ‘ pered with, upon my Account; and *Newgate*
 ‘ sent to for Witnesses: To have a Servant (who
 ‘ was turned off for his ill Behaviour) brought as
 ‘ an Evidence, and my most intimate Friends im-
 ‘ prisoned for not swearing against me; are
 ‘ Hardships and Proceedings, I believe, hitherto
 ‘ unheard of in *England*; and such as, I hope,
 ‘ your Lordships will, in your great Wisdom
 ‘ and Justice, think fit to redress. All which is
 ‘ of a piece with an infamous offer made to my-
 ‘ self by one of the Under-Secretaries of State,
 ‘ who, the Morning after I was first examined,
 ‘ came to me with a Message (as he said) from
 ‘ one of his Superiors, to let me know, *That I*
 ‘ *had now a very good Opportunity of serving myself;*
 ‘ *and that he was sent to offer me my own Conditions.*
 ‘ And when I declared myself an entire Stranger
 ‘ to the Conspiracy, and was sorry to find that
 ‘ Noble Lord have so base an Opinion of me, he
 ‘ seemed to wonder that I would neglect so
 ‘ good an Occasion of serving myself, *especially*
 ‘ *when I might have any thing I pleased to ask for.*
 ‘ What Authority that person had for this Mes-
 ‘ sage, or the rest of his After-proceedings, I
 ‘ will not pretend to say: But as I have been
 ‘ ruined and utterly undone by them, I hope
 ‘ your Lordships will take my Sufferings, as well
 ‘ as Circumstances, into your Consideration;
 ‘ and, instead of inflicting any farther Pains
 ‘ and penalties, look upon me (as I really am) a
 ‘ person highly injured, and not a Criminal con-
 ‘ cerned in any Transactions against the Govern-
 ‘ ment.

‘ As for my Circumstances, they are but too
 ‘ well known in the World.

‘ And here I cannot omit my Gratitude to the
 ‘ late, and present Constables of the *Tower*: for
 ‘ the late Constable (tho’ I never had the Ho-
 ‘ nour to see his Lordship) was, upon a Repre-
 ‘ sentation of my Circumstances, so very good,
 ‘ as to procure me the promise of an Allowance
 ‘ from the Government: And his Lordship, the
 ‘ present, has been so kind as to get it paid.
 ‘ But the Officers of the place can testify, That
 ‘ this Allowance has not been converted to any
 ‘ private Use of mine, but constantly given to
 ‘ the persons appointed to attend me. And I
 ‘ must take leave to assure your Lordships, That
 ‘ it has cost me more since I was sent there, than
 ‘ the Government has now left me really worth
 ‘ in the World; and I must suddenly become a
 ‘ Sacrifice to my Necessities, if not set at Li-
 ‘ berty by your Lordships great Clemency and
 ‘ Compassion.

‘ If I have dropped any Expression which may
 ‘ not be so agreeable to some particular persons
 ‘ in power, I could wish that my Defence had not
 ‘ laid me under that Necessity: And I do so-
 ‘ lemnly protest, that they have not proceeded
 ‘ from any Resentment for my Sufferings; but
 ‘ from a sincere Endeavour to give your Lord-

‘ ships the clearest Conviction of my Innocence.
 ‘ And since I could not merit their Favour, I
 ‘ shall always endeavour to preserve their good
 ‘ Opinion.

‘ As to the Legality of *these* proceedings, and
 ‘ the Danger of making precedents of this Kind,
 ‘ those are things which have been already fully
 ‘ set forth by my Counsel, and must be submit-
 ‘ ted to the great Wisdom and Jurisdiction of this
 ‘ most illustrious Assembly: An Assembly! which
 ‘ is not only the Highest and most Honourable,
 ‘ but the Uprightest and most Impartial, I be-
 ‘ lieve, upon Earth; and whose Justice has ever
 ‘ appeared as extensive as their power. The
 ‘ great, and the *only* Argument, which I have
 ‘ heard offered for the passing of this Bill, is
 ‘ That the Occasion is extraordinary; that your
 ‘ Lordships are in your legislative Capacity;
 ‘ and tho’ the proofs may not be so legal, how-
 ‘ ever in *Terrorem*, it is necessary to pass it. But
 ‘ I humbly beseech your Lordships to consider
 ‘ where the Extraordinariness of this Occasion
 ‘ lies:—Has there been the least Commotion in
 ‘ any part of the Three Kingdoms? Or any
 ‘ person injured in his Liberty or Fortune, be-
 ‘ sides those who have been so unhappy as to fall
 ‘ under this Suspicion? Or, is this Occasion
 ‘ more extraordinary than when there was a
 ‘ publick Insurrection in the Kingdom? And
 ‘ when the persons concerned in it, were tried
 ‘ by the common and ordinary Courts of Jus-
 ‘ tice? And because your Lordships are vested
 ‘ with a Supreme Authority, and not tied up
 ‘ to the common Forms of law, can that be a
 ‘ Reason for your acting directly contrary to it?
 ‘ And to suppose your Lordships capable of do-
 ‘ ing so, was not, I must say, so becoming an
 ‘ Argument to have been offered upon this Oc-
 ‘ casion. And to have a Session, which opened
 ‘ with so mild, so gracious a Speech from the
 ‘ Throne, end in such an extraordinary Manner,
 ‘ must surely be very contrary to the Design and
 ‘ Intention of the Throne at that time; and is, I
 ‘ hope, so still; especially since no intervening
 ‘ Accidents have happened to ruffle the Quiet and
 ‘ Tranquillity of the Kingdom.

‘ *My LORDS,*

‘ The first extraordinary Bill, that, I believe
 ‘ ever passed in *England*, was that of the Earl of
 ‘ *Strafford*; and how much personal prejudice
 ‘ was in his prosecution, and how fatal that
 ‘ Bill proved in its Consequences, I need not
 ‘ mention, since the Royal Martyr himself has,
 ‘ in his dying Words, called it, An unjust Sen-
 ‘ tence, and imputed all his Misfortunes to it.
 ‘ And pray, my Lords, why was that Sentence
 ‘ unjust, but because it was not supported by
 ‘ law?—And, to the eternal Honour of
 ‘ this House be it said, That when the proofs
 ‘ upon his Trial were not found legal, they
 ‘ refused to find him Guilty. But when this ex-
 ‘ traordinary Method was taken, and the Tor-
 ‘ rent of the Times bore down their usual Justice,
 ‘ then the Flood-gates of all those Miseries were
 ‘ opened, which overwhelmed and sunk the Con-
 ‘ stitution: And of which, some of your Noble
 ‘ Predecessors had so strong and lively a Sense, as
 ‘ to declare in this very House, That they
 ‘ would be sooner torn in pieces, than come into
 ‘ such illegal proceedings; and so fell a Sacrifice
 ‘ to the love and laws of their Country.

‘ To which I shall only beg leave to add
 ‘ one Observation, that, I am sure, is but too
 ‘ well known to that Right Reverend Bench:
 ‘ ——— That of all the Prelates who advised his
 ‘ Majesty to the Passing of that Fatal Bill, not one
 ‘ of them escaped the Violence of those very Persons
 ‘ whom they endeavour’d to oblige by that Advice.
 ‘ These, my Lords, were the unhappy Effects
 ‘ and fatal Consequences of one extraordinary
 ‘ Bill: And what those of another may prove;
 ‘ the great Director of all Things only can fore-
 ‘ see!

‘ Many are the Arguments wick might be
 ‘ brought to shew the great Injustice, as well
 ‘ as Inconveniencies, of these Laws in particu-
 ‘ lar: But as *my* Liberty can be of no great
 ‘ Moment to the World, I shall only beseech
 ‘ your Lordships, not thro’ me to give a Wound
 ‘ to the Constitution, which, perhaps, may not
 ‘ so easily be cured. The great Characteristick
 ‘ which distinguishes *England* from the rest of
 ‘ the neighbouring Nations, is, the Excellency
 ‘ of our Laws, of which your Lordships are the
 ‘ great Guardians: And if you suffer those
 ‘ Laws to be broke in upon, and render *Life* or
 ‘ *Liberty* so precarious, as to be affected or taken
 ‘ away, by every idle Hearsay, *that* Excellency
 ‘ must soon disappear, and the best form of Go-
 ‘ vernment now upon Earth, consequently sink
 ‘ into Anarchy and Confusion.

‘ My L O R D S,

‘ The Words of my Bill are very severe, and
 ‘ do not bear the least Proportion to the Proofs
 ‘ which have been produced against me: And
 ‘ I humbly hope, That my past Sufferings will be
 ‘ looked upon as a sufficient Punishment; espe-
 ‘ cially since it is not pretended, that I have tran-
 ‘ gressed any Law yet in being. I propose no
 ‘ great Happiness in this Life, and would wil-
 ‘ lingly avoid as much Misery as I could: And
 ‘ must therefore humbly beseech your Lordships,
 ‘ to look upon me as a Stranger in your King-
 ‘ dom, and a Person (as I really am) inconsider-
 ‘ able in myself; and, consequently, incapable
 ‘ of doing the least Prejudice to any Govern-
 ‘ ment. For my Behaviour, I am willing to
 ‘ give the best Sureties that I am able: But if
 ‘ that be not approved of, I hope your Lord-
 ‘ ships will give me leave to retire to some other
 ‘ Part of the World, where I may enjoy my
 ‘ Poverty with Freedom. But, let my Fate be
 ‘ what it will, I shall ever pray for your Lord-
 ‘ ships particular Welfare, as well as the general
 ‘ Prosperity of the Kingdom.

‘ And so resign myself, with the utmost Hu-
 ‘ mility, to your Lordships great Clemency,
 ‘ Justice, and Compassion.

After which the House pass’d the Bill, which
 obtain’d the Royal Assent, and was as follows:

An Act to inflict Pains and Penalties on
George Kelly alias Johnson.

‘ **W**Hereas in the Years One thousand seven
 ‘ hundred and twenty one, and One thou-
 ‘ sand seven hundred and twenty two, a detestable
 ‘ and horrid Conspiracy was formed and carried
 ‘ on by divers Traitors for invading your Ma-
 ‘ jesty’s Kingdoms with foreign Forces, for raising
 ‘ an Insurrection and Rebellion against your Ma-

‘ jesty, for seizing the *Tower* and City of *Lon-*
 ‘ *don*, and for laying violent Hands upon your
 ‘ Majesty’s most sacred Person, and upon his
 ‘ Royal Highness the Prince of *Wales*, in order
 ‘ to subvert our present happy Establishment in
 ‘ Church and State, and to place a Popish Pre-
 ‘ tender on your Throne: And whereas for the
 ‘ better concealing and effecting the said Con-
 ‘ spiracy, divers treasonable Correspondences
 ‘ were, within the time aforesaid, carried on by
 ‘ Letters written in Cyphers, cant Words, and
 ‘ fictitious Names; which Conspiracy, had not
 ‘ Almighty God in his great Mercy disappointed
 ‘ the same, would have deprived your Majesty’s
 ‘ Kingdoms of the Enjoyment of their Religion,
 ‘ Laws and Liberties, involved them in Blood
 ‘ and Ruin, and subjected your people to the
 ‘ Bondage and Oppression of *Romish* Superstition
 ‘ and Arbitrary Power: For which execrable
 ‘ Treason *Christopher Layer* hath been indicted,
 ‘ tried, convicted, and attainted. And whereas
 ‘ *George Kelly* alias *Johnson* hath been a principal
 ‘ Actor in the said horrid and detestable Conspi-
 ‘ racy, by traitorously consulting and correspond-
 ‘ ing with divers Persons to procure a foreign
 ‘ Force to invade this Kingdom, and to raise an
 ‘ Insurrection and Rebellion against your Majesty
 ‘ within the same, with design to depose your
 ‘ Majesty, and place the Pretender on your
 ‘ Throne; for treasonable Practices in which
 ‘ Conspiracy the said *George Kelly* alias *Johnson*
 ‘ being arrested, and divers papers then found
 ‘ about him seized, in pursuance of a Warrant
 ‘ under the Hand and Seal of one of your Ma-
 ‘ jesty’s principal Secretaries of State, for seizing
 ‘ and apprehending him the said *George Kelly* alias
 ‘ *Johnson*, together with his papers, and the
 ‘ said *George Kelly* alias *Johnson* being in Cus-
 ‘ tody of a Messenger by virtue of the said
 ‘ Warrant, did, by Force and Violence, with
 ‘ a drawn Sword, make an Assault upon, and re-
 ‘ sist the said Messenger, with intent to destroy
 ‘ the said papers, and did burn the same: There-
 ‘ fore to manifest our just Abhorrence of so wick-
 ‘ ed and abominable Conspiracy, and our Zeal
 ‘ and tender Regard for the preservation of your
 ‘ Majesty’s person and Government, and of the
 ‘ protestant Succession in your Majesty’s Royal
 ‘ Family, the solid Foundation of our present
 ‘ Happiness and future Hopes; and to the end
 ‘ that no Conspirator may, by any Contrivance
 ‘ or practice whatsoever, escape punishment, and
 ‘ that all persons may by the Justice of Parlia-
 ‘ ment be for ever hereafter deterred from en-
 ‘ gaging in any traitorous Conspiracies or At-
 ‘ tempts, We your Majesty’s most dutiful and
 ‘ loyal Subjects, the Lords Spiritual and Tem-
 ‘ poral, and Commons in Parliament assembled,
 ‘ do humbly beseech your Majesty, that it may
 ‘ be enacted; and be it enacted by the King’s
 ‘ most excellent Majesty, by and with the Ad-
 ‘ vice and Consent of the Lords Spiritual and
 ‘ Temporal, and Commons in Parliament assem-
 ‘ bled, and by the Authority of the same, That
 ‘ the said *George Kelly* alias *Johnson* shall be de-
 ‘ tained and kept in close and safe Custody, with-
 ‘ out Bail or Mainprize, during the Pleasure of
 ‘ his Majesty, his Heirs and Successors, in any
 ‘ Goal or Prison within the Kingdom of *Great*
 ‘ *Britain*; to the Custody of the Goaler or
 ‘ Keeper whereof the said *George Kelly* alias
 ‘ *Johnson*

‘ *Johnson* shall from time to time be committed, in pursuance of this Act, by Warrant under the Hand and Seal of any Secretary of State of his Majesty, his Heirs or Successors: Which Warrant or Warrants any Secretary of State for the time being, is hereby authorized and empowered to make; and that the said *George Kelly* alias *Johnson* shall forfeit to his Majesty, all his Lands, Tenements, Hereditaments, Goods and Chattels whatsoever.

‘ And for the more sure detaining the said *George Kelly* alias *Johnson* in safe Custody, be it further enacted by the Authority aforesaid, That if the said *George Kelly* alias *Johnson* shall break the Goal or Prison to which he shall be so committed, or shall escape out of the Custody of the Person in whose Custody he shall be by virtue of such Commitment, that then the said *George Kelly* alias *Johnson*, and all and every person and persons whatsoever, who shall be aiding or assisting the said *George Kelly* alias *Johnson* in breaking such Goal, or Prison, or in making such Escape, as aforesaid, or who shall by Force take or rescue the said *George Kelly* alias *Johnson* out of such Custody, Goal, or Prison, during the Continuance of his Imprisonment by virtue of this Act, being thereof lawfully convicted, shall be judged guilty of Felony, and shall suffer Death as in Case of Felony, without Benefit of Clergy.’

In pursuance of this Act, *George Kelly* was continued prisoner in the *Tower of London*.

Mrcb 22. The Bill to inflict Pains and Penalties on *Francis* Lord Bishop of *Rocheſter* was brought into the House of Commons, to which the Bishop making no Defence, it pass’d that House *April* the 9th, and was sent up to the Lords; where the Bishop made his Defence by Counsel; who were *Sir Constantine Phipps*, and *Mr. Wynne*: *Sir Constantine Phipps* spake as follows:

My Lords,

BY the Appointment of this Honourable House I have the Honour to attend your Lordships, as Counsel for the Reverend Prelate, the unfortunate Prisoner at the Bar: And persuade myself it will not be difficult to defend his Lordship from the heavy *Pains* and *Penalties* of this Bill; since the Counsel for it confess that it is supported *only* by *circumstantial* Evidence.

Bills passing into Laws for taking away Mens Liberties and Estates by *Circumstances* only, are new. Convictions by Circumstances were never heard of in Ages past; and I hope will never be known in this, or any which is to come: And tho’ one of the Gentlemen said, that Circumstantial Evidence is sufficient at *This Time of Day*, I hope, the Law is the same at *This Time of Day*, as ever; and that the Lives and Fortunes of *English* Subjects will be as well protected and defended by *your Lordships*, as they were by *your Predecessors*.

The Securities which the Laws have provided for our Liberties and Estates, and the Happiness that we cannot be depriv’d of them but by full and legal Proof, are Advantages which were obtain’d at great Expence of Blood and Treasure, by your Lordships Noble Ancestors: And we doubt not but You will transmit them to Posterity, as

entire as they have been continued down to your Lordships.

The Law is the Rule of Mens Actions; and Persons accused as Criminals for Facts committed by them, ought to be tried by the laws that were in Force *at the Time* of the Facts committed, *secundum Allegata & Probata*. But laws made *ex post-Facto*, to punish Men for Facts which were not Offences when they were committed, render all things that are dear to *Englishmen* precarious; and for that Reason have been as often *condemn’d*, as they have been *made*.

The Charge against the Bishop and *Mr. Kelly* are so interwoven, that I beg you will excuse me, if, in my Vindication of him, I urge any thing, which I offer’d in behalf of *Mr. Kelly*, when I had the Honour to attend your Lordships as his Counsel: But I shall take care to repeat no more than is necessary.

My Lords,

I am very far from denying, or contesting, the Power of Parliaments as to Bills of *Attainder*; but I hope I may have leave to observe, that such a Power hath been very *rarely exerted*, unless upon *extraordinary* Occasions, and in Cases of *Necessity*. I hope too I may be permitted to shew, that the Case of my Lord Bishop is not within either of those Reasons.

He never withdrew himself out of the Kingdom; never fled from Justice, but was always amenable and forth-coming, ready to be try’d according to the usual and ordinary Methods of Justice. And the *Attainders* of *Mortimer*, and the Earl of *Arundel*, in *Edward III*’s Time, of *Sir Thomas Haxey* in *Richard II*’s Time, and others afterwards, were revers’d, because the Persons accused were forth-coming, and might have been brought to a Trial according to the usual Course of Justice. Wherefore I hope the same Reasons which prevail’d with those Parliaments to reverse those *Attainders*, will have Weight enough with your Lordships to prevent this Bill’s passing into a Law.

The Parliament, at the Restoration, did not think fit to interpose their legislative Authority even in the Case of the *Regicides*; but left such of them, as were alive, and forth-coming, to the ordinary Methods of Justice, and gave them a *fair Trial* for their Lives and Estates. The only remarkable Bill of *Attainder*, which hath been in some Ages (except of such as were in *actual Rebellion*, or fled from Justice) was that of *Sir John Fenwick*. I own, I mention’d this Case on behalf of *Mr. Kelly*; and it being a Case so material for my Lord Bishop’s Defence, I cannot in Justice to his Lordship omit making some Observations upon it: From which it will appear, that the *Reasons* given for *passing* that Bill are the strongest Arguments in the World *against* this.

The Preamble of *Sir John Fenwick*’s *Attainder* shew’d the Necessity of it: For the Preamble sets forth,—That *Sir John Fenwick* was, upon the Oaths of *George Porter*, and *Cardel Goodman*, indicted of High-Treason: That he obtain’d his Majesty’s Favour to have his Trial delay’d from time to time, upon his repeated promises of making an ingenuous and full Confession: That several times were appointed for his Trial; at one of which he had been actually try’d, had it

not

not been for the Expectation of the Discoveries so often promised: That since the times appointed for his Trial, *Cardel Goodman*, one of the Witnesses, was withdrawn, so that he could not be had to give Evidence. And it appeared upon the Trial, that *Porter* had been tampered with, and had 300 *l.* paid him, and 200 *l.* more promised him, to go beyond Sea. This made the presumption very strong, that *Goodman* was sent away by some of Sir *John's* Friends. So that there was an *Indictment* against him; two Witnesses were sworn upon it, and proved the Treason; and he promised from time to time to make Discoveries.

Hath my Lord Bishop been indicted? Hath there been any Oath made against him? Did he ever impose upon his Majesty or the Ministry, by promising to make any Discovery? Hath he sent away any one that was Witness against him? Since these Circumstances were thought necessary by the parliament at that Time to induce them to pass that Act; and the present Case is not attended with any one of these Circumstances; this, we humbly conceive, is a Reason, why your Lordships should not pass this Bill.

The greater the Offence is of which any person is accused, the plainer and clearer the Proof ought to be: And my Lord Coke in his 4th Institute, page 37. (which I mentioned the other Day) speaking of the Attainder of *Cromwell Earl of Essex* by Parliament, says; 'The more high and absolute the Jurisdiction of the Court is, the more just and honourable it ought to be in its proceedings, to give Example of Justice to inferior Courts.'

The Offence charg'd on my Lord Bishop is of the highest Nature; and this Jurisdiction the most high and absolute: Therefore the proceedings, without doubt, ought to be the most Just and Honourable.

The Punishment inflicted by this Bill, is the greatest that can be, next to Death itself: For what can be worse, than for a Reverend Prelate of such advanced Years, and of so infirm a Body, to be banished into another Country, and be forced to seek his Bread in desolate Places?

The punishment is still much severer to his Lordship, who hath saved nothing to support himself: For his eminent Hospitality, and his extensive Charity, tho' they have fitted and prepared him to live in another World, yet have disabled him from subsisting in another Country: There he will himself want that Charity, which he so liberally bestowed upon others; and must beg upon his Crutches, or starve.

As to the Evidence offered against his Lordship, I humbly apprehend the Proof would not be sufficient at Law to support an Indictment for the lowest Misdemeanor. And will your Lordships, in your great Wisdom and Justice, convict a Lord of Parliament, a Member of your own Body, and subject him to such severe Punishment, upon Evidence that at law would not be sufficient to convict the meanest Subject of the most minute Trespas?

This, I humbly apprehend, will appear to be the Case, when the Charge against my Lord Bishop, and the Evidence to support it, have been considered.

The Bill recites, 'That there was a detestable and horrid Conspiracy for invading his Majesty's Kingdoms with foreign Forces; for raising a Rebellion; for seizing the Tower and City of

London: and for laying violent Hands upon his Majesty's most sacred Person, and upon his Royal Highness.'

As to the seizing the Tower, and the City, and laying violent Hands on the King and Prince; neither of these Crimes is charged upon my Lord Bishop. But the Charge against his Lordship is, that he hath been deeply concerned in forming, directing, and carrying on, the wicked and detestable Conspiracy, by traitorously consulting and corresponding with divers Persons to raise an Insurrection within this Realm, and to procure foreign Forces to invade this Kingdom; and intending to raise a Rebellion, at the time of the Elections; and when the King went to Hanover; and at the breaking up of the Camp.

As to the first, viz. The sending for foreign Forces; the Bishop is not charged with being privy to any one of the three Memorials: For *Neynoe* says, he wrote them, and they were dictated to him by *Kelly* and *Watson*, whom he supposed to be the Earl *Marishal*.

As to the Charge of raising a Rebellion at the time of the Elections, 'tis founded on a letter, signed 1378, and directed to Mr. *Jackson*; which, the Report says, the Committee have good Reason to believe was from the Bishop of *Rocheſter* to the Pretender.

The letter says, 'Notwithstanding this Opportunity is elapsed, I agree with you, another may offer before the end of the Year.' And the Observation made upon it is, that it was wrote the 20th of April, when most of the Elections were over: So consequently the Opportunity was elapsed.

The letter of the 20th of April is supposed to be wrote to the Pretender at Rome. It supposeth a letter to the Pretender had been wrote, taking notice that an Opportunity was elapsed at the Elections; and that an Answer had been made to that letter by the Pretender, that another may offer before the end of the Year: which must be at least two Months before the Date of the letter; and that was before the Elections were begun.

As for raising a Rebellion, when the King went to Hanover; it is infer'd from dark Passages in letters of the 20th of May 1722, N. S. 9th of May O. S. and 10th of May O. S. which are said to have passed between *Dillon*, or his Secretary, and *Kelly*. And by comparing those Passages, you will observe what Foundation there is for such a Charge.

In the letter of the 9th of May O. S. 20th N. S. *Quitwell*, supposed to be *Dillon's* Secretary writes to *Baker*, supposed to be *Kelly*, 'That if this Post hath not brought an Addition of Three to the Six, formerly come from *Repney*, it is easy for Mrs. *Jones* to see, what is still wanting for the purchase she intends to make.'

In the letter of the 10th of May O. S. *Hatfield*, who is supposed to be *Kelly*, writes to *Howell*, who is supposed to be *Dillon's* Secretary, 'That the King intends to set out early next Month; if they could then compass Barrels enough, the sooner the Wine comes, the better; *Jones* promises to be a good Customer.'

From hence, and from what *Pancier* said *Skeen* told him, 'twas insinuated, that great foreign Forces were to be brought in for the Pretender; that great Sums of Money were contributed for that purpose; and that those Sums were under the Management of the Bishop of *Rocheſter*; and all

this, because *Quitwell* tells *Baker*, if the last Post did not bring an Addition of three to six, Mrs. *Jones* may see what is still wanting for the purchase she intends to make.

Now suppose, by *Quitwell* and *Howell*, are meant *Dillon's* Secretary; and by *Baker* and *Hatfield*, *Kelly* is intended; and suppose, that by the Addition of three to six, is meant a *Remittance of Money*; by *Wine* are meant *Soldiers*; and by Mrs. *Jones* is meant my Lord Bishop of *Rochester*: Yet can what *Dillon's* Secretary writes to *Kelly*, or what *Kelly* writes to *Dillon's* Secretary, affect the Bishop of *Rochester*? If it can, it is in the power of *any two Men*, one residing *here*, and the other *beyond Sea*, to take away the life of *any Man* breathing. But suppose we can make it appear, as most certainly we shall, that by Mrs. *Jones*, cannot be meant the Bishop; then what becomes of this part of the Charge?

The next thing to support this Charge, is, a passage in an Extract of a letter dated the first of *May*, written from *Quitwell* to *James Baker*; in which 'tis said, that 'Mrs. *Jones* cannot take a better Time to have *himself* fitted with an easy Saddle, &c.' If an Extract of a letter can be of any Weight, and the Construction put upon it is to be allow'd; then the *Bishop* is turn'd *General*, or at least a *Colonel*. For by *Neynoe's* Information and *Plunket's* Cypher, *Saddlers*, and *Saddles*, are *Irish Soldiers*, and *Regiments*: so the Bishop is represented as undertaking to raise a Regiment of *Irish Soldiers*, and to mount on Horseback himself to command them.

As to the third thing charged, which was to raise a Rebellion at the *Breaking up of the Camp*; there is no *Pretence of Evidence*. So that, upon the whole, there does not appear to be any pretence for that part of the *Preamble* to the Bill, which chargeth the Bishop with having been *deeply concern'd in forming, directing, and carrying on the Conspiracy*.

The next thing charged against his Lordship, is, that he was *concern'd in a Correspondence Abroad, and some Transactions at Home for bringing in the Pretender*.

Now as to this, I would observe, that there is not *one Witness* against his Lordship of any criminal Act; that tho' *all his Papers have been seiz'd*, yet there appears not any *Letter*, or *Paper*, under *his Hand*, of a criminal Nature; nor any letter *prov'd* to be *written* or *receiv'd* by him, which is criminal: Neither is there any Charge of any *Meeting* or *Consultation* with any Persons for carrying on this Conspiracy. Indeed he is mention'd as a Member of a Club, call'd the *Burford-Club*, of which the Earl of *Orrery* was said to be Chairman; which Club (as I apprehend) was never heard of 'till *Layer's* Trial. This Accusation I know to be *false*; and never met with *any one* that *believed* it: Therefore shall not trouble your Lordships with any farther Observations upon it, than just to take notice, that tho' he who made the list hath joined me with persons of great Quality and Honour; yet I presume to say, that my Profession in the Law, as well as my Religion, has given me such a Sense of my Duty, that no persons whatsoever are great enough to draw me into a plot against his Majesty and the Government.

I beg leave to observe that this Charge is founded, partly upon the *Hearsay* of *Pancier* and *Ney-*

noe, and partly upon the three letters dated the 20th of *April* 1722.

As to the *Hearsay-Evidence*; *Pancier* deposes, that *Skeen* told him, that the Bishop of *Rochester* and Lord *North* and *Grey* had the principal Direction of the Conspiracy; that 200000 l. had been raised by Contribution, and was put into the Management of the Bishop; and that it was call'd the *Military Chest*. Now can this be *Evidence* in an *Indictment*, or *Action*, for the most *minute Trespass*, or in *any Case*? Can it be imagin'd, that *so much money* could be raised among the *Jacobites*? or that such a Sum could be *raised*, and not *one Contributor discovered*? Can it be imagin'd that such a Sum should be *entrusted* with *one Man*? Or that *my Lord Bishop* would be *that Man*, who would have the *Care* and *Trouble*, and run the *Hazard*, of such a Sum? To which it may be added, that *Skeen*, the *only Person living*, who by *any Person living* is said to have said this, is now in Custody, ready to be examin'd upon *Oath*, and *denies every Word* of it.

As to *Neynoe's* Examinations, he speaks only what *Kelly* told him; and can what *Kelly* told him affect the *Bishop*? Besides, none of his Examinations are upon *Oath*, or so much as sign'd by him; (whereas the Examination of *Goodman*, that was given in Evidence against Sir *John Fenwick*, was upon *Oath*;) all of them appear to be taken *after he was in Custody*, under great *Apprehensions* and *Terrors*; nay, it appears that one of them was taken *the Day before he drown'd himself*: And moreover, that only *one of them* was read, which was extract'd out of *three* Examinations, mark'd *A, B, C*, and said to contain the Substance. We desire *all the Three* Examinations may be produced, and read; and then it will appear, whether that one contains the whole Substance; or whether there be not *some Things* very material *omitted*: And it will likewise appear, that there are such *Inconsistencies* in them, as will take off their Credit. For in one place he says, he saw *Kelly* make use of the Cyphers; and that *Kelly* own'd *with great Freedom* they were for carrying on a Correspondence with the Pretender and his Agents: and yet in another place he says, That *Kelly* never *open'd himself* as to the plot now on foot; that indeed he had seen several letters from *Paris* and other places, but they contain'd *nothing material*. So that it must be supposed, either that there was no Treasonable Correspondence carry'd on by *Kelly*; or that *Neynoe* was not so great a Confident of *Kelly's* as he pretended.

Neynoe says, he drew *three* Memorials; and the last was in *December* 1721, to the *Regent* for five thousand Men; that all the Memorials were drawn by the Order of, and dictat'd by, one *Henry Watson*, whom he did not know, but took to be the late *Earl Marishal*; that *Henry Watson*, whom he took to be *Earl Marishal*, was in *England* all last Spring, and that he lay with him several Nights.

'Tis very extraordinary, that the *Earl Marishal* should trust a mere *Stranger* to draw three Memorials, and one of them for *five thousand Men* to invade the Kingdom; and that afterwards he should lie with him several Nights, and not know who he was.

In one of his Examinations he says, the *Heads* of the Memorials were given *him* by *Kelly* and *Watson*; in another he says, they were *all drawn* by

by *Watson*: And 'tis observable, that the *rough Draught*, or a *Copy* of any one of them, is not produced; which certainly, he that intended to turn Evidence, and so soon after became an Informer, would have done, if there had been any such.

The Committee are pleas'd in their Report, *Pag. 38.* to take Notice, that *Neynoe said, Kelly told him*, that a *Lord of the Council* gave the Bishop Notice of his being to be taken up, some Days before it happen'd; and are pleas'd likewise to say, that he afterwards confess'd, (as they were inform'd) that in that, and other his Examinations, he endeavour'd all he could to *create Diffidence and Suspicions among his Majesty's Servants*. And what Credit can be given, after this, to one, who had so *little Regard to Truth*, as to say *any Thing*, tho' never so *false*; to so *wicked a Purpose*, as to create a Misunderstanding among his Majesty's Servants? especially if one considers how probable it is, that the *Remorse he had upon his Conscience*, occasion'd by the Evidence he had given, and his Dread of the *Shame* of being *forc'd*, when he came upon his *Oath*, to deny what he had *said* when he was *not upon his Oath*, were the Reasons of his making away with himself. And we shall call some Witnesses, who will give a full Account of him.

We shall call one, who but lately depos'd before your Lordships, that *Neynoe* told him, he had *said* several Things to a *great Man*, which he neither would nor could *swear* without being perjur'd.

I most humbly beg your Lordships Pardon, for being so particular in a Matter which I had so lately an Occasion to mention: But this is the Hinge upon which the Weight of the whole Charge against the Bishop turns, and therefore I doubt not but your Lordships will excuse me.

The next Charge against my Lord Bishop ariseth from *three Letters*, dated the 20th of *April*, 1722. One signed *J. Jones*, innuendo the Bishop; to *Chivers*, innuendo *Dillon*: The second signed *Illington*, innuendo the Bishop; to *Musgrave*, innuendo *Lord Marr*: The third to *Jackson*, innuendo the Pretender; and signed 1378, innuendo the Bishop. These letters are said to be wrote by *Kelly*, and dictated by the Bishop.

Now as to these letters, I beg leave to observe there is *nothing Criminal* appears to be in any of one them. But then 'tis objected, that two of the Persons are attainted of *Treason*, and are Agents of the *Pretender*; and 'tis High-Treason to write to them: And the third is the *Pretender himself*.

Supposing *Chivers* were *Dillon*, and *Musgrave* were *Marr*; yet writing to them in *private* Matters, not *criminal* in themselves, nor relating to the Pretender, is not *Treason*.

But how comes the *Lord Marr* to be an Agent for the Pretender? He quitted the Pretender's Service many Years before; and from the Time of quitting his Service, till after the Date of those letters, had a Pension from his present Majesty. I believe the Counsel for the Bill, and all Mankind, will be at a Loss to tell by what Law writing to one, who hath quitted the Pretender's Service so many Years, and who hath subsisted ever since by a Pension from his Majesty, can be an Offence.

Indeed, if it be proved that *Jackson* is the Pretender, I admit Writing to him is *Treason*:

But if it be proved (as it will beyond all Dispute) that by *Jackson* neither *is* nor *can be* meant the Pretender; and that my Lord Bishop neither *did* nor *could* write or dictate any one of these letters; then the whole Charge against my Lord Bishop, founded upon those letters, falls to the Ground.

The next Thing I would observe, as to those letters, is from the Report, *Page 42.* where the Committee are pleas'd to observe, that the letter to *Chivers* is, great Part of it, out of Cypher; which seems to allow that the other Part was *in* Cypher. Therefore it was very necessary, I think, to have *printed* the letters in the *Cyphers* and *Characters*, in which they were *written*; and also *as they are decypher'd*: Then the Persons accus'd would have had an Opportunity of employing Men skill'd that way, to see if they were *rightly* decypher'd. This was done in *Colman's Case*.

The *French Papers*, in the *Appendix*, are printed first in that language, and then as they are translated; which was not so necessary as Printing the letters in *Cypher* in this Case: Because almost every one understands *French* enough to tell, at first Sight, whether a *French* letter be rightly translated; but 'tis impossible for a Man of the great Skill in the Art of decyphering, to tell, upon a sudden at the Bar, whether a letter be rightly decypher'd: So that all a Man hath in the World, is to depend upon the Skill and Integrity of the Decyphers. Nor are they infallible; for the Witnesses who decypher'd the letters, admit, that there are some Words in them which they could not decypher; and those Words may give a Turn to the whole Sense of the letters. Nay, *Mr. Willes* said, that one of the Numbers he could not decypher stood for *two Words*: He was likewise pleas'd to say, it was *impossible* that the Number he could not decypher could make an Alteration in the Sense; which is very extraordinary for a Man to *swear*: But if *one* Word could not make an Alteration in the Sense, surely *two* might.

The writing these letters is charged upon *Kelly*; which cannot affect my Lord Bishop, unless they were dictated by him, or written by his Direction, or Privity; of which there is no *Pretence* of Proof. And therefore I shall next offer to your Lordships some Observations upon the Arguments and Circumstances alleged to support this Charge.

It is observed in the *Report*, that the Person who wrote these letters, speaks of himself as being in *ill Health*, in *great Pain*, under some sad and *melancholy Circumstances*, which he expects will soon blow over; and from thence 'tis infer'd it must be the Bishop, because his *Wife* was then ill, and died in six Days after; and that he himself was at that Time afflicted with the *Gout*. One of the Gentlemen, who was Counsel for the the Bill, said, These were Circumstances, that did not happen to *any two Men* in the World at that Time: And give me leave to instance one other Circumstance, which, I believe, did not happen to any one Man in the World; which is, *writing a Letter of Politicks*, when *his Wife lay a Dying*.

Why these Circumstances must necessarily intend the *Bishop*, more than *any other* Person that was *sick*, and under *Misfortunes*, I cannot apprehend. That *ill Health* must necessarily imply the *Gout*; and that it must be intended; that *no Man* had

had the Gout *the 20th of April*, but the *Bishop*; that *melancholy Circumstances* necessarily imply a *Man's Wife being sick or dying*; and that *no Man* had a *Wife sick or dying*, but the *Bishop*; is, in my humble Apprehension, a new way of arguing.

Another way of proving these letters to be wrote by the Bishop, is by the Names and Figures subscribed. For one letter is subscribed, *T. Jones*, and another letter is subscribed, *T. Illington*: And the Report observes, that wherever *Jones* and *Illington* are named, the Bishop is to be understood. But *why* the Bishop is to be understood by those Names, *non constat*; nor is there any *Pretence of Evidence*. And if we shew (as we infallibly shall) that by those Names the Bishop *could not be meant*, and that he *could not write*, or *dictate those Letters*; then the *Inferences* against the Bishop *from those Letters*, and from the *subsequent Correspondence* under those Names, become of no Force or Weight.

A Third letter is subscrib'd, 1378; which the *Decyphers* say denotes a Person, whose proper Name begins with an *R*. And the Report is pleas'd to infer, that *it must be* the Bishop of *Rochester*. Now why 1378 denotes a Person, whose Name begins with an *R*, the *Decyphers* only know: And we are as much at a Loss to know, why by a Name beginning with *R*, must be intended the Bishop of *Rochester*. If that Number appear'd to denote a Name beginning with *R*, and if no Name began with that letter but the Bishop of *Rochester's*; there would then, I confess, be some Weight in the Observation.

That *Jones* and *Illington* are not the *same Person*, appears from the letter of the 10th of *May*, from *Hatfield* to *Howel*; where, within the Compass of *two Lines*, they are distinguished. For in one Line he saith, *Jones* promiseth to be a good Customer; and in the next Line but one he saith, *Illington* is gone in the Country; which plainly shews them to be distinct Persons. Besides, in the Papers mention'd concerning the Duke of *Norfolk*, his Grace is several times denoted by the Name of *Jones*: In *Layer's* list, *Sir William Ellis* is described by that Name; and in *Plunket's* list *Jones* stands for the *Germans*.

The Evidence to prove *Jones* and *Illington* to denote the Bishop, and the Intimacy between the Bishop and *Kelly*, is the *Present* of a *Dog* called *Harlequin*.

The Evidence stands thus. — *Rep. 40. E. 35.*
 ' *Hatfield*, who is supposed to be *Kelly*, in his
 ' letter of the 30th of *April* to *Howel*, who is
 ' supposed to be *Dillon's* Secretary, writes thus.
 ' Mrs. *Jones* died last Week; pray present my
 ' Respects to Mr. *Musgrave* (meaning *Marr*)
 ' and let him know, I received the Present sent
 ' by the young lady; that he had a leg broken
 ' in the Journey: However I will take all the
 ' Care imaginable of him; and inform Mr. *Jones*
 ' of it, to whom I know any thing from that
 ' Quarter will be very acceptable.'

Hatfield, in his letter to *Musgrave* of the 7th of *May* 1722, says; ' Mrs. *Illington* is in great
 ' Tribulation for poor *Harlequin*: However his
 ' Obligations to the lady are as great, as if he
 ' had come safe.'

From these letters 'tis inferr'd, that by *Jones* and *Illington* the Bishop is meant; and that a young lady sent the *Dog* to *Kelly* as a Present for the Bishop: And 'tis urged, that Mrs. *Barnes* in her Examination of the 23d of *May*, says, The *Dog*

was not design'd for her, but for the Bishop of *Rochester*: That *Kelly* told her, the *Dog* was for the Bishop; and that *Kelly* promised to get the *Dog* for her from the Bishop, in case it did not recover its lameness.

It is admitted, that Mr. *Kelly* brought such a *Dog* from *France*; that Mrs. *Barnes* had it; and that its leg was broken: But that it was design'd for the Bishop, or that the Bishop ever had, or saw it, there is no *Pretence of Proof*; and my lord Bishop utterly denies it; and Mr. *Kelly* hath solemnly deny'd it to your lordships: And instead of its being a Present from a young lady to the Bishop, Mr. *Kelly* says he bought it of a Surgeon at *Paris*, to give it to Mrs. *Barnes*.

There is one Expression in the letter of the 7th of *May*, which is remarkable; and, in my humble Opinion, enervates and destroys the Force of all those letters relating to the *Dog*: For it was written four or five Days after the *Bishop's Lady* was bury'd; and it says, ' Mrs. *Illington* is in great Tribulation for poor *Harlequin*.' Mr. *Kelly* was supposed to write that letter, and was supposed to be a Friend of the Bishop's; and could a *Friend*, could any Man of *Common Sense*, be guilty of such a foolish and ridiculous Expression? Could any Man say of one of my lord Bishop's Character, who was in the utmost Affliction for his Lady, that he was in great Tribulation for the breaking of a *Dog's Leg*? 'Tis evident, he who wrote that letter, did not know the Bishop's melancholy Circumstances: 'Tis likewise well known, that the Bishop never loved a *Dog*, nor ever had one.

The next Method of proving Letters upon the Bishop, is by *Similitude and Comparison of Hands*; not by comparing any Paper written by him with any other Writing; but by producing a letter supposed to be written by Mr. *Kelly* in *August*, and by proving that the three Letters written in *April*, were open'd and copy'd, and sent forward; and that those Letters were of the same Hand with that produced.

It was to be hoped, that, since Mr. *Sidney's* Case, the Evidence by *Similitude of Hands* in criminal Prosecutions would never have been offer'd: He was convicted upon such Evidence, and for that Reason his Attainder was revers'd in Parliament. And therefore, I humbly hope your lordships will not in your Legislative Capacity admit that to be Evidence in this Case, which in the same Capacity you were pleas'd to condemn in Mr. *Sidney's*.

In 1695, *Crosby* was indicted for writing treasonable letters; and the Evidence was *Similitude of Hands*: Which Evidence was disallowed by the Chief Justice *Holt*, and *Crosby* was acquitted.

In *Francia's* Case, my lord Chief Baron *Bury* declared *Similitude of Hands* to be no Evidence: And if it was not admitted in those Cases, where Papers, were produced, and proved to be of their own Hand-writing, and the Papers with which they were charged were produced, and compared with those other Papers; we presume, your lordships will not allow it in this Case, where it is carry'd farther than ever it was attempted before.

The Proof, as to this Point, stands thus. — Three Clerks of the *Post-Office* swear, that the 20th of *April* 1720. these three letters were open'd; that they took Copies of them, and seal'd them up again, and sent them forward; that

that *four Months* after, another Letter came to the Office, which was stopp'd: That is produc'd; and they all swear, they believe the *three Letters* were the *same Hand-writing* with the Letter produc'd. Now that Men, who never saw a Hand but once, and thro' whose Hands *so many* letters pass in a Month, should be able to swear, that three letters, which were sent in *April, 1720*, were of the same Hand-writing with a letter which was stopp'd *four Months* after, is strange and incredible.

I beg leave farther to observe, that the Clerks of the Post-Office own they did not compare the Copies of the three letters with the Originals. And was ever a Copy allowed to be read, unless the Person who produc'd it swore that he compared it with the Original, and that 'twas a true Copy?

It is remarkable, that *Clark*, one of the Post-Office, said, It was impossible to write a Hand, that had any Resemblance to those letters; but yet, he said, the Figures bore a Similitude to the Hand-writing: So that one Hand cannot be like another; but Figures may be like a Hand-writing.

It is also observable, that the letter produc'd is proved to be *Kelly's* Hand-writing, only by *Hutchins* the Messenger; who says he had him in his Custody a Week, and saw him write several letters; and by *Malone*, who proves Mr. *Kelly's* Hand by a Superscription in *French*, and yet owns he cannot read *French*: Whereas, we shall prove by three positive Witnesses, that this is not his Hand. Besides, they might have produced the letter which he wrote to my Lord *Townshend*, which is admitted to be his Hand.

We shall likewise prove by several Witnesses, That at the Time when the three letters are said to be written, the Bishop was at *Bromley*, and so lame with the Gout, that he could not stir Hand or Foot; that his Lady was dying; that no Person was admitted to him, but two or three Servants; and that Mr. *Kelly* was not at *Bromley* at that time, nor for three or four Months before, or after. And therefore 'tis impossible those letters should be written, or dictated, by the Bishop.

The Evidence of *Wood* the Coachman, confirms this. For he swore, that he never saw Mr. *Kelly*, till he was carry'd to see him in the Tower; and that *Kelly* was not at *Bromley*; that no Stranger was at *Bromley* from the 12th of *April* till the 26th, when the Bishop's Lady died; and that he must have known it, if there had; that the Bishop never sent the Coach for *Kelly*, or any other Person in *Berry-street*, or any Place near *Pall-Mall*. So that by this, the Examinations of *Elizabeth Levett* and *Neynoe* are quite destroyed.

But 'tis objected, that a Man might put his Horse at an Inn, and come to see the Bishop, and *Wood* not know it. Can it be imagined, that *Kelly*, who is supposed to be so particular a Friend of the Bishop's, would leave his Horse at an Inn? But we shall examine other Witnesses to this.

It was objected, that on the 10th of *June* the Bells rang, and the Servants had *Roses*. But it appears, most of them were red *Roses*: And if it should be criminal to ring the Bells on the 10th of *June*, we shall shew that the Bishop knew nothing of the Ringing of the Bells, or of the *Roses*.

In the Report, Page 50. the Committee of the Commons are pleased to take Notice; "That

" on the 11th of *June*, *Kelly* sends his Friends at *Paris* an Account of his late Misfortunes; " and after complaining of the Neglect in not " bailing him out sooner, says, your Old " Friend *Rig*, indeed, offer'd all that could be " expected from the poor Man;" and infer, " That by *Rig* is meant the bishop of *Ro-* " *chester*.

Can it be imagined, that *Kelly* would call the bishop *Gerrard's* old Friend; who, 'tis not pretended, ever knew him, or saw him? and if poor Man be taken by way of Contempt; can it be imagined that Mr. *Kelly*, a Gentleman of that good Sense and Breeding, would use such an Expression of my lord bishop? If these Words are taken in the literal Sense, 'tis as improbable; for the bishop was not taken for a poor Man: Besides, how could he, who had 200,000*l.* Contribution-Money, and had the Command of the *Military Chest*, be said to be poor? And I dare say, there is nobody but believes, that if my lord bishop would have intermeddled on Mr. *Kelly's* behalf, he had Interest enough to procure whatever bail *Kelly* wanted: And therefore I apprehend, that *Rig* cannot be intended to be the bishop.

Indeed, no Credit can be given to *Cant-Names*; for the same Names are us'd for several Persons: As *Laws* in *Plunket's* Cypher stands for *Marr*; and in the Cypher found on *Dennis Kelly*, it signifies Mr. *Cesar*. *Hawksby* in *Plunket's* Cypher, stands for King *George*: And in the Report 62, there are Compliments from the Pretender and his Spouse to *Hawksby*; which, I presume, they did not mean for his Majesty. *Jones* is used many times for the Duke of *Norfolk*. It is used for Sir *William Ellis*; and it is also used for the *Germans*; as I before observ'd.

That *Jackson* cannot mean the Pretender, is plain. App. E. 30. A Postscript in the letter from *Quitwell* to *Vernon* says, " Mr. *Chivers* advises, that the Money you mention, in *Clinton's* " Hands, should be equally divided between " *Medley* (meaning the late Duke of *Ormond*) and " *Jackson*, meaning the Pretender." Now would any one devoted to the Pretender's Interest, put *Ormond* before the Pretender? *Jackson* is put for the Pretender only in *Plunket's* List; and yet 'tis observable, that *Plunket* in all his Correspondence never calls him *Jackson*, but *Joseph*, or *Jephson*: And in the voluminous Correspondence charged on *Kelly*, he is not once called *Jackson*; but the usual Names are *Jephson* and *Joseph*.

As for the letter to *Dubois*, it seem'd at first to be a letter written from *France* TO the bishop, by the Name of *Dubois*; and after a Month's time they find it to be a letter written BY the bishop. If so; Writing a letter, and not sending it, can be no Offence. But how comes the bishop to keep that letter seal'd, which he had written seven Months before? The Writer of that letter owns, he had receiv'd one from *Dubois* two Months before, by Mr. *Johnson*; which was the Name *Kelly* went by: And 'tis very strange, that the bishop should be so weak, as to mention the Name of the very Person, who, 'tis said, us'd to write his letters, and by whom he was suppos'd to carry on his Correspondence. If it be presum'd that He wrote this letter; it must also be presum'd, he was out of his Senses when he did it.

That letter was not signed, and was dated the 16th of *Dec.* but no Year; tho' they have put the Year 1721 to it. For a Month together they never thought the letter to *Dubois* to be the bishop's Hand; tho' they had several of his letters. As to the Observation made by one of the Gentlemen, that the letter to *Dubois* was sealed by a *particular Seal*, and not the Seal with which he seal'd such letters, as He intended all the World should see; that Gentleman would do well to let us know, *what* letters were written by the bishop, which he intended all the World should see.

That *so many* letters were written before 1712, and *so few since*, was occasioned by his lordship's great Correspondence about Matters of Learning at that Time, and his being from that Time often afflicted with the *Gout*, so that he could not write many letters, and consequently receiv'd but few. Besides, He was made bishop in 1713, and Dean of *Westminster*; so had not Time to write much himself, but kept a *Secretary*.

As the Matters before mention'd to be charg'd against my lord bishop, arose from letters supposed to be written by him; I shall next consider the Charge against Him, which arises from letters supposed to be written to Him.

There are *Two Letters* mention'd in the Report as written to Him; one of the 11th by *Motfield*, interpreted to be lord *Marr*, wrote to *Illington*; the other of the 25th of *July* from *Digby*, interpreted *Dillon*, to Mrs. *Weston*.

Now I would observe, That it is not pretended, that either of those letters was ever receiv'd by the bishop; so consequently must be *intercepted*: Therefore it would have been proper, to have produced the Letters, and to have prov'd the Hands.

As to the letter from *Motfield*, 'tis only a *Compliment of Condolence*: And 'tis infer'd that it *must be the Bishop*, because his *Lady died* a little before. The letter says, "We must submit with Resignation, to what the just and great God thinks fit to order; but you know such Things so much better than I do, that I will not trouble you with saying any more upon it." From these last Words it is infer'd, That this letter was written to a *Clergyman*, and consequently the *Bishop*.

What Weight this way of Reasoning will have with your lordships in *criminal Prosecutions*, is humbly submitted: But it must be observ'd, That this letter is said to be an *Answer* to the letter, said to be written the 20th of *April* to *Musgrave*. And as we have shew'd, that it was impossible the bishop should write or dictate either of the letters of the 20th of *April*, the *Answer* must fall with the letter. But from hence the Observation is natural, and undeniably true; that if *Jones*, who wrote the letter to *Musgrave* of the 20th of *April*, could not be the *Bishop*; and *Illington*, to whom *Motfield* wrote, be the same as *Jones*; then neither *Jones* nor *Illington* can denote the *Bishop*.

As to the letter from *Digby* to Mrs. *Weston*, who is interpreted the bishop; it was written the 25th of *July*, *N. S.* wherein *Digby* says, "I cannot on any reasonable Grounds complain of your Silence, because I am inform'd of the Situation of your Health, and the Concern your Family are in, by Bankrupts, and Law-Suits."

It must be observ'd, that on the 7th of *July* O. S. *G. W.* in his letter to *Digby* says, "I saw Mrs. *Weston* yesterday; she never was better in her Life than now." It is strange, that *Digby* the Week following should take Notice of the ill Situation of Mrs. *Weston's* Health. 'Tis plain both these letters can't be Genuine, and therefore no Credit can be given to such a Correspondence.

One Way of fixing the intercepted Correspondence, and the *Cant-Names* mentioned therein, upon the bishop, is, by the *Coincidence of Times*, and other *Circumstances*; as of his lordship being in *Town*, and out of *Town*: And there are several Mistakes in them. For in *Hatfield's* letter to *Musgrave* of the 7th of *May*, he says, Mr. *Jones* is come to *Town* only for a Day: If that be to be understood of the bishop, it is not true; for he came to *Town* the 5th of *May*, and did not go out of *Town* till the 10th.

In the letter from *I. H.* to *Dixwell*, of the 18th of *June*, 'tis said, 'Mr. *H. Rig*, and *Rep.* are I hear in the Country.' And 'tis said, by *Rig* is meant the bishop: Which cannot be, for the bishop was then in *Town*. So in a letter to *Maisonneuve*, of the 19th of *July*, 'tis said, '*Rig* is in the Country.'" Whereas the bishop was then in *Town*. This is the more observable; because the *Report*, taking Notice of the bishop's being ill of the *Gout*, says, *Page 41.* 'This Particularity, as also several others, which will be taken notice of as to the bishop's being in *Town*, or in the Country, at the respective Times mention'd in the intercepted letters, have been carefully inquir'd into.' And in the next Paragraph, the *Report*, taking notice of the letter to *Musgrave* of the 7th of *May*, which says Mrs. *Jones* is come to *Town*, says, 'This agrees with the Inquiry.' And yet it will plainly appear, that there are such Mistakes, as to those Times, as I have before mention'd.

I hope I may have leave to observe, that these Mistakes escaped the Observation of the Honorable Committee of the House of Commons; and that tho' the letter of the 7th of *May*, in the *Appendix*, says, 'Mrs. *Jones* is come to *Town* only for a Day;' yet in the *Report*, the Words *only for a Day* are left out.

All the *Circumstances* before mention'd are made use of to fix the Names of *Jones* and *Illington* upon my lord bishop; and therefore the next Paragraph but one in the Report is very observable: Which is this.

'These several *Circumstances*, joined to *Neynoe's* Declaration, that *Kelly* had told him, the bishop went sometimes by the Name of *Jones*, and that *Carte* had told him, the bishop went by the Name of *Illington*, shew, that wherever *Jones* and *Illington* are named in *Kelly's* Correspondence, the bishop of *Rochester* is to be understood by those Names.'

So that the whole Proof of the Correspondence, charged to be carry'd on by my lord bishop under the Names of *Jones* and *Illington*, is resolv'd into this; that *Neynoe* DECLARED that *Kelly* and *Carte* TOLD HIM the bishop went by those Names.

I beseech your lordships, Is this *Proof*? Is this Evidence sufficient to deprive a Reverend Prelate of all his Ecclesiastical Preferments? And to send him into perpetual Banishment? Do the

the Lives and Liberties of *Englishmen* stand upon so weak a Foundation? If they do, I presume to say they are very *precarious*, and the most *innocent* Man alive cannot say he is *safe*.

I beg your Lordships Indulgence to observe farther, that this heavy Charge against my Lord Bishop is supported only by *Innuendos*: And with what an Eye *Innuendos* have been always look'd upon in *criminal* Cases, many Instances may be given.

I shall trouble your Lordships but with *one*; which is full to this Purpose, and of the greatest Authority: I mean the Resolution of your Lordships in the Case of Sir *Samuel Barnardiston* in 1683. He was prosecuted for writing letters, alledged to be seditious, and highly reflecting on the Government, and the publick Justice of the Nation; and was found guilty, and fined 10000*l*. He brought a writ of Error in this most Honourable House, and your Lordships were pleas'd to reverse that Judgment; for that the Information being grounded on *Letters*, which in *themselves* were not *criminal*, but made so by *Innuendos*, your Lordships were pleas'd to declare, that *Innuendos* and *forced Constructions* ought not to be allow'd; for all *Accusations* should be *plain*, and the *Crimes* ascertain'd.

Now if it can be suppos'd, without any *Evidence*, that my Lord Bishop wrote the letters charged to be written by him; even then this Case is the same with Sir *Samuel Barnardiston's*. For the letters are not *criminal* in *themselves*; nor can be made so but by *Innuendos*, and *strain'd, forc'd Constructions*. Nay, I presume to say, there is not *one Part* of the Charge but subsists purely by *Innuendos*, and *strain'd Constructions*.

I will trouble your Lordships with instancing only *one* letter; which is that of the 20th of *April*, written to Mr. *Jackson*, and subscribed 1378. With the *Innuendos* it is thus. 1378, *Innuendo* a person whose proper Name begins with an *R*, *Innuendo* the Bishop of *Rocheſter*, did write to Mr. *Jackson*, *Innuendo* the *Pretender*; that, notwithstanding *this* Opportunity, *Innuendo* an Opportunity of raising a *Rebellion* in England at the Time of *Elections* of Members of *Parliament*, had elapsed; I, *Innuendo* the *Bishop*, agree with you, *Innuendo* the *Pretender*, that another, *Innuendo* another Opportunity of raising a *Rebellion* in England, may offer before the end of the Year, *Innuendo* at the *breaking up of the Camp*. Your Lordships will please to observe what a *Superfetation* of *Innuendos* (if I may so say) there must be to support this Charge; and without *Innuendos* no Part of the Charge against the Bishop can be maintain'd: And therefore I humbly hope that the same Reasons which induced your Lordships to reverse the Judgment against Sir *Samuel Barnardiston*, will prevail upon you to reject this Bill.

To what I have objected, I imagine it will be answered, That your Lordships are now acting in your *Legislative* Capacity; and that in your legislative Capacity you are not bound by the *Forms of Law*: But I humbly submit it, whether you will not think fit to proceed according to the *Rules of law*, tho' not according to the *Forms* of it.

Mens *Lives*, and *Properties*, are to be try'd and determin'd *secundum Allegata & Probata*; and the Proof in such Cases must be *legal* Proof. And I apprehend with great Deference, that when your Lordships proceed in your *Legislative* Capacity in

other Instances, you proceed according to the *Rules of Law*: As in Bills for enabling persons to *sell*, or *settle Estates*; or for *making Rivers navigable*. If the Title or Property of any Person come in question, your Lordships are pleas'd to hold the parties to *strict legal Proof*: And why not in Bills of *Attainder*? Are Bills of *Attainder* (whereby Mens *Lives* are forfeited, their *Estates* confiscated, their *Blood* corrupted, and their *Families* undone) of less moment than Bills to enable Persons to settle their *Estates* for the benefit of their *Families*? I humbly apprehend that your *Legislative* and *Judicial* Capacities are here so *united*, that they cannot be separated. For a *Bill of Attainder* is a *Condemnation* by *Parliament*; and your Lordships always hear and judge whether a Party be *Guilty*, before you *condemn* him. Will you then be pleas'd to judge, and determine upon *less Proof* in *one* Case than in *another*? Can it be conceived that your Lordships will not act by the *same Rule* in *both* your *Capacities*? or that you will not have an equal *Tenderness* and *Regard* for the *Lives*, *Liberties*, and *Estates* of the Subject in *one* Capacity, as in the *other*?

When a Man *flies from Justice*, he gives *Judgment* against himself; and when a Person accused doth by corrupt or indirect Means *conceal* or *convey away* the *Witnesses* against him, then *he* is the Cause, why *strict* and *legal Proof* cannot be had: And that may be a Reason, why less Proof should be admitted. But in Cases not attended with *either* of these *Circumstances*, to say that less than *legal Proof* is sufficient for a *Bill of Attainder*, is to affirm that *PRIVATE OPINION* alone, without *Proof*, is a sufficient Foundation to pass a *Bill of Attainder*. And how harshly that would found in the Ears of *Englishmen*, is humbly submitted to your Lordships.

My Lords, By our Law a *Judge* cannot go according to his own *private Opinion*; but must be govern'd by the *Evidence* given before him in *Court*. For the Rule is, *Nil refert, quod notum sit Judici; si non notum sit in Forma Judicii*. And if Mens Rights and Liberties were to be determin'd by *private Opinion*; how *precarious* would the *Lives* and *Estates* of *Englishmen* be? The most *innocent* Man could not be safe; the wisest Man could not *foresee*, where it would end; and *England* must no longer boast of the Excellency of her Constitution.

It is a Rule, both in Law and Reason, that *Nemo bis puniri debet pro eodem Delicto*: And yet that may happen to be the Bishop's Case. For the *Charge* in the Bill is *general*; intending to raise a *Rebellion*, and holding *treasonable Correspondence* in order to bring in foreign Forces: But there is *no particular Fact* charged upon him. Now if he should be *indicted* for either of those Species of *Treason*; and *particular Overt-Acts* of such *Treason* should be alledg'd, as *buying Arms*, and *listing Men* for the *Pretender*, and the *Overt-Acts* should be proved by *two Witnesses*; he might be *condemn'd* and *executed* for it. For he could not *plead this Bill* in *Bar* to such *Indictment*; because the *Indictment* would not be for the *same Facts*, there being *no particular ones* charged in the Bill. And yet it may happen (as I said) that my Lord Bishop may be *indicted* and *try'd* for the *Treason* mention'd in this Bill: As in the Case of *Hampden* and *Fitzbarris*, which I lately mention'd. For Mr. *Hampden* was try'd for meeting and consulting to raise a *Rebellion*, was fined

40000*l.* and was afterwards tried for High-Treason for the same Fact: And tho' he insisted on his having been try'd for the same Fact, and desired to plead it; yet the Court would not allow it. And in *Fitzbarris's* Case, he was indicted for High-Treason, and pleaded an Impeachment; and averr'd, it was for the same Fact. But the Plea was overruled: For there being no particular Article, the Averment could not be supported; because he could not aver any thing that was out of Record.

I humbly hope your Lordships will excuse me for taking up so much of your Time. But the *Multifariousness* of the Matters of which the Accusation consists, and the *Weight* of the Subject, drew me into it. I humbly thank your Lordships for your great Indulgence and Patience in hearing me: And if, as a *Lawyer*, thro' my Zeal for my Client's Service, or, as an *Englishman*, asserting those *Laws* which I apprehend are the *Security of British Liberties*, I have let drop any Expression, which may be thought improper; I most humbly beg your Lordships Pardon. And if there be a difference between your *Legislative* and *Judicial* Capacity; I submit it, whether your Lordships will be pleased to give that Judgment in your Legislative Capacity, which the Counsel for the Bill do, in my Apprehension, admit you could not give in your Judicial. And therefore, I hope your Lordships will be pleased to reject this Bill.

Mr. *Wynne* (his Lordship's other Counsel) spake next.

May it please your Lordships,

I AM of Counsel for this Reverend Prelate: and however unnecessary I know Apologies to be before your Lordships, who are always ready to hear what the youngest and most unexperienc'd Person has to offer; yet it becomes me to say something for my first Appearance at your Lordships Bar, in a Matter of the last Consequence; and it was the Desire of this Reverend Prelate, rather to make his Defence by such weak Hands as mine, as if he was persuaded, that his Cause needed not the Assistance of Art or Experience, in order to move the Passions, or to impose upon the Reason of his Hearers; which he knows to be but an impotent Help to Persuasion, in comparison of Truth and Innocency. He appears before those, who (he hopes) will regard plain Facts and positive Law; and Truth, notwithstanding all the Disadvantages of an unskilful Pleader, will, he hopes, at last prevail.

For my own part, since your Lordships have assign'd me for his Counsel, I shall be under no Apprehensions of Danger or Displeasure in performing my Duty to him, in humbly offering every thing I think necessary for his just Defence: and I will not doubt, but I shall be fully and favourably heard. And tho' it is his Lordship's Misfortune to be already pre-judg'd in another Place, and to be condemn'd without Doors, by some few vulgar mislead Apprehensions; yet he hopes better Things of you, my Lords: He does not doubt, but that your Lordships, who in Matters of less Importance proceed with Calmness, Justice and Prudence, will be careful not to deviate from those Measures in a Matter which demands the greatest Caution and Deliberation:

For it is the Case, the Reputation, the Liberty, the Fortune, and (I was going to say) the Life of a most learned Prelate; because some Circumstances of this Bill are so cruel and extreme, that it is little better than if it had affected Life itself.

Every one that is a Friend to this Bill, must avow, that it is not to be offer'd without an evident and cogent Necessity. But, I hope, my Lords, tho' the Grounds and Suggestions of it were true, and duly proved, yet that there is no such Necessity.

In order to discover whether there be any such Necessity or not, I shall consider the End proposed by this Bill, and then weigh the Means whereby 'tis hoped to attain that End, and whether this Bill be a Means necessary or convenient to attain it.

The End, I hope, is the Security of the Government, and the Execution of Justice, and it ought to be pursued by all regular and lawful Means; and therefore, before I speak particularly to the Crimes supposed in this Bill, or the Proofs which have been offer'd to make them out, I shall beg leave to say something as to the Manner and Method of this Proceeding. Not that I shall presume to question your Lordships Power in such Cases: But, as on the one hand we must admit your Lordships may, and have in some Cases exerted your legislative Capacity, in declaring That a Crime which was not so before, or by inflicting particular or extraordinary Punishment on common and ordinary Crimes; yet, on the other hand, till that is done, I hope I am at Liberty freely to represent the Inconveniency, the Injustice, and the Imprudence of making such a Declaration, or of passing such a Law, in the Case now before you. If it should become a Law, his Lordship must dispute it no longer, but submit to it as just, whatever Hardships he may, in the Retirement of his own Heart, conceive introduced upon him by it. But, thanks be to God, this is yet no Law, and that I am at full Liberty to represent the Injustice and the Unreasonableness of this Bill; and to say, this is not a proper Occasion that needs or calls upon your Lordships to exert your legislative Power.

I might here enlarge upon the Injustice of all Laws made *ex post facto*, and for one particular Case or Person, and no other; that they are against the Common Law, and the Common Right which every one is entitled to, in the Place or Community where he lives; because Laws, in their Nature, ought to be Rules for the general Order, and Good of Society; and Natural Justice would surely in all such Cases stop the Precipitancy of your Lordships Resolution, by this Question; Against what Law hath he transgress'd? If he hath transgress'd any publick known Law, he is undoubtedly subject to undergo the Pains or Penalties enacted by it, when the Proof is duly and fully made which that Law requires. But if there is no such Law yet in being, or if there is no such Proof as that Law requires to suppose him guilty, will your Lordships introduce a new Law, or a new Sort of Proof to make him so? If these Methods are to be taken, the most innocent Man is not safe, and the wisest Man cannot judge what is an Offence, or in what Degree; what Proof is necessary for his Defence, or how he is to be try'd. And in vain does the Legislature every Session provide
Laws,

Laws, if a particular Law or a particular Proof is still to be made for every particular Purpose, not only contrary to the Tenor of all the former; but such as is not to be a Rule or Law in any other future Case whatsoever.

Thus much I am sure may be justly urged in any Place of Judicature in the World, against all such Laws in general; but much more as we are *Englishmen*, as we have Laws, which my Lord Bacon calls wise and just, that give to God, that give to *Cæsar*, that give the Subject, that which belongeth to them. Not like those of other Countries, imposed upon the Subject at the Will of the Prince, before Probation or Trial, whether they are fit and convenient for the Genius of the People; nor the Production of one Man, or of one Parliament in any one Age, but the Wisdom and Experience of many Generations.

And I am sure one of the greatest Excellencies of this Law, beyond that of other Nations, has been always esteemed the common and ordinary Method of Trial. It has been always accounted the Birth-right of an *English* Subject to be try'd *per Pares*, according to the known Course of the Law.

And therefore, the better to shew the Difference, and to evince the Hardship of this extraordinary Proceeding, I shall a little consider the Nature of the ordinary Trial; and tho' I might do this in the Language of *Magna Charta*, and of many eminent antient Writers of the Law, I rather chuse my Lord Chief Justice Hales, that great and good Man, whose happy Moderation between the Prerogatives of the Crown, and the just Liberties of the Subject, can never be remember'd by Posterity, without the deepest Honour. He says^a it is the best Trial in the World, and one of the first Principals upon which our Constitution is erected. Here a Man has a legal Exception to any one of his Triers, if they have any Dependance upon either of the Parties, are prepossess'd or prejudiced before they hear the Evidence. All the Evidence is given openly, in the Presence of the Judge, Jury, Counsel, and Parties; not in private, before a Commissioner or a Clerk, (as in Chancery, or by the Civil Law) where oftentimes a Witness delivers that, which he will be ashamed to testify *ore tenus*, and where in a crafty Clerk will oftentimes make a Witness speak what he really never meant, by dressing up his Evidence in his own Terms, Phrases, and Expressions. Or a Man may depose in Writing, what the Fear of being falsified, or perhaps a better Recollection would not let him adhere to in open Court, where he has an Opportunity to correct, amend, or explain his Testimony.

Besides this, (says that learned Judge) a Jury must all agree in their Verdict, and are not to be concluded by a Majority; and therefore, tho' in some Cases, the Law don't positively require two, nor one Witness, *viva voce*; yet the Credit of a Verdict is great, where twelve Men on their Oaths unanimously agree.

The Counsel on the other Side may be apt to reply upon me, with the frequent Abuses and Corruptions of Juries. My Lords, I do agree, that may happen to be the Case; or it may happen that one more knowing or over-bearing Man among them, may sometimes govern all the rest. But, if the same may happen, and often does in every Society or Number of Men, and the best

regulated Bodies in the World, surely that can never be a Reason to deprive a Man of his common Right, and to lay aside a most valuable Institution.

I am afraid, my Lords, this little has been too much upon a Point that so little needs it: but the Love of one's Country, and its antient legal Constitution, is an honest Prejudice, which every one is apt to indulge; and the Advantage of this Privilege, every one that hears me, (I doubt not) is in the Heart sufficiently convinced of, and would boldly insist on it as his Birth-right in any Case of his own, where his own Property, his Reputation, his Life, or his own Liberty was in the least concerned.

It is urged by the Counsel for the Bill, and indeed by the Bill itself, that this is an extraordinary Case, and requires an extraordinary Remedy, where the Offender has taken Care, by subtle Contrivances, to keep out of the Verge of the Law, and the Reach of all ordinary Proceedings. But if such a cruel artificial Suggestion be allow'd to be a good Reason to deprive a Man of the Benefit of the Law, no Man's Life or Liberty is safe. The same may be suggested of every Offender, and in every Offence: That a Man endeavours to evade the Punishment of the Law. The same may be said with more Justice of every one that pleads Not Guilty, and insists on his Trial, that he endeavours to evade the Law, because such an Accusation or such an Indictment is found against him. And yet the most rigid Casuist never yet maintained, but that any Man (tho' he knew himself to be a most guilty Criminal) might plead Not Guilty, and insist on his Trial.

But if this cruel Artifice is to prevail, and this should be a Reason to exert such an extraordinary Proceeding: Wo! be to all Men of Sense and Ingenuity. Nay, my Lords, if such a Notion is to take Place, the Bishop is in a much worse Condition, than if *Neynoe* were alive, or any other Witness would have deposed, *viva voce* against him, all they would have had them. For even then, his Accusation or Indictment must have been found upon the Oaths of Twelve Men at least, he would have had his legal Trial, and his Challenges. This I say upon a Supposition that the Gentlemen of the other Side may not allow his Lordship to be a Peer of the Realm; but if they do allow his Right of Peerage before your Lordships Bar, and consequently that he is intitled to a Trial by his Peers, yet still he would have had his legal Exceptions to the Testimony of the Witnesses; there must have been two positive Witnesses to the same Overt-Act; and his Accusation must have been found by twelve Men at least upon their Oaths; and, after all, if his Lordship should have been found Guilty, he might move in Arrest of Judgment. All which Benefits he is now utterly deprived of, by this Method of Proceeding.

We shall be told (I doubt not) by the Counsel for the Bill, that your Lordships sit now in a Judicial Capacity; that you are Judges of the Fact, as well as of the Law. No Man will doubt, but your Lordships have a Judicial Capacity, and have at all Times most worthily exercised it; but yet I must beg leave to doubt, whether your Lordships are now properly acting in that Capacity-or not? You have a Power, 'tis true, in this

^a *Hist. of the Law*, cap. 12.

Method of Proceeding to condemn this Reverend Prelate, if Guilty; but not to save and acquit, if you are ever so well satisfy'd of his Innocency: and whether it be your Lordships Pleasure to pass or reject this Bill, I desire to know of the learned Counsel, whether it may be pleaded in Bar of a Prosecution in the Courts below, that he was *auterfois acquit*, or *auterfois convict* before your Lordships; or whether this Proceeding by Bill might be pleaded in Bar, even of an Impeachment for the very same Treasons; or whether your Lordships Resolution on this Bill (whatever it be) would be any legal *Estoppel* to any other Bill in a future Session. No, my Lords, I humbly apprehend, it would not be a good Bar or a legal Plea, either at Common Law, or according to any Rule or Usage, of Parliaments; and therefore we hope your Lordships will not do that, which after all cannot be a complete or a final Judgment, and by that means draw this Reverend Prelate into the Danger of a double Trial. Which, I am sure, is not only contrary to the Rules of Law, but also of Natural Justice. I have the more Countenance in saying this, not only from *Hampden's* Case, but from the known Case of *Fitz-Harris*, who pleaded this very Matter to the Jurisdiction of the Court of *King's Bench*, that he was impeached for the same Crime by the Commons of *England*: but it was the Opinion of that Court, with the Advice of all the Judges, that he might, notwithstanding, be try'd there: and in fact, was try'd and condemn'd by the Court of *King's-Bench*, though the Impeachment was still depending before your Lordships House.

But if your Lordships are resolved to proceed in your *Legislative* Capacity, and my Lord Bishop must, after all, be in Danger of the ordinary Method of Trial; yet suffer me to say what has been done, in former Times, by former Parliaments, on the like Bills: and how light soever other Authorities may seem, we hope your Lordships will have some Regard to your own Usage and Resolutions.

There have been too many Instances, I confess, my Lords; but those, that can be in any Degree justify'd, may be reduced to these few. They are such as pass'd against Persons dead, or who fled from Justice, and did not render themselves by the Time appointed; or they have passed against such as were in actual Rebellion, in direct Opposition to all Methods of Trial, and in Defiance to all Courts of Justice; or against such whose Treasons were flagrant and undeniable, but their Persons above the reach of inferior Courts and Commissions. Those few Sacrifices to the Heat and Necessity of the Times have been most of them revers'd with Infamy and Detestation, when Men were cool, and at Liberty to hearken to the Voice of Law and Reason, and began to consider they had only prepared Shackles for themselves. Those few melancholy Instances, procured without due Trial by an Excess of Prerogative, of Persons that have been forth-coming, principally because it was the Will of a Prince; are not to be mentioned without Horror and Detestation. Such as those, says my Lord *Coke*^a, *auferat oblivio si potest, si non, utcunque tegat silentium*. Let such gross Breaches and Violations of the sacred and unalterable Rules of Justice be forgot, if it be possible; or at least draw a Veil over them, and let them be buried in perpetual Silence.

But in all sober regular Times, a free Trial in the ordinary Course of Law has seldom been denied, even where the Facts have been so notorious as (one would think) almost to need no Trial, and so evident as to need no Proof; as the Regicides, except such as fled from Justice were admitted to Trial, no less than Twenty Nine before one Commission of *Oyer*, and every one heard with Patience in the ordinary Course. Even *Felton*, that stabb'd a Prime Minister in the Execution of a High Commission, tho' he confess'd the Fact, both before the Council and Court of *King's-Bench*, and justify'd it as a publick Service to the Nation, in the most daring and impious Manner, was brought to Trial, without superseding any of the ordinary Methods and Circumstances of Justice. Indeed where some flagrant Crimes have been legally prov'd and determin'd in the Courts below, Parliaments have sometimes thought fit to add to, or heighten the Degrees of Punishments. It was so resolved in the Case of the Gun-powder Plotters 5 *November*, that they were at first to be try'd at Law, and then the Parliament (if need be) to add a Confirmation to it. Nay, that Resolution went farther; it says they were not competent Judges of it, before it was found in the Courts below.

I might mention the Opinion of Judge *Dodderidge*, the Mirror of Justice, Lord Chief Baron *Atkins*, &c. who say the Parliament is a supreme Court of *Oyer*, and that the proper Subject of their *Oyer* is such Offences for which Right cannot otherwise be had, and to deal with Delinquents too high for the ordinary Courts. And, as I am before your Lordships Bar, I am very proper to mention the Resolution of your Lordships Predecessors, in the Case of *Fitz-Harris*, who (as I before mentioned) was impeach'd by the Commons of High-Treason; they refused to take him out of the Hands of ordinary Justice, and directed him to be proceeded against according to the Course of the Common Law.

And what Opinion subsequent Parliaments have had of my Lord *Strafford's* Bill of Attainder, best appears from the Words of the Act of Reversal, by ordering all the Records and Proceedings relating to it to be cancell'd and destroy'd, that no Remains of so evil and unjust a Precedent might be visible in after Ages, or brought into Example to any one's Prejudice. But even in that detestable Instance, such Informations and Evidence were not admitted, the Witnesses were all examin'd, *viva voce*, upon Oath, and he was first adjudged Guilty, by way of Impeachment at the Bar of the Lords, before there was any Order for a Bill. The very same Method was observ'd in the Cause of Archbishop *Laud*, and Articles fully proved against him, as they thought. If it had not been so, even that House of Commons, as bad as they were, and as thirsty as they were after the Blood of those Noble Persons, probably would not have ordered those Bills. But yet this latter Instance of Archbishop *Laud*, never had the Royal Assent: and 'tis well known in History, what desperate Measures were made use of to induce the Lords to pass it; and at last I think there were but seven of your Lordships whole House, that were present when it was passed. But if this Bill should pass, we must no longer blame and condemn those Instances; for this will, in effect, re-enact them, and many others, which the Wis-

^a 4 Institut. 37

dom of former Parliaments have revers'd with Marks of Infamy and Detestation.

How much more is there to be said of Sir *John Fenwick's* Case? he had been indicted upon the Evidence of two positive Witnesses: There had been several preceding Trials, at Law, by which it manifestly appeared that he was equally concerned with those that were found Guilty. Sir *John Fenwick* had likewise withdrawn himself from Justice, and was retaken; (a Circumstance always urged as a strong Presumption of Guilt.) He had protracted his Trial by Offers of Discovery, the Reason of which afterwards appeared to be, that one of the King's Witnesses might withdraw himself beyond Sea; and altho' that Witness was gone, yet his Evidence not only remained in Writing sign'd, and upon Oath, but was attested and confirmed by some of the Grand-Jury themselves that found the Bill, and by others of the Petty-Jury, before whom that Witness had given the very same Evidence. There was a Proof likewise that he had attempted to corrupt the remaining Witness, as well as some of the Jury. These were Circumstances upon which that Case was founded; no Man can say, but there was a reasonable Evidence, tho' not strictly legal; one full and positive Witness, and many strong undeniable Circumstances; and yet the Opposition, which that had in both Houses, was very great. Whether the Reasons that prevail'd for the passing of it were sufficient, becomes me not to enquire: Since it is still a Law, I must presume them just.

But is there any thing, my Lords, like that, in the Case now before your Lordships? Has there been any Attempt to withdraw from Justice; and yet that Honourable Committee have been pleas'd to observe, his Lordship had Notice that he was to be apprehended some considerable Time before. Has there been any preceding Trial, in which my Lord Bishop's name was mentioned as an Agent, much less (as this Bill suggests) a principal Manager and Director in the Conspiracy? Or, in that one Trial which hath been, has any thing appeared to derive the least Suspicion of Guilt upon him? Can any one say he has used any Methods or Artifices to avoid or protract his Trial in the ordinary Course of Law? Has he not on the contrary (and as one of the strongest Proofs and Convictions of Innocency) sought and petitioned to be tried? Yes, my Lords, he has applied in all Courts, and in all Places, in the most earnest and legal manner, to be brought to Trial. Has this Reverend Prelate used any indirect Measures to corrupt or withdraw a Witness? and yet Mr. *Kelly*, (who is the only Person supposed capable of testifying against him) 'tis well known, had his full Liberty, even after his Lordship's Apprehension, but would not hazard his Recognizance by one Day's Non-appearance. No, my Lords, nothing of that kind has been attempted to be prov'd, nor so much as insinuated in this Case; nor is there here before your Lordships any one positive Witness of any kind: Nor is there the Sanction of any one Oath here, or any where else, in any one material Point against his Lordship. What need therefore, or what Reason can there be for this Bill? Surely your Lordships will never pronounce a Judgment that shall affect any Man's Life, Liberty, or Fortune, without some Oath, and on Circumstances so widely different in every respect from those of Sir *John Fenwick*.

And if this Case bears no Proportion nor Similitude with that of Sir *John Fenwick*; I am sure it has much less, or rather none at all, with any of those before mentioned. For we hope, after so long and full a Discovery of the Conspiracy, and those many just Methods of Preparation against it, the Danger cannot now be so great or cogent, as to require so precipitate a Resolution. His Person, your Lordships see, is safe and forthcoming, and the Courts of Law in their usual and open Course; and at this Time filled with such learned and resolute Judges and Ministers of Justice, that they are equal and able to deal with the most bold and daring Offender.

There can be less Reason therefore, none at all we hope, for your Lordships at this Time to exert such an extraordinary Method of proceeding.

But there is this further Objection against proceeding by Bill, that it makes not only your Lordships pronounce Judgment against one of your own Members, and a very terrible one too; but it makes the King himself, without hearing one Word of the Defence, in Person, pronounce a Judgment upon his Subject, which his own gracious Temper must be averse to; which the Common Law therefore has wisely left to be pronounced by his Justices, even in those Courts where he is always supposed to be present. But in this Instance, there is something which must be still more ungrateful to him; in that it is to exclude a Branch of prerogative which his Majesty most delights in, and it must be some Surprise to every good Subject to find his Royal Judgment so highly mistrusted.

There is another Thing, which, I persuade myself, your Lordships will fully consider; that if this Method of Proceeding by Bill be encourag'd and grow familiar, it will put an End to one considerable Branch of Judicature, which your Lordships were heretofore so justly jealous of, as not to admit at any time the least Competition. The Lower House will hardly care to appear any more before your Lordships as Accusers or Prosecutors, when they can so easily partake in your Judicial Capacity. And every such Bill (especially against a Member of this House) is a direct Infringement and Diminution of that high and valuable Privilege, and will open a Door to some other Mischiefs to the Peerage: which I had much rather your Lordships would suggest to yourselves, than I express. It has been always doubted without Doors, whether your Lordships could begin such a Bill against a Commoner; but I think it may be more justly doubted, whether the Lower House can begin such a Bill against any one of your Lordships: and, if this Bill should have no other Consequence, it will establish this so far, as to bear no Question hereafter. My Lords, I need not say, how much more proper it would have been, for the Lower House to have left this Matter intire to your Lordships; because it has been so often resolv'd by your Lordships Predecessors, that the *House of Commons* have no Power of Judicature or Coercion against any one, but in Matters concerning that House. Whereas this is a Case of Peerage, the Punishment, and the Exclusion of a Member of this House. There is an Instance on your Lordships Journals, where the Lord *Purbeck* voluntarily surrendred his Title and Dignity of Viscount to the King by Fine, and yet your Lordships unanimously

nimously revers'd that Judgment, and declared, that no Place could judge of, or intermeddle with Dignities or Rights of Peerage, but your Lordships own House.

And those my Lords of that Reverend Bench, will surely consider what a fatal Blow this Bill will give to the Discipline and Polity of the Church of *England*. They have more than ordinary Reason to be jealous of increasing such Precedents, and of introducing Methods of depriving Bishops and Deans, hardly known to former Ages. The antient Canons have already prescribed Methods of judging, censuring, and deposing Bishops, and the Cases when and where those Methods are fit to be exercis'd. I don't say the Parliament cannot do this, or any thing else which they think proper; but the Metropolitan, their Lordships know, is intrusted with this Power over his Suffragans, or a Provincial Synod. And 'tis plain, the Law of *England* takes Notice of no other Power, that can regularly deprive. For to mention but this Instance, if an Issue should be joined, whether a Bishop be deprived or not, the Court where such Issue should arise, could only write to the Archbishop to certify. And to prove this Assertion, I will not name Bishop *Stillingfleet*, or any of those great Ecclesiastical Authorities, (since possibly they may be excepted against, as Persons who have too much Interest in the Case to be impartial) but it is so laid down by my ^a Lord Chief Baron *Atkins*, in his great Argument of Ecclesiastical Commissions, and by my Lord Chief Justice *Holt*, and the Court of *King's-Bench*, in the Case of *Dr. Watson*, Bishop of *St. Davids*.

All Precedents, my Lords, will increase; and the Scorn and Contempt of Libertines against your Lordships sacred Order is too great, to drop or to forget a Precedent so grateful and pleasing to them as this will be. Every one knows the Destruction of the smaller religious Houses, only made way for that of the greater. A Time has been when their Lordships Predecessors were all excluded and sequestred; and it has been attempted, even since the Restoration, to take away Deans and Chapters. I am far from apprehending any such thing at present, and I hope it will never enter into the Heart of any Man. But, my Lords, I confess I thought as little at this Time of such a Bill as is now before you, to deprive a Bishop and Dean at once, not only of all his Dignities and Benefices, but from the Exercise of any Part of his holy Office and Function: And I will say, that if this Bill should pass, and by any of their Lordships Assent, such a Design will be rendred more easy and familiar, and much more unpitied, by all Mankind.

Give me leave, my Lords, next to observe, with what Caution and Moderation other Parliaments have proceeded, even in those Cases where they have thought proper to exercise their legislative Capacity. I pass over the Statute 7 *W.* c. 19. for Imprisonment of *Sir Thomas Coke*, &c. and many other such Cases, which were too great and intricate for the ordinary Course of Law, but yet too low and inconsiderable to enter into this Comparison. But the Statute 8 *W.* c. 5. may be named, I am sure, with that now before you, for the Imprisonment of *Counter*, &c. concern'd

in the Assassination Plot, against all whom there was some positive Evidence upon Oath. Tho' the Zeal of that Parliament can never be question'd from an Act so full of Gratitude, and in such strong Terms and Accents of Loyalty to the King, yet they did not at once, and at one single Stroke, cut them off from the Land of the Living, and utterly deprive them of all the Necessaries of Life. The first Step that Parliament took was to pass an Act for the Detainment of them for the Space of one Year only, not to the Forfeiture and Deprivation of all they were worth, or to the Exclusion of his Majesty's Mercy, but even to leave a discretionary Power of Bailing within that Time, to any six of the Privy-Council, if they judged proper. Their further Obstinacy and Impenitency occasioning another Act, 9 *W.* c. 4. to detain them a Year longer, it was still under the same Exception. At the End of that Term another Act was made, empowering the King to detain them during his Pleasure, 10 *W.* c. 11. After these, two other Acts passed, empowering the late Queen and his present Majesty to detain them. What the particular Reason of these Alterations were, I cannot take upon me to determine, because the Acts themselves are wholly silent; but, my Lords, such were the prudent and moderate Steps taken by former Parliaments, even in that bold and wicked Conspiracy.

I may also justly take Notice of the Prudence and Clemency of the last Parliament, when there was so loud and so general a Cry for Justice, and when the Necessity of the Time seem'd to require a more speedy and extraordinary Degree of Punishment than the Common Law was acquainted with: but with what Difficulty, with what slow Paces, and with how many tender Circumstances did that Bill pass? Your Lordships will easily imagine, that the Persons I here speak of are the late Directors of the *South-Sea* Company.

It would ill become me, my Lords, if I had Inclination, to insult the Distresses, or to aggravate any of those Gentlemen's Misfortunes; but the Service of the Reverend Prelate now under Consideration, requires me just to mention what a State of Confusion they had reduced the Kingdom to: How many Thousands have felt, and still feel the pernicious Effects of that Scheme? Tho' their Crimes had no particular Appellation, or determinate Punishment in our Law, yet the ^b Civil, and the Laws of other Countries could have told us, that *Crimen Peculatus*, the Robbery of the publick Money, was such an infamous Transgression, that the Punishment of it was Death, both in the Principal and Accessaries. How different and how mild was the Punishment inflicted by the late Parliament, in comparison of that, I need not mention; and every one knows, how tenderly and sparingly that Law has since been executed upon them, and how much they still enjoy of the Spoils and Plunders of the Nation.

Let us not then follow every Precedent that has been, but the just and Prudent Precedents of moderate Times, and of good and peaceable Reigns. Let us not be ambitious to surpass the Proceedings of violent and arbitrary Men, which we or our Posterity may have Cause to repent of hereafter; but let us imitate such only as are

^a Sal. Rep. 135.

^b Dig. 48. 1. 6. &c.

agreeable to the Law and Constitution, such as are grounded upon true Reason, and the Principles of exact Justice.

Having thus spoken as to the Method of these Proceedings in general, and shown (in some measure, I hope) that they are contrary to the publick Wisdom, contrary to the known Rules of Law, and the common Right of the Subject, I shall, with your Lordships Favour, next examine the Foundations and Suggestions of this particular Bill. As for those general Matters and Allegations with which it is introduced, and upon which the Counsel for the Bill have spent so much Time, there is no Necessity, as we conceive, to answer to. We are here before your Lordships only as Counsel for this Reverend Prelate, one single supposed Conspirator; and it would ill become us in the least to controvert, that there has been a Conspiracy formed and carried on by some Persons abroad and by others at home, after it has been so solemnly resolved by both Houses of Parliament. Nor can we deny, but that Mr. *Laver* has been, Tried, Convicted, and Attainted of it: But we are yet to seek, how these Things have any Relation to the Case now before your Lordships; or how that unhappy Gentleman's Case comes to be connected and made part of my Lord Bishop's, as it is by this Bill. We may justly appeal to every one that heard or read that Trial, whether this Reverend Prelate's Name is so much as mention'd in any one Line of it; whether there are any Grounds to think, from any of that Gentleman's Papers or Examinations, that his Lordship was privy to, or in the least concerned or acquainted with his Person, or his Intentions: And I dare say, his Lordship is as much amazed at the Rashness and Folly of his Schemes, as he detests the Wickedness of them. Notwithstanding which, it is his Misfortune to be charged in this Bill as a principal Actor and Director in the framing and carrying on of those very Schemes and Designs for which that Gentleman has been convicted. And as to the Cyphers and Papers of *Plunket*, I am as much at a loss to imagine, upon what Grounds they should be given in Evidence against the Bishop, since 'tis not so much as suggested in the Bill; nor is there any thing throughout the *Report* or *Appendix*, that in the least charges his Lordship with any Inter-course or Correspondence with him.

It is strange, my Lords, that Persons Thoughts and Intentions, so widely distant in all other Respects, should yet center in such unnatural Projects, and wild Undertakings, without some previous Discourse, some Consultations, or Acquaintance one with the other; and yet as strange and unaccountable as it is, this Reverend Prelate is charged in the very same manner by this Bill, with consulting and endeavouring to raise an Insurrection, to procure a Foreign Force to invade the Kingdom, and Corresponding with the Pretender; and Persons employ'd by him, knowing them to be so employ'd. And if these Facts, my Lords, had been duly and legally proved, I should have very little to say in his Defence, but humbly intreat the Mercy and Compassion of this Honourable House; for they are Offences in themselves so great, that on the one hand they are not capable of Aggravation, nor on the other of Excuse or Diminution, by any thing I can say. But if the Facts have not been proved in the Whole nor in Part, the bare Affirmation or Allegation of them is only *Brutum*

fulmen, and does his Lordship no more Harm, than any other innocent Man, whose Misfortune it is to fall under an unjust Accusation. Or if those Circumstances which have been proved, are not Criminal in themselves, they shall not, we hope, by Inferences and Deductions, be heightened into Crimes; and the Number or Complication of them, shall never make them exceed their Nature. And, my Lords, we hope, that notwithstanding all that has been affirmed, alledged, or proved, this Reverend Prelate can still say, not only in the Form of Law, but boldly and with a safe Conscience, and upon an impartial and serious Recollection, That he is Not Guilty of any one of the Charges contained in the Bill: That he is not conscious to himself of any one treasonable or irreverent Expression, or of any one Degree of Offence committed by him, with respect to any of those Charges. He can still say, that he has not acted in direct Violation of his Oaths and Obligations, nor to the Scandal of Religion or his Holy Function. I am sure, my Lords, I should not take upon me to say this for his Lordship, or any Man alive, unless I thought we had a full and positive Answer to every thing that has been said, unless I was verily persuaded we had a sufficient and a legal Proof to encounter all that has been offered on the other Side; or unless my Instructions told me, that many Things in the Course of their Evidence are utterly false and groundless; false, I say, as we shall prove (if my Instructions are true) by the fullest Proof, and the most satisfactory Evidence that is possible in the Case; by such Arguments and Reasonings, as we think are clear and undeniable; by some Witnesses we never saw nor heard of before, consequently the more credible and impartial; by others, whom I am sure we had no Opportunity to lead or instruct; and all (as I am informed) glad, that it is consistent with the Rules of your Lordships House, to receive their Testimony upon Oath. In short, every Circumstance, every Part of the Evidence produced against us, your Lordships, in the End, we hope, will find, turn strongly for us.

There is one thing which I take for granted, from the Nature of the Evidence that has been offer'd, That it is admitted as fully by the Counsel for the Bill (as if they had said so in express Terms) that there is no legal Evidence against his Lordship in all they have offer'd; or else this extraordinary Method of Proceeding, and this new sort of Evidence had never been set up. Nay, I am sure, it is a sort of Force upon those Learned Gentlemen, so well versed in Methods and Notions of Law, to maintain so many gross Paradoxes, which have not the least Colour of a legal, or even a reasonable Evidence, and would never be allowed, they well know, in any Court of Law or Equity. And tho' your Lordships have been pleas'd to permit those Papers and Letters to be read, your Lordships did not (as I apprehend) finally declare or determine them to be Evidence; but were willing to hear all Things, and afterwards judge how far it was reasonable or fitting to admit them as Ingredients in your Lordships Judgments. And whatever Opinion your Lordships might be of on the two former Bills, as we are Strangers to them, so we hope we are not precluded from offering any thing farther, why they ought not to be allowed in this Case. If it be your Lordships Pleasure at last to

adhere to that Opinion, or to resolve the like in this Case, we must submit.

If there is any thing certain in Law, or agreeable to Reason, it is this, That in all Criminal Charges, the Evidence ought to be clear and positive; and that the higher and more heinous the Nature of the Charge is, the more clear and undeniable the Evidence ought to be by which a Man is convicted. Now, I beseech your Lordships to consider at one View (as far as it is possible in such various and perplexed Facts) the Methods made use of to prove his Lordship Guilty, and what they have offer'd to your Lordships under the Name of Evidence. Where Words have been capable, and sometimes where they have not been capable, of two Senses, an arbitrary and invidious Interpretation has been put upon them. Where Words have been plain and proper for the Occasion, and which considered separately by themselves, it was impossible to put a criminal Gloss upon, the Writer is supposed to have some mysterious Meaning or double Entendre; or else they are complicated and thrown together with those which will infer some criminal Meaning. In other Letters the Names and Words relative to Men, are supposed to be used for those of Women, and the proper and usual Appellation of Women, for those of Men; and because one fictitious Name will not answer all they would have it, the Names are often shifted, one and the same Person is supposed to pass under seven or eight different Denominations: and often two or three Names in the same Letter, within the Compass of two Lines one to the other, are urged to stand for the same Person. Some Letters which are writ of another, and speak in direct Terms of a third Person, they would have to mean the Writer himself, tho' as often without any Name, Date, Subscription or Superscription at all. Books of Accompt, Manuscripts, and common Mercantile Terms, which seem proper for the Person and the Occasion of the Correspondence; and the Name of Stocks, which every one knows the true Meaning of, and carries all the Appearance of Reality, are very particular and exact in the current Prices at that time, by a new kind of Metaphor are to be taken in an ill Sense. Others which are only to be informed of the Distemper of a Friend, the Variations which happen in it, and the Opinion of Doctors upon it, by a strange and arbitrary Construction are applied to explain very different Purposes: and, as if they were suspicious even of their own Suspicions, and distrustful of these Explanations, they call in for Aid several disjointed Fragments, Extracts, and Scraps of Papers, which no Man but themselves can tell what to make of; and when there happen to be some Words which cannot be reconciled with such a Construction, or the Uses which they would make of them, they are totally omitted, and we are told they are not material, or not yet decypher'd, or not legible in the Original, but your Lordships and the World must intend them to mean something criminal.

My Lords, if such foreign Suppositions, Glosses, and Intendments, such unnatural Constructions, false Inferences and Innuendos, are to be admitted as Evidence, and deserve the Name of Proof, I must confess, they have given you some.

If the Whimfies and Conjectures of Decypherers, the Hearsays and Reports of third, fourth, and fifth Persons are to take place in your judicial Proceedings, instead of that plain, honest, and positive Proof, which the Law requires; or if the Number of Facts and the Variety of Circumstances could make them alter or exceed their Nature, I must confess, they have offered some Things worthy of your Lordships Consideration.

But if it were your Lordships Pleasure to construe Things according to the most natural plain Sense and Import of the Words, as others would have understood them, and in such a Sense as the Writer probably meant them, or in that just manner which your Lordships have hitherto done on criminal Prosecutions, no one can say they have shewn one Degree of legal or reasonable Evidence, to prove any one Suggestion in the Bill. This I most humbly assert, and, I think, no one can disprove my Assertion.

Thus far in general of the Proofs that have been offered; but I shall, under your Lordships Favour, speak now more particularly to them, and shall be so far from abridging or sliding over any thing that has been said, that I am willing every thing those learned Gentlemen for the Bill have been pleased to offer, or that Honourable Committee have observed in their *Report*, should have its full weight, and be put in the strongest Light against us.

It has been observed, that there were three several Methods and Times fixed for the Execution of this intended Conspiracy.

The first was to have procured a regular Body of foreign Forces to invade the Kingdom, at the time of the late Elections, which was from the middle of *March* to the middle of *April* 1722.

But have they shew'd your Lordships any Evidence, or even one Passage in the *Report* of that Honourable Committee, that particularly charges his Lordship with being privy to any one of these three Designs thus generally and roundly affirmed? He is not charg'd with being privy to either of the three Memorials to the Regent for Forces. The only Passage that can be pretended to contain any Imputation of that kind, is in the Letter sign'd 1387 to *Jackson*, which, they say, there is reason to believe was from my Lord Bishop to the Pretender: but this we hope in the Course of our Evidence effectually to disprove.

The second Design was to have made an Attempt at the time it was believed his Majesty would go abroad; but all that is insinuated in relation to his Lordship, is contained in two or three obscure Passages relating to one *Jones*, in Letters said to have passed between *Dillon*, or his Secretary, and Mr. *Kelly*: which Passages being something ambiguous, are interpreted in an ill Meaning, by Hearsays from *Neynoe* and *Pancier*, and *Plunket's* Cypher; but cannot, without the greatest Absurdity, be thought to relate to his Lordship.

Two of these Passages relate to Remittances of Money, which they insinuate the Bishop was to furnish; but it amounts in the whole to no more than the bare Hearsay of one Man, and an arbitrary Interpretation of some Expressions in the Letters of two others, (to either of which his

Lordship has not in the least been prov'd privy;) and the Whole depends upon a Supposition, that *Jones* here and elsewhere in the Correspondence means him; which depends again upon another Supposition, that the Bishop dictated those three Letters of the 20th of *April*, one of which is signed *Jones*; a Supposition which we hope likewise to prove absolutely false, and by that means shake the Foundation of the whole Charge.

The other Passage^a is in a Letter from *Dillon's* Secretary to *Kelly*, about *Jones's* fitting and providing himself with Saddles; which by the same Methods is explained to mean Soldiers and Regiments, which his Lordship is supposed to have undertaken to procure: and if the Words are to be taken in that Sense, and applied to him, he must likewise be supposed to have undertaken to be at the Head of them; which, considering his Lordship's Function, Age, and Infirmities, is so absurd and ridiculous, that, instead of spending more of your Lordships time in answering of it, I shall only make use of it hereafter, as one Instance (among many others) to shew, how much they are mistaken in affirming, that, wherever *Jones* is named, his Lordship is to be understood.

The third and last Design, tho' I must confess the most enormous, if it were true, because Part of it was the Seizure of his Majesty's Person, was to have been put in Execution at the breaking up of the Camp. But, I am sure, there is not one the least Hint throughout all this voluminous Affair, that his Lordship was concern'd or privy to that.

And therefore 'tis surprizing to think upon what Grounds his Lordship can be (as he is in the Preamble of the Bill) charg'd with having been deeply concern'd in forming and directing this Conspiracy; which, as your Lordships have heard, consisted of those three several Designs. The Counsel, indeed, for the Bill have endeavour'd by divers Methods and Reasonings, by some little Circumstances, and seeming Probabilities, to charge upon his Lordship in general such a Correspondence: And they may all be reduc'd to these four Heads:

1. Hearsays.

2. The three Letters said to be dictated by his Lordship, and wrote by *Kelly* to Lord *Marr*, *Dillon*, and the Pretender.

3. Two Letters said to be wrote to the Bishop.

4. The Co-incidences of Circumstances, Times, and Names, in the intercepted Correspondence, to induce a Belief of the before-mention'd Hearsays, and supposed Facts.

To all which I shall endeavour to give some Answers.

But before I enter upon these Particulars, I shall beg leave to observe to your Lordships, That if such Evidence is to be countenanced, it will be in the Power of any two Men, the one in *England*, the other beyond Sea, getting an Account of the Circumstances and Motions of a third Person, by an artificial intercepted Correspondence, to raise what Suspicions of him they please; and yet he be all the while innocent and ignorant of what is doing. Whether that is the Case here, I shall afterwards submit to your Lordships Judgments.

But it is very remarkable, that in all the intercepted Correspondence to and fro, there are no Footsteps or Descriptions which any ways point out to, or of whom they are written, but those alone which are supposed to relate to his Lordship; and in them, as the Counsel observe, things are said and done in such a manner, and with such particular Circumstances, as lead directly to him, and him only. And this being so contrary to the Caution and Reserve practis'd in all other Instances, carries in it some manifest Marks of Fraud and Contrivance.

This Remark I humbly apprehend to be the stronger, because there has been no Proof of any particular Meetings or Consultations with other Persons, towards carrying on these Designs. And how a Man can conspire with himself, I know not, except that it is barely alledg'd he was a Member of the *Burford Club*; the Falsity of which Assertion that Honourable Committee themselves seem so sensible of, and by that Indulgence and Enlargement which one of those Noble Persons (tho' said to be the chief of them) has since met with, is now so well understood, as to need no manner of Refutation.

I may also as justly observe, that there is no one Witness against this Reverend Prelate of any one criminal Act or Expression, from the Time of his Majesty's Accession to the Throne; tho' one of the Counsel (as your Lordships may remember) was very particular about the Manner of his passing of the 10th of *June*, which the Coachman gave them an Account of for four Years together; and tho' all his Papers were seiz'd, not one Letter, or Paper, under his own Hand, produced of a criminal Nature, or pretended to have been seen or intercepted. Not any one Letter intercepted that is pretended to have been written to him, much less any prov'd to have been receiv'd by him, the Matter of which appears to be Treasonable, or any ways Criminal. My Lords, I must own a great Consequence is drawn by that Honourable Committee, because a great Quantity of Letters and Papers were found dated before the Year 1712. This very Objection was made in the Accusation of his Lordship's worthy Predecessor, and a slight Answer satisfy'd his Examinants; and the plain Reason is, that his Lordship at that Time had a settled Correspondence with many eminent Men on Matters of Learning, which he esteemed so valuable as to preserve; but since the finishing of those Controversies, he had less occasion to write, and his Lordship's Merits having call'd him up to a more high and busy Station, he had less Opportunity to write; and he that writes little will receive but little. From that Year therefore (they justly observe) few of any Consequence were found, and even those few, (if no other than what are printed, and as yet produc'd) we beg leave to say, are of no Consequence at all, to support the Inference drawn from them.

The first, I think, is from a great Lady; but so general and uncertain, that it does by no means warrant the Conclusion drawn from it; for it does not so much as appear to have been a Letter, or what it was that was enclos'd. And I beseech your Lordships, what more can be inferr'd from Captain *Halstead's* Letter,^b the Contents of which are no more, than that a Neighbour, as

^a Rep. p. 47. App. D. 17.

^b D. 9.

Captain *Halstead* was to the Bishop, desires leave to dine with his Lordship on a *Thursday*, which was his publick Day, in Company of 20 other People? I must confess they have laid a Stress upon the Character of the Man in their Opening; but nothing more has been prov'd, than that he was in a Ship by some Name different from his own. Another Letter that was said to be found among his Lordship's Papers, was that directed to *Dubois*. But this (my Lords) I shall beg leave to reserve for a more proper Occasion.

I shall now consider the four several Charges against the Bishop: And the First arises from *Neynoe* and *Pancier's* Informations, all mere Hearsays; some from living, and some from a dead Person; but positively and expressly denied by the living Persons, from whom such Informations are supposed to have come.

All that *Pancier's* Informations^a say, relating to this Reverend Prelate, is, That one *Skeen* told him, that the Bishop of *Rocheſter* had the Principal Direction of the Conspiracy; and that 200000*l.* had been rais'd and put into his Management. This *Skeen*, it seems, is still in Custody, and your Lordships will hear how far he will support this Charge.

Tho' the very Accusation itself we beg leave to call absurd and incredible; that such a Sum of Money as 200000*l.* could be rais'd and deposited in one Man's Hands, and not yet traced up to some of the Contributors, or to the Hand where it was deposited, especially when it is charged upon a Person not used to deal in Merchandizes, or Remittances. Tho' the Counsel for the Bill have slid over this, yet being often repeated in the Report, as if there had been some Weight in it, I thought myself oblig'd to take Notice of it, tho' it is so incredible, I confess, that it is scarce worth removing.

Of *Neynoe's* Informations, your Lordships may observe there are Four, but none of them sworn to nor signed; and it was expressly resolv'd, in Lord *Audley's* Case,^b by all the Judges of *England*, that no Examination without Oath ought to be read except of the Party himself that is tried. They are all either of a Date subsequent to his Lordship's Commitment, (and therefore till then thought^c inconsiderable, and not worth reducing into Writing,) or else they are of no Date at all. One of the Two without a Date appears manifestly to have been taken after he was seiz'd, and brought up from *Deal* in *September*, which sufficiently shews what just Distrust there was at that Time of his Credit; that on the 27th of *September*, was on the Day before he drowned himself; and both, when he is known to have been under the greatest Terrors and Apprehensions, in that he was not able to make good what appears by the Paper (mark'd E. 11. and found afterwards in his Pocket) to have been undertaken by him, or required of him. It is not said, as to one of his Examinations,^d before whom it was taken: Another of them, and the only one they now think fit to make Use of, is an Extract only from three other Papers, and said to contain the Substance of them; but the Papers themselves, out of which it was extracted, do nowhere appear. And there are some Particulars in the Report^e of that Honourable Committee, which he is said to have confess'd, which do not appear in any one of these Examinations, and are

of such a Nature as to affect the Credit of all he said, and (if produced) would, we doubt not, in other Respects entirely blast the Credit of his Testimony. And, my Lords, if the Examination of a Man is thus taken to pieces, the Antecedents and the Consequents left out, Treason (and what not) may be made and inferred from the most innocent Things and Expressions.

But his Examinations, even as they lie in the Appendix, are full of Inconsistencies and Absurdities: Inconsistencies, I mean, not only with *Pancier's* and the Depositions of other Persons, but even with themselves. For *Pancier* says, little pass'd in Writing in the Conduct of the whole Affair: *Neynoe* says, there were many Bundles of Letters that Mr. *Kelly* brought with him from *France*, and which he had seen him write at several Times. But yet they are much more inconsistent with themselves; for instance, *Neynoe* says, in his Examination, mark'd E. 7. that he had seen several Letters written by *Kelly*, and sent to him from *Paris*, and other Parts, but they never contain'd any thing material: And yet in E. 8. he says, that he had seen several Cyphers of *Kelly's*, and seen him make use of them; and that *Kelly* with great Freedom acknowledged they were for carrying on the Correspondence with the Pretender's Agents. Whereas it is utterly incredible that a Man, who had really been so communicative in his Discourse, and of his Cyphers, should yet be so reserv'd as to hide from him any thing material in his Letters. In the very same Examination (he says) he was well acquainted with one *Watson*, i. e. the late Earl *Marishall*, and lay several Nights with him; but after all his Intimacy, at last it comes out, that he did not know really who he was. There are some other Inconsistencies, which have been already taken notice of by Sir *Constantine*, which I shall not repeat.

But, my Lords, if the Persons and Credit of *Neynoe* and *Pancier* were unexceptionable, yet what they say is only Hearsay, or mere Affirmation: And was ever that allow'd as Evidence in any material Point by any Law, or in any Court in the World? 'Tis expressly resolv'd in the Trials of *Langborn* and Lord *Ruffel* to be no Evidence; and it is the first Time it ever receiv'd so much Countenance as to be read in judicial Proceedings; and I dare say, there is no such Practice in the Courts of *Inquisition* abroad. Even common Fame and Reputation is but of little Weight in any Case that I know of. It may, my Lords, be a sufficient Ground for an Officer of the Peace, in some few Cases, to arrest a Person, or for a vigilant Ministry to make Enquiries, i. e. to accuse or apprehend; but was never yet allow'd to be a Guide in judicial Proceedings, or to condemn any Man in any Criminal Case, whatever. But even when the Commons (in the Case of the Duke of *Buckingham*, 1 *Car. I.*) had declar'd, that common Fame was a good Ground of Enquiry, it was complain'd of, and the Commons afterwards receded from it, and proceeded upon the Examination of Witnesses, and other Evidences, and in every Article of their Accusation the particular Facts are express'd. Much less will your Lordships allow the Hearsay of one single Man, and only Extracts of that Hearsay, to be of any Weight, nay, to be of more Weight and Authority now he is dead, than if he were living; for if he were living, and could only depose by Hear-

^a Report 10. 35. Append. D. 1.^b State Trials.^c E. 7.^d E. 9. E. 10.^e Page 38.

say, no one surely can say it would be admitted as Evidence; but since he is dead, and we have no Opportunity of cross-examining of him, why ought not his Lordship to have the Advantage of it, as was resolv'd in the Case of the ^a King against *Pain*? Or like the known Case of a Man dying in Execution, the Law is satisfied, and his Creditor is without Remedy? And it cannot be deny'd, but if one of our Witnesses had died, and a Person had taken Minutes of what he could say, we should not have had the Benefit of his Testimony; and where there is the same Reason, there ought in Justice to be the same Law and Construction. And yet this is the Foundation and Support of the whole Charge against his Lordship. It is upon this Man's Examination singly that it is affirm'd, among other notorious Untruths, that the Pretender rely'd more upon Advices from the Bishop, than from any other Persons. But this, and whatever else is in them, with Submission to your Lordships, amounts to no more than this, that *Neynoe* was heard to say, what he heard *Kelly* say, what *Kelly* must have heard some other Persons say, what they had heard the Pretender say, what neither they, nor any one else, ever had Reason to say.

But, my Lords, there is still something more strange in what is now attempted; for the Persons of whom 'tis pretended they heard all this, and into whose Testimony it must all be resolv'd, are now both living, and are so far from supporting what 'tis pretended they have heard from them, that they absolutely deny and contradict every Word of it. One of them has already done it (if my Instructions are true) in the most solemn Manner, at your Lordships Bar, and the other is now ready to do the same. And *Neynoe* was so conscious to himself of the Falsity of what he had said, that he lost his Life to avoid the Punishment that might otherwise have fallen on him, (for his Flight, my Lords, can admit of no other Sense or Construction.) He could not apprehend himself in Danger, if what he had said was true; but on the contrary, had reason to expect Rewards, if he could make out the Truth of his Information. Charity forbids me now, my Lords, to say any more of him, unless it be thought requisite to prove the Falsity of his Information by his own free and voluntary Confession, often repeated and confirm'd to Strangers and indifferent Persons. And (if my Instructions are true) we have those that will speak most fully to it.

This is the first and the principal Part of their Proof; and if we take away this Foundation, all the mighty Superstructure raised upon it must fall to the Ground, and all their corroborative Proofs and concurrent Circumstances must come to nothing.

The second Head of Accusation against his Lordship, is, from three Letters, supposed to be dictated by him, of the 20th of *April*. The first to *Chivers*, interpreted *Dillon*, signed by the Name of *Jones*; the second to *Musgrave*, interpreted *Marr*, sign'd *Illington*; a third to *Jackson*, explain'd to mean the Pretender, sign'd 1378, and sometimes 'tis printed 1387; and therefore which of these two is right I cannot tell.

Before I speak of the Letters themselves, I shall mention one Word as to the Manner of their Con-

veyance: They are said to be enclosed in a Packet to one *Gordon* of *Boulogne*, in a Letter from *Kelly* himself, sent by the ordinary Post, and sign'd with a Name, which they say he most usually signed and went by. This is so improbable, that out of eight or ten Names they are pleased to give him, he could bethink himself at that Time of no other Name to sign a Letter enclosing three of the utmost Consequence; and is so inconsistent with that Caution and Subtlety all along insinuated in this Correspondence, that it almost needs no Confutation. But yet (if my Instructions are true) Mr. *Gordon*, to whom they are said to have been directed, and the only indifferent Person in the Case, and can be under no sort of Influence from hence, has attested upon his Oath, that there was no such Letter, or Packet, ever came to his Hands.

And supposing these Letters were sent, as they suppose, to the Persons they suppose, and dictated by the Persons they suppose; is there one Passage in them of such a criminal Import, as would be sufficient to found an Indictment at Law? If there is not, they are not to be made criminal by Arguments, Innuendos, and Implications. The Case of Sir *Samuel Barnadiston*, already mention'd by Sir *Constantine*, is expressly in Print; and the Reason given for the Reversal of that Judgment (as appears by your own Journals) is, because the Information was grounded upon Letters, which in themselves were not criminal, but made so by Innuendos, and forced Constructions. There is *Crosby's* Case to the same Purpose, before the Court of *King's-Bench*, in the Year 1695, who was indicted of Treason; and the Overt-Acts laid in the Indictment, were for inviting the *French* King to invade the Kingdom, and by sending Letters and Instructions, how and where to make the Descent. Tho' the Court thought his Hand-writing was prov'd, and the Matter of the Papers of a very odd and suspicious Nature, and the *French* King frequently mention'd in them, and the Indictment supposed them to be contriv'd for to invite him over; yet they held it not Treason.

And the chief Thing that gives any Ground of Suspicion, in this Case, is, the Person to whom they are supposed to be directed: but I must submit to your Lordships, that there has been no Proof that either *Chivers* and *Musgrave*, or *Jackson*, are the very Persons supposed, or that his Lordship was privy to the Writing of one, or the other of them; nor are they capable of Proof, as we hope immediately to make appear.

However, for the present, supposing as they have supposed, that *Chivers* and *Musgrave* mean *Dillon* and *Mar*, and that such Letters were wrote to them by his Lordship without any Disguise, (unless the Matter of them, as I before said, were plainly criminal) or unless your Lordships will suppose (as they suppose) something criminal contained in the Words not decypher'd; and unless it could have been prov'd that the Persons writing or dictating these Letters, knew them to be the Pretender's Agents, and as such address'd to them; I dont know (my Lords) how it could be construed a treasonable or criminal Correspondence, either within the Letter or Intention of *Stat*, 14 *W.* III. c. 3. or any other Law whatsoever.

For tho' the late Lord *Marr* is an attainted Person, it can't be denied but he is still in many Senses a Subject of *England*, and is no more divested of his natural Allegiance, than a banish'd, or an out-lawed Man: and tho' he appeared in open Arms and Rebellion against his Majesty, he was not thought so dreadful a Man, as to have a Correspondence with him made Treason or Felony; but that was a peculiar Favour, reserved for this Reverend Prelate and his Friends. My Lords, I would not be understood to mean, as if the most innocent Correspondence with a Person under such Circumstances, was prudent or convenient; but I think I may affirm (even from the Clause of this Bill) it would not of itself have been criminal. But (according to my Instructions) this Reverend Prelate was little known to that Lord, and never had any Friendship or Acquaintance with him while in *England*, and cannot be supposed to have contracted such a Friendship since he was abroad.

That *Dillon* was an Agent of the Pretender's, nothing appears antecedent to these Letters: Nor did *Marr* at that Time appear to be one of his Agents, when it was so well known (as that Honourable Committee observe) that he was at that Time subsisted by a Pension from the Court of *England*. This Pension indeed, is said to be stopt last *August*; but the Letter to him of the 20th of *April* (by whomsoever wrote) was some Months before.

Indeed, if *Jackson* had been proved to mean the Pretender, the Writing to him would be High-Treason plainly within the Statute: but that the Pretender is not, and cannot be understood by that Name, we hope to make appear fully, before we have done, even from the Lights that Honourable Committee have afforded us.

I shall next consider the Nature of the Proofs to induce your Lordships Belief, that these Letters were dictated by my Lord Bishop: And the first they offer, is, Because the Matter of them agrees with his Lordship's Circumstances at that Time; *i. e.* his being ill of the Gout, and the approaching Death of his Lady; which (they say) is morally impossible should suit so exactly to any one Man else. These two Circumstances must be allow'd to be agreeable to those which his Lordship was then under: But one would think (my Lords) they are Circumstances so melancholy in themselves, that they might have been spared, especially considering the little Use or Advantage that can really be made of them. But these Circumstances were no Secrets: every one that knew his Lordship, must likewise know them; and whoever wrote these Letters with a Design to have them intercepted, and imputed to him, (as we hope to shew the Case really was) would certainly mention such Matters or Circumstances in them, as might be naturally thought to describe him. Or if they were written without his Knowledge, (as they will be clearly proved to have been) it is no wonder, if the Writer, who personated his Lordship, should insert all that was proper to fasten the Suspicion he intended on him.

Another Proof that they were dictated by his Lordship, they say, is, from the Subscription of the Names of *Jones*, *Illington*, and the N^o 1378, which are all affirmed to denote his Lordship: And the Reason why that Number belongs to

him, is, because the Decypherer has found that Number to denote the proper Name or Title of a Person beginning with the Letter *R*. If this is his real Opinion, must that needs be the Bishop? Is there no body else, whose Name or Title begins with the same Letter?

But, with Submission to your Lordships, it seems impossible to affirm even thus much with any Degree of Certainty, and it must be only Matter of mere Conjecture. Dr. *Wallis*, who is allowed to be the Father of the Science, (such as it is) and was the Wonder and Envy of all Foreigners, directly owns, that the Whole was built upon Conjectures; and he that had the best *Guess*, was the best *Artist*. Such, my Lords, is the Science of Decyphering. And from such uncertain and conjectural Premisses, what certain Conclusion can possibly be drawn? And 'tis plain, Mr. *Willes* is not so infallible as he pretends to be, by that Number of Passages not yet decypher'd.

When we took our Objection first against the Nature of this new sort of Evidence, the Counsel for the Bill were pleased to cite a Statute in *Q. Eliz.* Time, wherein they said the Word *Cypher* is mention'd. I have since looked for that Statute, but could find nothing about it; and, perhaps, may be mistaken in the Statute which they mean. But, my Lords, I am sure they did not mention any particular Trial, where it was ever heard of, or allowed as Evidence. I rather believe, that, according to the Notions of those Times, (for soon after the Statute was made against *Witches*) if any Decypherers had appear'd then as Evidence, they might have been in more Danger than the Criminal.

But if there are any certain Rules, or any reasonable Methods in Decyphering, I am sure 'tis highly improbable, that Persons so cunning and wary, as these are all along represented to be, should be guilty of such a fatal Oversight, as just to sign with such Numbers, that all, it seems, who understand Cyphers, must necessarily know to be intended for the Initial Letter of their Names. It would, my Lords, in my humble Opinion have been more consistent with that Care and Caution, to have made those Numbers stand for quite contrary Letters, and those Letters to have been express'd by quite contrary Numbers; and there is no Doubt, but they might have made any others signify the same Thing. However, since the Decypherer has not shew'd us by what Methods he has arrived at this Conclusion, 'tis impossible for us, by any positive or direct Evidence to confute it: But 'tis sufficient for us, to deny on the one hand, what he has on the other hand affirm'd, without telling us the Reasons of it.

That the Names of *Jones* and *Illington* belong to his Lordship, is endeavoured to be proved by some Passages in subsequent Letters, and by refining on the Matter of them, which they think is applicable to his Lordship only.

I have already mentioned two of those Instances, *viz.* his Lordship's own Indisposition, and the Death of his Lady, which are likewise mentioned in the subsequent Letters, in order to fasten the Imputation intended, yet deeper on him. There is a Third, which relates to the Present of a Dog.

That such a Dog was sent does indeed appear; but that his Lordship had received it, or saw it, or had any Letter or Message about it, has not been proved, and he positively denies it; and to whom, or from whom it was really sent, Mr. *Kelly* can best determine, and his Lordship must refer himself to what he has always affirmed in his Examination; and (if I am rightly inform'd) since re-affirm'd at your Lordship's Bar, that he gave it to Mrs. *Barnes*, and designed it for her from the first, and for her only.

My Lords, I should apologize for taking Notice of such minute and low Circumstances; but it is the Evidence and Nature of the Proof made use of against us. I should rather have expected, that ingenious Gentleman (the Decypherer) would have shewn, by some Rules of his Art, that the whole Story of the Dog had been a Fable or Fiction, and explain'd it to something that was reasonable and probable, which I am sure this is not, to suppose (as the Letters read to your Lordships do suppose) *Musgrave*, i. e. *Marr*, in one Part of the World, General *Dillon* in another^a, widely distant one from the other, and a learned Prelate, to be in such Tribulation and Concern for a little Dog; which no way suits the Characters of any one of the Persons to whom it is applied; much less the Circumstances of this learned Prelate, who had at that time a much nearer Concern upon him, from the Death of his Wife, and was himself in such great Disorder and Weakness of Body. The speaking therefore of this Present, backwards and forwards, with such particular Circumstances, and the Report of it so industriously spread many Months before my Lord Bishop's Apprehension, (as some of your Lordships cannot but remember) is absurd and ridiculous upon all other Suppositions, but upon the Design of fastning something on his Lordship, the Point all along in their View.

If the Writer of these Letters had been really and truly informed of his Lordship's Circumstances, he might, perhaps more properly, have affirm'd it of his Lady; which 'tis plain, the Writer was not, because he speaks of her as Living 11 Days after she was Dead. And how ignorant of them the Writer really was, appears by another Passage in that very Letter; where he says, ^b 'Mr. *Jones* is come to Town for a Day only, 'May 7th.' Whereas his Lordship had been in Town Two Days, and staid Three more, as appears even by their own Evidence, *Lawson* and *Wood*.

By these your Lordships may see, how many forced Inferences and Constructions, and what a Train of Absurdities and Suppositions are necessary to support one poor, and (if true) yet considerable Assertion, when once we depart from the sure and known Rules of Law!

A Third Way of proving these Letters to be the Bishop's, is from the Hand-writing, which is supposed to be *Kelly's*, and he is supposed to have been his Lordship's Secretary in these Matters: Both which Suppositions are destitute of any proper or satisfactory Proof.

The first is attempted to be supported by the Testimony of the Clerks of the Post-Office. But before I speak to the Testimony which they have given, I must beg leave to offer one Word as to their manner of obtaining it; and shall endeavour

not to transgress your Lordships late Resolution: And when I mention any Words of that Act of Parliament, it is only to shew the cautious Measures the Legislature took even in imparting this Power to them, and the just Apprehensions they had of the Abuses and ill Consequences that might attend it. My Lords, I am so far from endeavouring to bring them in danger of a Penalty, as the Counsel were pleased to object, that I am willing to suppose those Clerks had proper Warrants at that Time, and for that particular Opening and Detaining. But that is all which the Act gives, and the Words of it are fully satisfied by such a Construction, without going farther, and extending the Words of the Act to that which was not in the least within the Intention or Purview of it. It don't appear to me, my Lords, I confess, how they are empower'd to take Copies (for all such Acts which are in Restraint of Trade and Commerce, are to be strictly and literally construed :) But I am utterly at a Loss to know, from what Words of the Act it can be inferr'd, that such Copies shall be received as Evidence in Courts of Judicature; and not only against the Writer himself, but against other Persons too.

A private Act of Parliament (tho printed in *Rastal* and other authentick Collections of Statutes) has been disallow'd, when it has not been examined with the Record. But, my Lords, I don't know that a Copy of any Thing was ever allow'd as Evidence, but what was made by a proper Sworn Officer, known in Law, and where every one may have Access to it; and therefore, if false, may be disproved by the other Side. But is there the same Reason here? My Lords, can the Party ever have an Opportunity to disprove it, if falsely copied, when the Original is sent forward? Or, if it were still in their Possession, have we any Power to procure a Sight of the Original? or to have a Copy of that Copy? And therefore, we hope your Lordships will not regard that Part of the Evidence, if it were material. But to consider also, my Lords, what it is they have deposed of these Copies; That the Originals were written in the same Hand with some Papers shewed them; and which, they were told, were Mr. *Kelly's* Hand-writing. Your Lordships, I doubt not, observe the Time when they deposed this first, viz. the 24th of *August*, and afterwards the first of *January* last; i. e. The first of these Depositions four Months, the other eight Months, after they had seen the Originals of the 20th of *April*: For, they were forwarded by the Post, and the Clerks only took Copies of them, and did not detain any one Original for a Specimen till their first Deposition; and surely that was a little of the latest: So that it rests singly upon the Memory of the Clerks for four or eight Months. I think St. *James* says, *That a Man may even behold his own Face in a Glass, but he is no sooner gone, but he straitway forgetteth what manner of Man he was*: And it is much more impossible for any one so exactly and nicely to remember all the little Strokes and Dashes of the Pen, by which the Sameness or Diversity of Hands can only be made out.

And all *Malone* swears, is, That he believes it to be *Kelly's* Hand-writing; and 'tis remarkable, that his Deposition is but in *January* last, and he left Mrs. *Barnes's* Service in *May*, so that he

^a Rep. 40. App. E. 42.^b App. D. 47, 8.

could not have seen him write since that Time. He don't say, he ever read any of his Writing, or at most the Supercription of a Letter: He might, perhaps, see him write at some Distance, as he came in and out of the Room; but surely, that cannot be sufficient to form a Judgment of a Man's Hand-writing; and I am sure the Improbability is much greater after nine Month's Time. And *Hutchins* the Messenger, from seeing the Supercription of a Letter to the Secretary of State, has likewise, I think, taken upon him to swear the same thing.

But supposing these Persons had seen Mr. *Kelly* write frequently, and had, within a more reasonable Distance, swore it to be like his Hand, will any one say, That it is a sufficient, or even a reasonable Proof, in any criminal Case? But because Mr. *Kelly* is all along affirmed to have acted in these Matters as his Lordship's Secretary, I must beg your Lordships Patience to consider, How far that Doctrine of Similitude of Hands has prevailed.

Colonel *Sidney's* Case was the first wherein it was ever admitted as a Proof in a Criminal Case; but that Judgment was afterwards reversed by Parliament, as manifestly unjust. In *Lady Car's* Case, *Sid. Rep.* 419. which was only an Information of Perjury, yet a Letter under her own Hand was positively denied to be Evidence; tho' a Witness swore he believed it to be hers. I must own, my Lords, this Case at the late Trial of Mr. *Layer*, was not only denied to be Law, but all Men defy'd to make common Sense of it: But, with the utmost Deference to that learned Gentleman that said so, I beg leave to mention the Words of Sir *J. Hawles* upon that Case, who was of a different Opinion. 'At that Time, says he, when the Case of *Lady Car* was adjudged, besides *Twisden* and *Keyling*, two very eminent Judges, there sat in that Court Sir *Wad. Windbam*, whom all will own to have been the second best Judge who sat in *Westminster-Hall* since the Restoration; and if it is not Evidence in Misdemeanour, much less, says he, in Treason.' Which Inference, besides the Reason of the Thing itself, is supported by the Authority of Lord *Coke*.

In my Lord *Preston's* Case, his Hand-writing was proved by three Witnesses, that had belonged to him while in the Secretary's Office, and must necessarily have seen him write a thousand Times: But that was not all; for those Papers were seized on him, sealed with his own Seal, as he was going to *France* in the Heat of War, contrary to an Act of Parliament, which at that Time made it Treason.

In the Trial of the Seven Bishops, the same Question arose, Whether Similitude of Hands was a Proof in a Criminal Matter? and it was not admitted.

In *Francia's* Trial, before all the Judges at the *Old-Baily*, it is positively laid down by the Chief Baron, and not contradicted by any others, That it was no Proof or Evidence of itself; and the Letter in that Case would not have been admitted, but that it was found by his Bedside, and a Copy of the very same Letter enter'd in his Pocket-Book, which he had owned and explained to some Lords of the Council.

In *Crosby's* Case, the Hand-writing was sworn to by three positive Witnesses, and owned in

one of the Papers by the Prisoner himself; yet Lord Chief Justice *Holt* and the Court held it no Evidence, *Because one Hand, says he, may be like another, and Presumptions shall never take Place in Treasons.*

In the late Case of Mr. *Layer*, 'tis well known, that besides the Proof of his own Hand-writing, the Treasonable Papers were delivered by his own Hand to the Witness; and 'twas upon that Ground only, they were permitted to be read against him. Besides this, he had said *that* before the Lords of the Council, which the Court thought amounted to a full Acknowledgment that it was his Writing. But even all this, my Lords, was made use of against him but as concurrent Evidence, because there were two positive Witnesses, *viva voce*, against him, as to the other Overt-Acts.

I will mention to your Lordships some Foreign concurrent Authorities upon this Point, to shew, that the Reason and Equity of this Doctrine has been uniform and universal, That Similitude or Comparison of Hands is not a sufficient Proof of it. There is a famous Case of *Jean Millard*, in a Book called, *Le Journal du Palais*. He had lived 40 Years from his Wife, and then returned and reclaimed her, after she was marry'd to another. One of his Methods made use of to prove him to be the same Person, was, the Hand-writing of Letters that had formerly passed between them: Which occasion'd this Question before all the famous Judicatures of *France*, 'Whether the Testimony of skilful Notaries, who fully deposed of the Similitude of the Hands, was a sufficient Proof in this Case?' and it was universally denied. And yet this, my Lords, was a Case highly favour'd in all Laws; but more highly in those Places, where Marriage is reputed as a Sacrament, and in favour of which they will often admit even the Party's own Oath.

Codex Fabrianus Lib. 4. Tit. 14. Def. 71. says, 'A Proof by Comparison of Hands, is a very dangerous Proof: *Idque in causis civilibus duntaxat; sed in criminalibus, in quibus periculum majus versatur, aut capitis, aut existimationis, non item.*'

Voet, an eminent Modern Civilian, *Lib. 22. Tom. 4. Sect. 11.* to the very same Purpose. And so does *Cujacius* in his Commentary on the Novels 73. 'The *Romans*, says he, never allow'd it, but when no other Proof could be had. And in latter Times, when Forgeries became more frequent, they would not allow of it at all, unless the Writing had been acknowledged by the Party, or proved by two Witnesses who saw him write it.'

And then it was necessary to bring both into Court, that the Judges themselves might make the Comparison, and not leave the Witnesses to be the only Judges of it.

But it was never known, and I may defy all the Writers of Law to shew me one Instance, that any Evidence of the Similitude of Hands (which can only be made out by Comparison) was admitted, but where the Papers pretended to be written in the same Hand, were produced and compared: Which is so far from being the present Case, that even the attesting Clerks, who are the only Witnesses in the Case, never had an Opportunity of comparing the Original Letter stopp'd in *August* last, with any one of the three original Letters dated *April 20.* or with any

any of the intermediate Letters, which they affirm to have been written in the same Hand.

And if it be consider'd, how much more difficult it is to distinguish the Hand of one writing in Figures (which stand single one from another) from the Hand of one writing in Words at length (which are variously connected and combined) your Lordships will never give them the least Degree of Credit.

But at once to put an End to this Evidence (if my Instructions are true) it has already appear'd to your Lordships, upon Mr. *Kelly's* Bill, That the only Original Letter of the twentieth of *August*, stopt as a Sample at the Post-Office, and the only Ground of affirming these Three to have been his, was not his Hand-writing; and, if need be, we have the same and stronger Evidence to produce. Upon the whole therefore, I think I may affirm, That there is no legal or reasonable Ground to infer those Letters to have been wrote by *Kelly*.

And surely, my Lords, it was incumbent on them to prove, as well as to affirm, that they were wrote by his Lordship's Direction, before they can affect him; even tho' the Writer (whoever he was) had presumed to have signed them with his Lordship's own Name and proper Appellation. I beseech your Lordships, how does it in the least appear, that Mr. *Kelly*, or Mr. *Carte*, (as is afterwards upon no better Grounds suggested) was employ'd by his Lordship to carry on that Correspondence? It has, I confess, been frequently said at your Lordships Bar, as well as by that Honourable Committee, but like other Charges, without any Shadow of Proof; unless it be an obscure Passage in a Letter of *Chitwell* from abroad, to one *Williams* here, D. 27. which says, *They had a Story in France of Weston's Clerk being laid up for Debt*: Which, as I shall afterwards shew, could not possibly mean his Lordship. There is another Passage also in the Letter to *Dubois*, from whence the same Inference is made. What unknown Person that *Dubois* is don't appear, or whether it is a real or fictitious Name; for all their Lists and Cyphers afford nothing like it. The Committee are pleas'd to suppose it a Letter to the Bishop, and received by him from Abroad; and from thence infer, he us'd to receive Letters directed to him by fictitious Names. The Counsel for the Bill suppose it a Letter from *himself* to *himself*, because the Hand-writing, they say, (or rather the Letter *e*) is something like his Lordship's. It is not signed by any one, and dated only the sixteenth of *December* without any Year; and tho' that Honourable Committee are pleas'd to affix, in their Observations on it, 1721. because *Johnson*, they say, was about that Time at *Paris*, yet for what appears from the Letter itself, it might be written before his Majesty's Accession, or before the several Acts of Grace that have been; and if it had any Criminal Meaning, 'tis improbable his Lordship would have mentioned the Hand of Conveyance at length; and much more improbable, that he should have destroyed all his other Letters (as the Committee are pleas'd to insinuate) and to preserve this only, which is of no Consequence, but to furnish Evidence against himself, and to explain the Thing most wanted. Another Proof that it is his Letter, is from a broken Seal, which, they say, is made by the

same Seal as that seiz'd on his Servant at the *Tower*. But consider, my Lords, how many *Similitudes* we are at last come to in this one Attempt, *Similitude of Hands*, *Similitude of Figures*, *Similitude of Characters*, and *Similitude of Seals*.

That Similitude of Hand-writing is no Proof, I have shewn by a Variety of the best Authorities: much less, the Similitude of one Letter in the Alphabet; that is, I dare say, a Conceit perfectly new. And 'tis well known, Artists are capable of counterfeiting any Man's Hand or Seal in such a Manner, that even the Person whose Hand or Seal it is, shall not be able to distinguish it from his own: And your Lordships yesterday saw an ample Specimen of it.

It is upon these Grounds, my Lords, that *Kelly* hath been affirmed to have been his Lordship's Secretary in these Matters; but there is not the least Charge or Pretence of his having writ any other Letters of any kind for the Bishop, but these Three only, and not one throughout the whole Correspondence charg'd to have been written by *Carte*, (tho' he is in general charged as another Manager of this Correspondence.) This, my Lords, we must insist, ought to have had the fullest Proof, and the most undeniable Evidence: For it is the Gift of the Offence, 'tis the Foundation of the Statute 14 *W. III. c. 3.* and 'tis the particular Suggestion of this Bill. 'Tis possible some such Letter might be wrote by *Kelly* or *Carte* to the Persons they are address'd to, without the Bishop's Privity or Direction; 'tis not so uncommon a thing to pretend Acquaintance with Persons of Distinction, or to make use of their Name and Authority, to give themselves a greater Degree of Credit with their Correspondents.

If this may be so, and ought now to be presumed so, since no Man has proved it otherwise; then no Man surely ought to suffer by the Act of another, or to be punished for another Man's Fault.

I believe no one will think it any Reflection to hear many of your Lordships Names in these Cyphers, and afterwards to find a frequent Mention of them in the Correspondence; or to find his Majesty's own Name in *Plunket's* Cypher, under the Disguise of *Hawkesby*, and Page 62 of the *Report*, Compliments from the Pretender and his Wife to one *Hawkesby*. No Man, I say, will apply these, or many other Names of Persons of Honour mentioned in them, to the Persons themselves, or imagine those Letters were really wrote by their Privity or Consent. By the same Rule of Justice, and by a Parity of Reason, my Lord Bishop's Name may be presum'd to have been made use of, without his Privity or Consent; and if there is any certain Rule or Position in Law, it is this, That all Presumption ought to be in favour of Innocency.

And to shew the little Intimacy there was between his Lordship and Mr. *Kelly*, (if *Rig* means his Lordship, as they suppose, or that Letter *E. 64.* was from *Kelly*, as they also suppose) it will be sufficient to remind your Lordships of one Part of it, where the Writer says,—
 ' That *Rig* and one *Skin* had been together;
 ' but the Result of their Meeting he knew nothing of. *Rig* had fixed his Suspicion somewhere, tho' I cannot find out the Place; but
 ' you will hear it from *Skin*, to whom, it's probable,

‘ bable, he may have communicated his Sentiments that way.’ That is, my Lords, if I understand the Meaning of those Words, that *Kelly*, the supposed Secretary on all these Occasions, knew nothing of the Matters, or at least much less than *Skin*, whom *Kelly* had but just before introduc’d into *Rig’s* Acquaintance.

There is another Letter which has likewise been read, *E. 47.* (if it is to be understood to be *Mr. Kelly’s*, as they suppose, and *Rig* is to mean his Lordship; tho’ we are far from admitting the one or the other) which we desire to make use of, and amounts to a full and direct Confession, that the Writer (whoever he is) had nothing in his Power or Knowledge to charge him with. I have the more Countenance, my Lords, to repeat the Words of this Letter, because that Honourable Committee have let it pass without Exception, *Fol. 59.* of the *Report*: Wherein the Writer vows, ‘ He never heard of the Cant Names of *Jones* and *Illington*, or who was meant by them: That some Persons in whose Power it was to do for him, had shewed no Concern at all for his Misfortunes; that it was well he had no Secrets to reveal, since such Usage might provoke a passionate Man.’ And all the World is since convinced he had not, since no Person seem’d to be apprehensive that he could do them any Mischief. My Lords, I say, if this Letter is to be understood as from that Gentleman, we think we are intitled to have the Benefit of his open and candid Declaration.

But however, my Lords, if we should not be allowed to make this Use of it, yet (if my Instructions are true) *Mr. Kelly* fully asserted this himself at your Lordship’s Bar; and even without it, we shall be able to make appear most plainly, in the Course of our Evidence, that *Kelly* did not, and could not write those Three Letters from his Lordship’s Mouth, or by his Lordship’s Direction.

The Date of all Three is 20 *April*; when this Reverend Prelate (as has been already mentioned to your Lordships) was deprived of the Use of both Hand and Foot: had for a great while been confined to his Room, under the greatest Weakness and Disorder, when his Lady lay in the next Room, on her Death-bed.

These, my Lords, and other remarkable Circumstances in his Family, which distinguish this particular Period of Time, as on the one hand, they have given the Writer of these fictitious Letters some Advantage towards fixing them on the Bishop; so, on the other hand, they afford his Lordship a like Advantage (in the most providential Manner, I may say) towards clearing himself from the Imputation of them. Because his Servants then attending him, are able to recollect what passed on that Occasion, and to be very positive and particular in their Evidence concerning it.

His Lordship happened then to have Three Men-Servants actually attending on him, and some one of these always, both Day and Night, either present with him in the Room, or waiting in the Passage at his Chamber-Door; and the Weather being warm, and the Room close, the Door was generally wide open: It was then this Reverend Prelate’s Misfortune, that he was not

able, without their Help, to stir, or even to lift up what he eat or drank to his Mouth. Besides these, there were Two Women-Servants, which constantly attended his Lady in her Room, which is next adjoining, and came frequently to him (once or twice an Hour) every Day with Accounts how she did, the Bishop himself being disabled (for several Days before her Death) to go out of his Room.

And all these five Servants will depose, That for 14 or 15 Days before his Lady’s Death, no Stranger whatever visited his Lordship, much less stayed there any Time with him. This (my Lords) the Women-Servants will affirm, as far as their frequent seeing of him gave them Opportunity to make these Observations. His Coachman (tho’ now Witness against him) has constantly affirmed the same thing, both below as well as before your Lordships. But the three Men (one of which was always in the Room, Day and Night, as I before observed) can be most full and peremptory in their Testimony. So that the Bishop could not possibly dictate these Letters, either to *Mr. Kelly*, or to any Body else, without the Privity and Observation of some of them.

This being a Negative, it is impossible to be more fully proved in any Case; and nothing but the remarkable Circumstances which happened at that time, to which the Writer of those Letters unluckily pinned them down, could have help’d us to so strong and undeniable a Proof of it.

Whether *Mr. Kelly* was ever acquainted or visited his Lordship, indeed I am not instructed; their Evidence, ^a I am sure, has proved nothing like it, nor is it material, much less criminal. But as to the particular time (12 *April*) when *Mr. Kelly* is supposed to have told *Mrs. Barnes*, and she is supposed to have told *Mrs. Levett*, that his Lordship sent his Coach for *Kelly*, we shall expressly prove the contrary: and besides that it is only Hearsay of *Mrs. Levett* from *Mrs. Barnes* who denies it, and his Lordship’s Disability at that time to receive Company; I say (my Lords) besides these Circumstances, it is remarkable that the Coachman, and the Baker (who it seems were directed to keep a Diary of every Body that came, and of all that happened in his Lordship’s Family) say not one Word of this remarkable Incident, in either of their Depositions. The Coachman has denied that he ever fetch’d *Mr. Kelly* in his Lordship’s Coach since he lived with his Lordship, or ever was at *Kelly’s* Lodgings, or that he ever saw him or *Mr. Carte* in his Lifetime; and surely their Silence (if there were nothing else in the Case) is sufficient to infer, that he was not there at that time: And all *Mrs. Kay* and *Malone* swear is no more, than that they don’t remember *Kelly* lay at *Mrs. Barnes’s* that *Thursday* or *Friday* (the first only speaks in her printed Deposition of a *Thursday* or *Friday* about the middle of *April*.) And how is it possible they should remember the Time so exactly, for neither of them belonged immediately to *Kelly*, but were only Servants to *Mrs. Barnes*, who had other Lodgers in her House? They did not even make these Affidavits till the 6th of *February* last; and ’tis no easy Matter to remember such an inconsiderable Circumstance of a Lodger (ten Months together) unless they

^a D. 47. 8. 9. E. 6. b. c.

likewise had been instructed before-hand to keep Diaries of Mr. *Kelly's* Motions.

The Third General Charge against my Lord Bishop, is ^a the receiving of Letters from Abroad relating to this Conspiracy.

Two Instances only of this Kind have been ^b produced. The first from *Motfield* (interpreted *Marr*) 11th of *May*, addressed to *Illington*.

The other from *Digby* (supposed to be *Dillon*) 14th of *July*, addressed to Mrs *Weston*. Neither of which (do they pretend to say) came to his Lordship's Hands, or if they had, that there is one criminal Word contained in them, and consequently could not be (as I before proved) a treasonable Correspondence, within the Letter or Intent of any Law.

That of *Motfield's* is a mere Letter of Friendship, and (if from Lord *Marr*, as they suppose) is to a Person with whom he never had either Friendship or Acquaintance; but really seems designed for no other Purpose but to fix upon his Lordship the Letter directed to *Musgrave* of the 20th of *April*, (for the same reason interpreted *Marr*) the Receipt of which is there acknowledged; and in his Words of Condolence there is something, which, 'tis said, points out his Lordship's Character and Function, tho' in my humble Apprehension, no more applicable to his Lordship, either as a Bishop or a Clergyman, than to any other Person; especially if it be considered (as it really is) the Style of a Letter of Compliment. But if the Letter itself, to which this is pretended to be an Answer, should prove to be a mere fiction, the Answer to it (tho' it were Criminal) must fall with it, as a part of the same Contrivance.

And as to the Letter from *Digby* to *Weston*, tho' that Hon. Committee seem to lay some Strefs upon it, by printing it at length in their Report, yet there is nothing in it that can affect any Man criminally, but his Lordship not at all; because the passage in it relating to his Health, and the Concerns of his Family, cannot possibly be applied to him. It implies, that he was then in a very ill State of Health (*July* 25.) and his Family in great Disorder; whereas his Lordship (I can speak it, my Lords, upon my own Knowledge, as well as the Testimony of several Clergy of his Diocese, and others) was then perfectly well, and able to transact all the ordinary Business of his Diocese and Deanery, and had been so for above two Months, having myself the Honour at that time to be concerned with his Lordship in a very tedious and intricate Enquiry; and the Disorder in his Family (if it means the Death of his Lady, for that or nothing is meant by it) had been over a much longer space of Time.

Nor is it probable that such a Mistake should be made by the Person (whom the Name of *Digby* is supposed to denote) if what the Report p. 39. and the Appendix D. 32 and 29. informs us, be true, that two Letters had some time before been written to *Digby*, or his Secretary; the one (*July* 4) assuring, *Weston* was never better in his Life, the other (14 *July*) affirming he was then perfectly well. But it is still more improbable, if your Lordships will consider what that

Hon. Committee have justly observed, in the very same Leaf, that the Professions of these two Correspondents were so foreign and different, as to lay no sort of Foundation for Intimacy or Intercourse between them: and the natural and only Conclusion (we think) from hence, is, that the Letters on this Head, either from this or the other side of the Water, cannot be genuine; and that no fair or regular Correspondent could be guilty of such gross Mistakes.

And of both these Letters from *Motfield* and *Digby*, your Lordships have (I doubt not) observed, that there is no Pretence of Proof concerning the Hands in which they are written; which surely would have been more requisite, than the Application of feigned Names, to ascertain them. Otherwise any one who was acquainted with such Names might write Letters from the other Side, as coming from the Persons designed by those Names, which they themselves were ignorant of.

And as the Receipt of these Letters by his Lordship has not been proved, so there is not any Insinuation or Pretence that he ever answered them, tho' they both bear Date long before his Lordship's Commitment.

This part of the Scheme therefore for charging his Lordship with a foreign Correspondence under fictitious Names, was not so artfully contrived as the former; and seems, by so many grosser Mistakes, to have proceeded from Somebody that had a much worse Intelligence concerning his Lordship's Affairs.

I shall here beg leave to take Notice of the Letter taken from one of his Lordship's Servants in the *Tower*, on which the learned Counsel have laid such great Strefs, because there were no Professions of his Innocency in it. If there had been, I suppose they would not have been much regarded. Why therefore should it be any Argument against him, because there is no such thing? Matters are at a very low Ebb, when such Trifles are relied on. But there is another Reason. The Letter I suppose to have been intended for some near or intimate Friends, and to such Persons there was no need of making such a Profession. They knew (whoever they were) and were before sufficiently persuaded of his Lordship's Innocency, and that it was impossible he should be guilty of what is laid to his Charge. And by what has already appeared to your Lordships, I may say, this Reverend Prelate had no need of making such an Apology, and that the Persuasions of his Friends were not ill-grounded.

The Fourth Head, to which the Charge against his Lordship may be reduced, is the Coincidence of Circumstances, Times, and feigned Names in the intercepted Correspondence, to induce your Lordships Belief of the before mentioned Hearsays and supposed Facts, that his Lordship, and he only, is meant by that Correspondence.

And the chief Observation about the Coincidence of Times and Circumstances relates to the three Letters of *April* 20. his Lordship's Illness, and the Death of his Lady, and the Present of

^a Rep. 41. Append. D. 24; ^b Rep. 51. Append. D. 35.

the Dog, about the same Time. All which have already been accounted for, either as Truths publickly known, turned by ignorant or malicious Correspondents to ill Purposes, or as absolute Falsties, as will appear to your Lordships by our Evidence.

1. As to the Article of Times, of his Lordship's coming and going, it must be own'd, the Penmen of these Letters are sometimes right, but they are as often wrong, and the Mistakes are of more Consequence to destroy what is inferred from them, than the real Agreements, in point of Time, are or can be, to establish it. There is no doubt, but the Correspondents on this Side (whoever they were, and whether out of Malice or Vanity) apprized themselves as well as they could of his Lordship's Motions, in order to give a colour of Probability to what they said of him; and yet it happens, that out of seven Instances occurring in these Letters, and referred to in the Report, three of them (if not four) are plain and gross Mistakes: two only are true in all their Circumstances; and of the other two, it may be doubted whether they answer the Truth in every respect, or not.

First, As to the two doubtful Instances, one is 49 pag. Rep. D. 29. where *June 14. G. W.* writes to *Quitwell*, Mr. *Weston* is in the County, I saw him two Days ago. If these Words mean, that he saw him two Days ago in the Country, (which is the most obvious Sense of them) then the Assertion is false; for his Lordship came to Town *June 12.* as appeared yesterday by the Coachman's Book: but if they mean, I saw him two Days ago in Town, then the Assertion may be true.

The other Instance is *Report 51, 52. D. 14.* somebody writes *July 26. to Maisonneuve*, that *Rig* and *Skin* had been lately together, and that *Rig* went into the Country the Day after. Now by Depositions D. 48. it appears, the Bishop went out of Town *July 21.* they must have met therefore on the 20th, which don't well answer the Word *lately*, which one would think imported 6 or 7 Days more. And therefore these two Instances we set aside, as neither plainly true nor plainly false. The three next are manifest Mistakes.

In *Hatfield's* Letter to *Musgrave* *May 7.* it's said, ^a Mr. *Jones* is come to Town only for a Day, and yet (if *Jones* means the Bishop) he had been in Town two Days, and stay'd in Town three Days longer; for he came *5th May*, and returned *10th May*, as appears by *Lawson* and *Wood's* Examination.

So in a Letter of *J. H.* to *Dixwell*, *June 12.* it's said, *Rig.* (supposed to mean the Bishop) is, I hear, in the Country; whereas his Lordship was at *Westminster* *June 18* and *19*, as appears by the Coachman's Books.

In a Letter to *Maisonneuve*, *July 19. F. 59.* *Rig* is again said to be in the Country, whereas his Lordship was at *Westminster* that very Day, and continued there till the 21st, as appears by the same printed Depositions.

And the Mistakes in these three Instances are the more remarkable, because they all affirm his Lordship to be in the Country, when he positively was not; whereas it was ten to one, but that even mere Guesses had been true, at a Time

of Year that every one almost is in the Country, and his Lordship was really ten Days in the Country, to one that he was in Town during the whole Summer.

But, *My Lords*, I must with some Regret take notice, that none of these Mistakes are acknowledged in the Report of that Honourable Committee, tho' all the Letters and Passages are transcribed in it, particularly that of the 7th of *May*, E. 42. These Words are inserted in the Report, page 41. [*Mr. Jones is come to Town*] but the following Words [*only for a Day*] are omitted; and yet the Section concludes, *that it agrees with the Enquiry made at that Time*; which indeed it does (as far as it is there quoted) tho' not with the Appendix. E. 42.

What Enquiry of this kind was then made, and with what Views, we cannot say, unless we may suppose it to be made by his Neighbour *Lawson*. If it was, 'tis strange that he could not depose from his own Knowledge and Observations in *May*, but only as to what he had heard and was told by *Wood*, his Lordship's Coachman, so lately as the 19th of *February* last. I would reconcile this if it be possible: and the most natural Inference I can draw from it is, that *Lawson* (or whoever that Inquirer was) had pretended to take some Account of his own at the Time mentioned by the Committee, which, upon Comparison with that of the Coachman's, he found to be manifestly false and erroneous, and therefore would not produce or depend upon that: But we hope his Testimony can receive no Advantage from such a Conduct. And upon the whole it appears, that tho' more Industry has been employed on the Article of Enquiry, yet as many Mistakes, have been made in it, as in any other.

And as for the Coachman's Book, after all it cannot be entirely relied on; because the Entries made in his Book can only relate (as we apprehend) to the Charges of Turnpikes and Ferryings, or such other Matters for which he was accountable. He had no Reason to take Notice in such an Account, when his Lordship was in the Coach, when *Not*; and your Lordships have heard, cannot be positive on that Head. And therefore how exact soever his Accounts may be, in respect to those little Disbursements, they can add no Weight to the Observation drawn from them by that Honourable Committee; and tho' great Strefs has been laid on them, (with Submission to your Lordships) they amount to no more, than *that some Persons on this side the Water, writing to some on the other side, are supposed to mention his Lordship, sometimes as in Town, or in the Country*: and from thence 'tis inferr'd, that they had frequent Access to him, and consequently the Matter of their Correspondence is imputed to him.

Had these Correspondents been exact, *my Lords*, in all their Accounts of his Motions, surely no such Conclusions could have been reasonably made: but as they are oftner wrong than right, it follows, they were not so well acquainted with his Lordship or his Circumstances, as (to serve their evil Purposes) they have pretended to be.

Having thus spoken as to the Circumstances of Times, (which are thrown in to induce a Belief, that his Lordship was meant by that Correspondence)

^a D. 47, 8. E. 49.

dence) I shall next offer something as to the Cant Names: And tho' it has been already observed to your Lordships in various Instances, that the Names of *Jones*, *Illington*, and *Weston*, could not possibly belong to him; yet give me leave (*my Lords*) to say further, that *Jones* is not only a very common Name (for in one Society, I think, I remember no less than sixteen of the Name at once) but that Name is manifestly applied to very different Persons, even in the Papers contained in the Appendix. In *Plunket's* Cypher *Jones* denotes the *Germans*: Twelve or fourteen times it is supposed to denote the Duke of *Norfolk*, in three other Places to denote Sir *W. Ellis*; and even in the Letters imputed to *Kelly*, there are ^a Passages (besides those already mentioned to your Lordships) which cannot with any Reason or Probability be applied to his Lordship: For instance, *D. 23.* *Jones* and *Illington* are within the Compass of two Lines plainly distinguished, as two different Persons, and therefore both cannot be apply'd to his Lordship. And in the same Letter as well as a preceding Letter, *D. 13.* *Jones* is mentioned as having undertaken to do something for a Boy at *Eaton*; where it is well known his Lordship has no Influence or Acquaintance, and if he had interested himself there on any such Account, it would easily have been discovered. And this, my Lords, is one strong Instance, to shew the Ignorance of the Writer, even in some of his Lordship's most notorious Circumstances.

A great deal of Pains has likewise been taken, by the help of divers Suppositions and Reasonings, to prove that *Rig* denotes his Lordship. However, I shall take Notice but of one, in the Letter to *Gerrard*, which is said to be Sir *J. D'Obrion*, Report 49 *E. 47.* where something is said of *Rig*, highly improper, and absolutely false, if to be understood of the Bishop. An Account is said to be given of the Difficulty *Kelly* had to get Bail, and it is added—*Your old Friend Rig indeed offered all that could be expected of the poor Man.* (If my Instructions are true) *D'Obrion* is a Name his Lordship never heard of before, nor had the least Concern in procuring *Kelly's* Bail, nor knows to this Day who they are; the only Words applicable to him in this Passage, are those of *Poor Man*; and his Lordship permits me to say, that he is really such, poor both in Body and Purse, and as poor as his Enemies almost can make him: and tho' he may have Reason (if your Lordships should pass this Bill with all the Severities intended by it) to be heartily sorry he is so, and that he has neglected those Opportunities of enriching himself, which others would have laid hold of; yet he gives me leave, my Lords, to say, he is not ashamed of that Poverty, because free from all unjust Acquisitions, and unworthy Compliances. But that he was a poor Man at that Time, *i. e.* unable to procure Bail, (which is the Sense that Writer means it in) cannot with any Decency or Justice be applied to one of his Lordship's Interest and Station, if he had concerned himself in it.

Give me leave, my Lords, to take Notice of another Mistake of that Honourable Committee in the very same Letter; I mean, a Passage cited from it which is not in it, to prove that *Rig* and his Lordship are the same Persons; which I should

have omitted, but that it breaks at once the Chain of Reasoning there made use of. The Words are, *how far this late Affair may affect him* (*Rig*) *I cannot tell*, and *E. 47.* is cited for them. Now *E. 47.* gives an Account of *Kelly's* Examination promiscuously with other Matters, and was written *June 11th*; but the Letter where the Words really are, is *E. 49.* of the 18th of *June* (near a Month after *Kelly's* Examination.) Nor is there a Word in that about the Dog; but it might be proper to confound these two Letters, and connect these two Particulars, in order to make out, that *Rig* and his Lordship are the same, tho' they have really no Relation one to the other.

We might add, my Lords, many gross Errors in the Application of Names: but if your Lordships are satisfied with the Justice of those already mentioned, (as I hope your Lordships are) there will be no need to regard the rest; for tho' they have some little Coincidences of Time, yet they are dashed with so many Inconsistencies, and so many Falsities, that no fair Correspondent could be guilty of. But there is one which of all others bears hardest upon this Reverend Prelate, the most criminal in the Matter of it, and from which he is most deeply concerned to clear himself; *i. e.* the Letter of *April 20th*, which has been over and over affirmed by that Honourable Committee, as well as by the Counsel for the Bill, to be a Letter to the Pretender. If that be so, and had been proved by any Degree of Evidence, to have been dictated by his Lordship, we should have been utterly at a Loss what to have said, in a Case that would have been so fully within the Letter of the Law. Part of it, my Lords, we have already shewn to have been charged on his Lordship without the least Proof or shadow of Evidence; the other Part of the Charge we hope now to prove equally groundless and false.

That the Letter addressed to *Jackson* was not to the Pretender (whomever else it may mean) we think, appears clearly from the Words of it, *our Circumstance on this Side*; a Phrase not only used by all Writers, but is the constant usual Style throughout all the Papers in the Appendix, in contradistinction to *France*, which is the other Side, but never to *Italy*, as the Case must be here, if *Jackson* means the Pretender. The Instances in the Appendix are almost infinite.

Another Reason, why we think the Name of *Jackson* cannot reasonably be supposed to denote the Pretender, is from *E. 30.* where there is mention of dividing *Clinton's* Money between *Medley* and *Jackson*, *i. e.* says the Rep. p. 54. between *Ormond* and the Pretender. But it is not to be imagined that a Letter written from one devoted to the Pretender's Interest, should place *Ormond* before him; this is so unlikely, that even the Committee, speaking in their own Persons at the bottom of this very Page, slide naturally into the other Way of placing the Words, the *Pretender* and *Ormond*. Besides this, my Lords, there are so many Familiarities [to mention but one, *all such pretending People*] in the Letter itself that it could never come from any one (as I before said) devoted to that Interest, at least not to the Pretender himself, but to some Equal or rather to some Inferior. *Jackson* therefore must mean some-

^a Rep. 48, 9. 59. 68.

body else, somebody in *France*, and not the Pretender in *Italy*; and on this Supposition, every Word, and Phrase of that Letter is better accounted for than on any other.

The Committee of that Honourable House below, have been pleased also to observe, *p.* 45, 46. that *Jackson* appears from other Letters to be the same as *Malcolm*, (which they say means the Pretender) and for this Reason, because [*p.* 54. *E.* 30.] *Clinton's* Money is to be divided between *Medley* and *Jackson*. And *pag.* 56. somebody hopes *Clinton* has sent *Malcolm* half Money; which proves indeed, that either *Medley* or *Jackson* means *Malcolm*, but which, may be still a Question, as much as it was before.

That *Malcolm* means the Pretender, 'tis proved, because application is made to *Malcolm*, in a Letter from *Scotland*, for a Patent, and for Power to raise a Regiment, *Rep.* *pag.* 45, 75. But with Submission to that Honourable Committee, neither of these Instances prove that Assertion; since the most natural Way of applying in such Cases, is to Persons employed under the Principal, and not immediately to the Fountain Head itself: and if the late Duke of *Ormond* was to have come over last Summer to head the *Scots*, and they daily sent pressing Messages to that Effect, (as Mr. *Stanhope* writes from *Madrid*, *Rep.* *p.* 75.) who more proper to be applied to by a *Scots Man* on both these Occasions? *Malcolm* therefore (with Submission to the Committee) more naturally means the late Duke of *Ormond*.

I may add to this, my Lords, that in the Cypher inserted among the *Scotch Papers*, I. 14. *Davis* and *Lloyd* (not *Malcolm*) is said to be the Name and Designation of the Pretender.

I hope we may be allowed to argue in this Manner, from one Cypher to another, because the same Method has been made use of against us, upon this very Article, both by that Honourable Committee, and the Counsel for the Bill: for the only Colour there is for interpreting *Jackson* to be the Pretender, is taken from *Plunket's* Cypher, in which (as it is printed) *Jackson* is set over against the Name of the Pretender, and from the Titling to the Draught of a Letter of *Plunket's* to *Jackson*, C. 41. and admitting this Letter to have been so entitled by himself, (which has not yet been proved) yet it does not follow, (as I observed) that because a Letter address'd to one at *Rome* by *Plunket* under the Name of *Jackson* signified the Pretender, that another Letter directed to one of that Name in *France*, by a quite different Person, should likewise necessarily signify the Pretender. This, my Lords, I beg leave to say, is no certain or natural Consequence: but it is most certain, that that Draught (whomsoever it was intended to) was not written upon that Cypher which the Committee refer'd to, in order to have it thought to have been written for the Pretender; for there is but one only of the many Cant Names in the whole Letter, which is to be found in that Cypher. But if your Lordships will be pleased to consider that Cypher a little farther, it will appear, that the very Persons supposed to be concerned in dictating this Letter to *Jackson*, were utterly strangers to the Correspondence; for it consists of a hundred and fifty Names, and no Man can find above four that are in this Cypher, or in all that voluminous Correspondence attributed to *Kelly*; nor any of those four ever used in the Letters supposed to be writ

by *Kelly*; but in those only supposed to be written to him from abroad.

The Name of *Jackson* is not once in all that Correspondence applied to the Pretender: and tho' there be a hundred proper Occasions of mentioning him, it is always under some other Appellation. And *Plunket* himself, in his Examination C. 73. Sect. 14. (when he could not possibly know the Tendency of the Question) not only says positively, that he never writ to any Person by the Name of *Jackson*, and does not know who is meant by it, but it is also remarkable (my Lords) that in all the Letters said to be written by him upon that Cypher (after it was formed) he never once styles the Pretender *Jackson*, but either *Joseph* or *Jephson*.

The first of these Letters is in *May* 1721, and therefore that Honourable Committee have with great Exactness placed this Cypher immediately before it, as supposing it about that Time framed; for all the preceding Letters are manifestly written upon another Cypher. Now this Letter of the 20th of *April*, supposed to be dictated by his Lordship, was written before that Cypher of *Plunket's* was framed, and consequently could not take a Name from a Cypher which then had no Existence.

There is another Observation of that Honourable Committee, which I beg leave to take Notice of. They say, that the Cypher made use of in this Letter to *Jackson*, is the same made use of in the Letters from the late Duke of *Ormond's* Agents, and in Letters to *Dennis Kelly*; and yet the Pretender has some other Names in such Letters, but in none of them ever once styled *Jackson*. How comes it then, my Lords, that he should be styled so once, in this one Letter, and never before, nor after, by that Writer or by any other?

We have been the longer, my Lords, in removing this Imputation, because of all others it is the hardest and most unjust upon this Reverend Prelate; and upon the whole, we hope it is fully and effectually done, (notwithstanding the Difficulties we had of proving a Negative) and even from those Lights and Materials the Committee themselves have afforded us: and if we had had an Opportunity of inspecting the Originals, we doubt not we should have been able to have proved much better, that *Jackson* (to whom this Letter of the 20th of *April* was directed) could not possibly mean the Pretender.

And if that be the Case, as it certainly is, and it appears farther by the Evidence which we shall produce, that these three Letters of *April* 20. were not, and could not possibly be dictated by the Bishop, the Foundation of the whole Charge is destroyed, and consequently, all the Superstructure must fall to the Ground. Nay, I will venture to affirm, that it is impossible for them to form any Scheme to prove the Bishop wrote these Letters but what is, and will be actually disproved and falsified, by some Part of their own Evidence.

Having thus, my Lords, gone thro' every Part of the Charge, I must crave your Lordships Patience, yet to speak to two Things, which have been much insisted on by the Counsel for the Bill. That when your Lordships proceed in a *Legislative Capacity*, you are not to be guided by the *Rules and Niceties of Law*, and therefore that we are not in this Case to expect an Evidence strictly legal. The other Thing was, that at this time of *Day*, circumstantial Evidence is sufficient in a Charge

Charge of High-Treason, as the Case now before you is. This (my Lords) we have heard fully and often repeated, as it were to anticipate us in this Objection, which they themselves know to be so justly founded.

I have so far acted in Complaisance to them, as to argue chiefly on the Facts and Circumstances themselves, and under the very same Lights they have presented them to us, and hope (my Lords) our Inferences from them have been more just, our Construction more natural, and our Probabilities much greater than theirs; and even in that View (considered abstractly from what the Common Law, and the Common Justice of the Realm requires). I hope we have fully shewn to your Lordships Satisfaction, and to the Conviction of every reasonable or impartial Person, that there are no Grounds for what is suggested in the Bill; and that all who hear me may justly wonder, how this Reverend Prelate comes to be charged (as he is in the Preamble of the Bill) with being deeply concerned in forming, directing, and carrying on a Conspiracy; when it has not been proved, that he entred into any one Consultation concerning any one Measure, gave any one Direction, that he has done any one criminal Act, written, dictated, or received any any one criminal Letter: and if we should wave insisting on an Evidence strictly legal, or a Proof according to the known Rules of Law; give me leave to say, my Lords, because it is true, there has not been a reasonable Evidence.

But yet, my Lords, I shall always insist, both as an *Englishman*, and as Counsel to this Reverend Prelate, that there ought to be a legal Evidence in these, as well as in any other Criminal Proceedings. If there is any Difference, it is in this only, that as there are certainly many greater Inconveniences to the Subject in this Method of Proceeding, there ought to be a stronger Proof, and a Conviction more strictly legal. I will always hope, your Lordships will expect a Proof in such heavy Charges, agreeable to the Laws of the Land, and the Rules and Resolutions of other Judicatures. I am far from thinking your Lordships are circumscribed by the Forms of inferior Courts, because they are in their own Nature discretionary, and the Courts themselves often vary and depart from them. But the fundamental Maxims of Law, the unalterable Measures of Justice, and the positive Directions of an Act of Parliament, are of another Nature; they are binding every where, to all Persons and Authorities, (as long as they continue Laws) the King himself not excepted. I should beg Pardon, for carrying my Assertion so far, but that I am taught by the Bill of Rights that the King himself is bound by the Law, that it is not in his Power to alter, suspend, or dispense with Laws. But if the Doctrine of the Counsel for the Bill is true, and every one at Liberty to follow the Dictates of his own Judgment, and what Rules he pleases; what Confusions, Uncertainties, and Arbitrariness must that introduce in all Proceedings! Private Opinion will too often be a Pretence to exercise private Malice, Revenge, or Ambition.

I might appeal to every one that hears me, whether he has not at some Time or other, believed some things, as strongly as he did at first this Reverend Prelate to be guilty of what was suggested against him, and has afterwards found

himself mistaken? What is more common than for Men that agree in the same Notions of Morality, to deduce different Conclusions and Applications from them? (even where Interest or Partiality do not intervene;) and therefore the Wisdom of the Law of *England* has been, to determine general Notions of Justice and Right by particular Rules and Applications, in order to settle that Variety and Inconstancy, which without some established Rule must necessarily follow. Where then shall we go for true and proper Notions of Law or Equity, but to those great Oracles and Fountains, my Lords the Judges? What better Guide or more certain Rule, can any one of your Lordships propose to himself, than the constant and uniform Judgment of those, whom the Constitution of this Kingdom have made the proper Dispensers of Justice, and the Interpreters of Law?

'Tis your Lordships peculiar Advantage, to be continually assisted by some of my Lords the Judges; and we hope in this Instance (if any Doubt can at last remain) your Lordships will hear their Opinion, with the same Deference and Candor as in former Cases. Let it never be said, my Lords, that you, who are the supreme Oyer of the Kingdom, whose Judgments and Resolutions are Laws to other Courts, and ought to be an Example to all others, in the Justice and Equity of your Proceedings, that your Lordships will not regard the solemn Judgment of the Judges, or the Usages of former Parliaments: and let it not be said, that because other Courts are bound by a Law, to require such and such Circumstances to infer an Offence, or such a Proof before they condemn a Man, that you (my Lords) will follow your own private Opinion, make what you please to be an Offence, without any Evidence at all, but upon mere Hearsays, Conjectures, and Suppositions. Who can read that melancholy Case without Concern, which my Lord *Coke* has in his 3d *Instit.* of an Uncle that was condemned and executed for the supposed Death of his Niece, merely upon a Train of Presumptions and circumstantial Evidence; or *Harrison's* Case within Memory; where the Father and Mother both suffered upon Presumption for a supposed Murder? And with what Shame and Remorse did that hasty Judge see himself convicted by the Persons returning from beyond Sea? And every one almost remembers the Charge of Treason against this Reverend Prelate's Predecessor. If such a Bill had been thought on, or much stronger Evidence had been received, it might have pass'd before the Truth could have appeared. But happy was it for that innocent Prelate, that a quite contrary Method was taken, and his Accusers brought Face to Face to him, by which he quickly discovered the Villany of those Miscreants. Private Opinion or Persuasion therefore is such a Position, that every honest Man ought to disclaim in these Cases; and the greater the Crime is, in which he is to judge, the stronger Proof he ought to require: and when one adheres strictly to Justice, and goes according to the *Allegata & Probata*, by the best Rules and Reasons of Law; whatever Mistakes, Misinformations, or false Evidence may happen in the Case, he can never have Cause to repent, and neither the present Age nor Posterity can blame him.

It was formerly a Question, whether the *Star-Chamber* was bound by the Rules and Resolutions of

of other Courts: and the many Excesses, and extravagant Opinions in this Respect was the Reason that ancient Court was laid aside. And it has been as great a Question, whether the Court of Chancery was to be guided by Rules and Precedents. But the better Opinion has always been, that a Judge in Equity ought to regard the Rules and Resolutions that have been in like Cases; unless he is resolved to make Decrees totally arbitrary.

For tho' Equity and Reason, in itself, is the same all the World over, and nothing can alter the proper and intrinsic Notions of it; yet, as the Matters about which it is conversant, are represented in different Circumstances, and, like Streams of Water, will receive some little Tincture from the Soil thro' which it runs, and there is something in every Man's Temper that will slide into his best formed Notions; it shews the Necessity of some fix'd and establish'd Rules, at all Times, and in all Places of Judicature. And therefore, in that high Court of Equity, tho' the Rigor of the Common Law is in some Respects softned, yet there is nothing more known, than that it is not to be impeach'd in any of its essential and fundamental Points.

I hope your Lordships will pardon me, if I mention an Authority or two of great Name, that expressly say, the High Court of Parliament is likewise bound by the Rules of Law. Lord Chief Justice *Holt* says, The Authority of Parliament, is from the ^a Law; and as it is circumscribed by Law, so it may be exceeded; and if they do exceed their legal Bounds and Authority, their Acts are wrongful, and cannot be justified any more than the Acts of private Men. I might add to this, the Opinions of *Vaughan*, *Hale*, and *Hobart*, to the same purpose; that the Rules of Law ought to guide in passing of Acts of Parliament, as well as in the ordinary Course of Judicature. But when I mention the Sense of a living Authority, that has filled the highest Stations in the Law, and so great an Ornament to your Lordships House, and whose Merits have been so lately distinguished by new Honours, I need cite no more. It was in a Case, where the same Doctrine was advanced (that the Parliament was not bound to conform to the Rules and Proceedings of other Courts:) In answer to which, that noble Lord with great Truth observed, that those Rules were not to be Patterns to them, only because they were Rules of those Courts, but because they were Reason, and Reason approved of by long Experience, and they obtain there as Rules for that Cause; and I hope (says he) that is a Cause why the House should imitate them, as much as *Westminster-Hall*; or else how can they be said to go according to Reason, or Justice, when they go beside, or transgress those Rules?

Besides these great Authorities, there have been Times, when Parliaments have thought themselves bound by the common Rules and Proceedings of Law, and Parliaments that were very tender and sensible of their own Power, in other Respects. Not to mention several antient Acts of Reversal, because Judgments given in Parliament were not pronounced according to the known Laws; there is the Act for the Attainder of the Earl of *March*, because he had been instru-

mental in procuring the Attainder of another Lord, under pretence of a Letter, which (the Record expressly says) was no Evidence. And the Record for reversing the Attainder of *Roger Mortimer*, 28 E. 3. Sir *Thomas Haxley*, &c. is expressly declared to be, because they were attained contrary to the good Laws and Customs of the Realm. And not only the Lawyers and the Histories of those Times condemn them as grossly contrary to Law and Justice, but the Stat. 1 E. 6. cap. 12. is directly levelled at them. For it recites that those Proceedings were terrible and extreme, introduced for particular Policies and Purposes, repeals several Statutes that had been enacted in the preceding Reigns; and, that there might be no more such for the future, reduces all Treasons to the antient Standard of the 25 E. 3. and goes on and enacts, That no Person or Persons (*i. e.* my Lords, as I humbly apprehend, no manner of Persons, in no manner of Place, Court, or Method) shall be convicted for any Offence of Treasons, Petit Treasons, Misprifions, for which the Offender shall in any wise suffer any Pains of Death, Imprisonment, Loss of Goods, or the like, unless accused by the Testimony of two lawful and sufficient Witnesses. The Stat. 5 E. 6. cap. 11. goes further, and says, There shall not only be two Witnesses, but those two Witnesses shall be produced in Person before the Party, and shall before his Face maintain and avow what they have to say. The Words of this Statute, as well as the former, are as general as they can be, without any Exception of Place or Proceeding.

But notwithstanding these two Statutes, there was still Occasion for the Stat. 7 W. 3. to ascertain Treasons, and to regulate the Method of Trials. For there had been several tender complainant Laws introduced by the pretended Zeal of Ministers, with a peculiar Eye to the Prince on the Throne; which tho' others could not apprehend the Justice or Necessity of, yet on these Laws there had been many unreasonable Penalties, undue and irregular Prosecutions, in the preceding Reigns, and which Sir *Jo. Hawles* remarks as one of the great and immediate Causes of the Revolution. And to shew the Resentment of the Nation on these Proceedings, they were all reversed by particular Acts of Parliament; and to prevent the same for the future, that glorious Statute was made of the 7 W. 3. cap. 3. That Persons accused as Offenders should be justly and equally try'd, and not debar'd of all just and equal Means for the Defence of their Innocency. And whoever casts his Eye over the preceding Trials, will find every Clause of that Statute as it were a particular Provision against the Mischiefs that had been, and to prevent the like for the Time to come.

I do admit (my Lords) there is a Proviso in the End of that Statute, that it shall not extend to any Impeachments or Proceedings in Parliament, and therefore I don't mention it as a Rule to Parliamentary Proceedings in all Respects, as it is to inferior Courts. But surely the Reason and Justice of that Act ought to be a Guide, as far as it is consistent with the Nature of your Lordships Proceedings. And inasmuch as it was the Sense of the wole Legislature, and the united Voice of the Nation at that Time, and on a dear-bought Experience, it is surely so far worthy of your

^a *Saw. Rep.* 505.

Lordships Imitation. It can never be consistent with publick Wisdom, to run again into the same Mischief from which we are so happily rescued, or to split on the very same Rocks, on which many of your Lordships noble Ancestors have perish'd.

And it can never be (with Submission to your Lordships better Judgments) a natural or a reasonable Construction of that Proviso to enlarge the Proceedings of Parliament, or to give a greater Latitude than ever they had before. And to remind your Lordships how the Usage of Parliament was, preceding this Statute, I need mention but two or three Instances out of many. Lord *Delamere's* Case in King *James's* Time, 1685, where there was one positive Witness and a strong circumstantial Evidence; and yet your Lordships Predecessors thought that not sufficient to find him guilty. The Lord *Stamford's* Case in the very same Year, where there was also one Witness, and strong Circumstances, and he was in the like manner acquitted. In the Case of the Earl of *Pembroke*, 1677, for Blasphemy and Abuse of the Sacrament, your Lordships Predecessors declared, That the single Testimony of a Commoner, tho' on Oath, was no sufficient Evidence against a Peer denying the Fact upon his Honour; and upon that address'd his Majesty that he might be released from his Imprisonment.

And, as I humbly apprehend, your Lordships have thought fit to admit some of the Regulations of that Act into your Proceedings, such of them (as I before said) as are agreeable and consistent with the Nature of your Proceedings. Your Lordships have been pleas'd to allow Counsel to a Prisoner in Treason, to speak to Matters of Fact as well as Law: You allow a Copy of the Charge against him; you require the Witnesses for him to be upon Oath, as well as against him; neither will your Lordships admit Evidence of a Fact not in the Charge. And surely (my Lords) there is as much Reason, and as much Equity to require (as that Statute requires in the Courts below) the Testimony of two lawful and sufficient Witnesses. Nay, my Lords, I hope the Reason is much stronger, because (altho' your Lordships should consider your selves as unrestrained by the Stat. 7 *Will.*) yet it is positively requir'd by both the Statutes of *Ed. 6.* which are general and without Exception, (as I before observ'd) and because it is agreeable to the Usage of Parliament (as I have likewise shewn) from that Time even down to the Stat. 7 *Will.* And if your Lordships are not enlarged by the Statute of King *William*, and the Statutes of *Edw. 6.* are still Laws, give me leave (my Lords) to say, it can never be just or lawful to take away any Man's Life or Liberty on less Evidence than what those Statutes require, in any Place, or by any Method whatsoever. Because I am taught by Casuists, that every just Law is a Rule of Conscience, whether divine or human; and no Man can say, his Conscience is void of Offence towards God or Man, unless he acts according to the Laws of the one Sort, as well as of the other.

And if your Lordships will give me leave to step once more out of the Verge of my own Profession, I will mention a Word out of the Civil Law conformable to this: That is a Law (my Lords) in some Degree receiv'd by all Nations, as a Scheme of the greatest Equity and Justice.

The Number of Witnesses by that^a Law, ought to be two at least, to make a full Proof, and free from all Exceptions, both as to their Persons and to their Deposition. The Testimony of a single Witness is of no Validity, unless where other Circumstances concur; and it was not the Manner of the *Romans* to condemn any Man, before that he, which is accused, have his Accusers Face to Face. And this (my Lords) is not only the dead Letter of the *Code* and the *Dig.* but the learned *Groenw.* in his Notes upon these Laws, says, It is the general Policy, and obtains at this Day in most Parts of the World. I do own that there are many Cases that happen with us in the Courts below, where the Testimony of two Witnesses is not required; but then, my Lords, it is, when the Trial is by Jury, that is, when twelve Men, coming from the Party's own Neighbourhood, and consequently must be supposed to know something of the Fact upon their own Knowledge, find a Verdict upon their Oaths. But I need not say, that even in a Trial by Jury, if it is a Case of High-Treason, like this now before your Lordships, there must be two Witnesses, and nothing less can warrant the Verdict. And surely, my Lords, it is a Practice founded on Reason; not because this or that Law, or this or that Court requires it, but because it is absolutely necessary for the Discovery of Truth, and for the forming of a right Judgment, whether what is swore be true or false. One Witness may mistake, or be perjured, and yet happen to be consistent with himself; but when there are two separately examined, the Truth is much more easily found out: And tho' a Criminal may now and then escape for want of such a Proof, yet that would be a far less Evil, than to trust so much, in Cases so Penal, to Circumstances and Presumption, and to the Malice and Mistakes of one Person.

But if, notwithstanding the Opinion of the greatest Lawyers both *English* and Foreign, your own uniform Usage and Resolution, and the Reason of the Thing itself, your Lordships are resolv'd, in this one Instance, to follow every one his own private and particular Conscience; let every one hearken to that still Voice within him with an honest Attention, unto those secret Whispersings, with Temper and Moderation. Let no Man be sway'd by Hopes, over-rul'd by Fears, or transported by Zeal beyond the Bounds of Justice, and through this Reverend Prelate's Side give a Wound to himself or Posterity, which may never be cured. Consider, my Lords, if not for his, yet for your own Sakes, the Circumstances, the Probabilities, and Evidence on both Sides, with an unbiass'd Conscience, and by the Measures of Law and Justice. For tho' some Proceedings may seem convenient to certain Times and Occasions, yet unless they agree with the Law, with Reason, and with Justice, no Man ought to think he has any Power to consent.

There is a noble Instance on Record of the Lord *Digby*, and worthy of every one's Imitation. He had been, my Lords, one of the most violent Managers in the Impeachment of the Lord *Strafford*; and yet when that Proceeding was wav'd, and a Bill of Attainder brought in, he spoke as violently against it: Tho' he was still of Opinion (he said) that that Lord was the same dangerous Minister, and great Apostate to the Com-

^a *Dig. 22. 5, 12. Cod. 4. 20 9.*

monwealth, who must not expect to be pardoned in this World till he was dispatched to another; yet he had rather lose his Hand than put it to that Dispatch. He put them in mind of the Difference between Prosecutors and Judges, and how unbecoming that Fervor was in them, now they were Judges, which perhaps might be commendable in them as Prosecutors: That when he gave his Consent to the Accusation, he was assured, his Crimes would have been fully and legally proved, which if they had, he cou'd have condemn'd him with Innocency, as he had prosecuted him with Earnestness; but as the Case then appear'd, no Man could satisfy his Conscience in the doing of it. The Parliament, 'tis true, had a Judicial and a Legislative Capacity; the Measure of the one ought to be legally just, the other political and prudential: but these two Capacities were not to be confounded in Judgment; they were not to piece up (says he) the Want of Legality by Matters of Convenience, to the Ruin of a Man, by a Law made *ex posteriori*.

What can I say more? For it must appear to your Lordships by this Time, that this Proceeding is contrary to the fundamental Laws of the Kingdom, contrary to Publick Wisdom, and unjust in itself: That the Reasons and Suggestions upon which it is grounded have not been proved with any Colour of legal Evidence, or with any Degree of Proof or Probability, which ought to satisfy the Conscience of an honest, reasonable Man. But if the Matters, which I have humbly laid before your Lordships, have not all the Weight, which I hope they have; or if I have omitted any thing that is material or necessary for this Reverend Prelate's Defence, Your Lordships, I hope, as Judges, and (consequently in some measure of Counsel for the Prisoner) will, from your own Observation, supply it. Or if I have laid them before your Lordships in an improper Light, or a less effectual manner than others might have done; yet the Case itself will speak better and more strongly than any Words or Expressions of mine can do. It is the Cause, the Fortune, and the Liberty of a most Reverend and Learned Prelate, who is to be strip'd and torn from those Dignities and Preferments which his own high Merits justly call'd him to, and which he has ever since adorned with the greatest Lustre. Upon what slender and insufficient Grounds, Your Lordships have already heard, and I was going to say, without Precedent: but I must own there have been Instances of Deprivation, some in the Beginning of Queen *Elizabeth's* Reign, and some others since the Revolution. But yet they were upon a general Law, then in being, and an Incapacity voluntarily incurr'd by those Prelates, after the full Knowledge and Publication of those Laws, by refusing to give that Security to the Government, which at those Times was absolutely necessary. And tho' they were peremptory in the last Degree, and their Example might have produced worse Consequences than it did; yet their Punishment went no further. But this is a particular Law, to be introduced for this particular Prelate, subsequent to the supposed Offence, and which is not thought fit to be enacted as a Law for any other Person hereafter; and I wish, my Lords, I could say, this Act went no further. But this Reverend Prelate is likewise to be deprived, not of his Life indeed, but of all the

Conveniences and Comforts of it, of the Commerce of his Friends and Relations, and of all that is valuable to an *Englishman*. He is to be doom'd to the Curse of *Cain*, and to be turn'd out of his native Country, full of Age and Infirmities, to the Cruelty of Strangers and Foreigners, and even beyond the reach of his Majesty's most extensive Goodness.

But if your Lordships should pass this Bill, he will still have, I doubt not, the Peace of his own Mind, and this comfortable Reflection, which no Man can take from him; That he shares the Fate of the greatest and most honest Statesman of the last Century: tho' in this Instance also 'tis his Lordship's Misfortune to be very much distinguish'd. For he, tho' innocent, was afraid of the Violence of the Times, and withdrew from Prosecution. But this Reverend Prelate has been all along forthcoming, and, as it were, fearful of nothing, and conscious of nothing but his own Innocence, has sought in all Places to be brought to Trial. That noble Lord's Crimes (or at least his Accusation) were going to be proved in a proper Parliamentary Manner by Numbers of Persons: But this Reverend Prelate is to be involved by Implications, Inferences, Constructions, and the Conjectures of Decyphers, in Crimes, which he is here ready to deny, and of which no Man accuses him.

I would not be understood, my Lords, by any Thing I have offered in relation to the particular Penalties, as if I thought any one Suggestion of the Bill had been duly proved, so as to deserve this or that Part of the Penalties; tho' I must say, they are all so extraordinary in their Nature, as to deserve your Lordships Attention. And I doubt not, but your Lordships in your Goodness will consider what is already pass'd, the Length and Closeness of the Imprisonment, which this Reverend Prelate has already suffer'd as a supposed Criminal. Prisons before Conviction are only for the safe Custody of a Man, and not for Punishment; but his Imprisonment has not been so: which (if my Instructions are true) has been attended with such unheard of Barbarities, and such distinguishing Severities, as are a Shame and Reproach to every civiliz'd Nation. The Case of *Colledge* every one has thought hard and barbarous; but 'tis this Reverend Prelate's Misfortune to be distinguish'd in this also, as well as in every thing else: For that Case was before the Law allowed Counsel or Solicitors to assist a Prisoner in his Defence, but now they are allowed by Law, and were actually and duly assigned to my Lord Bishop; and yet part of his Defence, and part of his Evidence torn and taken from him. So that, all these Things considered, his Lordship cannot escape without being a very great Sufferer, tho' your Lordships should utterly reject this Bill.

Your Lordships will also consider the Infirmities of Body, under which that great and noble Mind even now labours before you; which have render'd him almost incapable of attending his Defence. Your Lordships will also consider the Grief and Vexation it must be to appear as a Criminal before this Honourable House, where he has so long sat as a Judge, and under the Suspicion of those Crimes which are laid to his Charge; and how grievous it is for one of his Lordship's Character and Function, to be tax'd with Breaches
of

of his Duty to God and Man, of Scandal to Religion, of Designs of overthrowing Church and State, in favour of Popery; who happens to be the only Clergyman in *England*, that ever thought it worth his while to draw his Pen in Defence of *Martin Luther*, the great Instrument of our Reformation from Popery; and who has, upon all other Occasions, appear'd the most strenuous Assertor of it. I might add much more of his Lordship's personal Merits, and of those high Abilities so eminently conspicuous in him; but that I know it is some kind of Violence to his Lordship to hear even thus much mention'd.

Yet suffer me to say, That if these Suggestions should be carried into a Law, without any Degree of Evidence or Probability, but rather (as your Lordships will immediately hear) against the strongest Evidence and Probabilities that are possible of the contrary: I say, if this Bill should pass on such Circumstances, whatever the present Age may think, his Case will be a standing Mark of Reproach to it, and he will be the Wonder and the Pity of all succeeding Generations.

I shall add to your Lordships Trouble but one Word more, in Behalf of myself: That your Lordships will pardon any Warmth of Temper, any unguarded Word or Expression that I may have been guilty of in the Course of this long Defence, in a Case, which every *Englishman* naturally considers as his own, and therefore will, in some measure, warm the most even Temper. And that this Learned (and whom I will now call Innocent) Prelate, will accept those little Services I have been able to perform, and will pardon the many Failings, which I may already have been guilty of, in his necessary and most just Defence.

After the Bishop's Counsel had done speaking, the Bishop produc'd several Witnessess to be examin'd, and on *Saturday, May 11.* Sir *Constantine Phipps* made a short Recapitulation of the Evidence, as follows.

My Lords,

WE have done with our Evidence; and hope we have fully answer'd every Part of the Charge contain'd in the Bill, and apprehend there is no one Circumstance left unanswer'd. Particularly, that we have totally destroy'd the Credit of *Neynoe's* Hearsay Evidence: For when the *Improbabilities, Inconsistencies, and Contradictions* of his Examinations are consider'd, and the *Testimony* of the *Witnesses* is duly weigh'd; no Person can give the *least Credit* to what *He* hath said, without offering the greatest Violence imaginable to his Reason.

And it is wonderful, that the Counsel for the Bill should insist he should be credited in *any Thing*: When we have *proved*, he had the Confidence to declare, that a *Right Honourable Person* had *endeavour'd to persuade Him to accuse Persons of Quality of Things He knew nothing of.*

Hath he not said that, when he was to be examin'd, *That Right Honourable Person* had him first *in private*, and told Him, *what Questions* would be *ask'd* Him, and *what Answers* He should give? Did he not say, that the very same Gentleman gave Him *five Questions or Enquiries*, and told Him *what he should reply* to each of them? Hath He not said, that refusing to give Evidence, He was *threatned with Newgate*; and that *thereupon* He gave Them *Informations* against *my Lord Bishop*

and *Others*? Nay, had He not the Impudence to say, that the *same Right Honourable Person* offer'd Him 2000*l.* 500*l.* per annum, and a *Place*, to accuse the *protesting Lords*, the Earl of *Orrery*, and *this Reverend Prelate*? And that being ask'd whether He *knew any Thing of the Plot*, He swore *No*, nor *Any body else*: But that he knew of *two other Plots*, viz. *One* of Mr. *Walpole* against the *Protesting Lords*, the *Other* of *Himself* upon Mr. *Walpole*, to get 2000*l.* of Him. Nay, it is *proved* He declared that the *same Gentleman* press'd Him *so hard to accuse some Persons*, that He had it once in his Mind to take up *That Right Honourable Person's* Sword, and *run him thro'* with it; and so make an End of the *Plot*.

These are things which have been *proved* upon *Neynoe*: And all these Things being consider'd, I believe the Counsel for the Bill will readily agree with me, that *no Credit* ought to be given to one Word *He* has said: And if *His* Evidence be laid aside, the greatest Part of the *Charge* against my Lord Bishop *falls to the Ground*.

My Lords, The Evidence Mr. *Lewis* gave was very material. For he shew'd your Lordships, that *Brockett*, who was of the Post-Office, was so skilful in *counterfeiting Hands and Seals*, that he wrote the Supercription of a Letter, and took the Impression of a Seal, and seal'd it again; and did it so well, and gave it such a Lustre, that Mr. *Lewis* could not distinguish it from the Original.

The *Engravers* likewise said, they could take off the Impressions of Seals so well, that they could not be distinguish'd: Nay, tho' the Wax were broken, yet if no Part of the Wax were lost, it might be done.

Your Lordships observe how the Engravers themselves were mistaken in relation to some Impressions, which were produced to them: And You farther observe, that the Seal in question was a *Cicero's* Head, which all the Engravers agree to be a very *common* one; and they had many of them: So that no Objection can be made against my Lord on account of That Seal. Nay, one of the Engravers said, it appear'd to him that the *Seals* of the *two* Letters were not *the same*. As to the *Dog*, there is Mr. *Crawford's* Certificate, and *Birmingham's* Affidavit.

As to Mrs. *Barnes's* Evidence, she hath found out now, That there were *Two Dogs*, tho' nobody else ever heard of Two. She said, the first was for the Bishop of *Rochester*. Now it is plain, the *First* was sent in *March*; and it was *His Leg that was broken*: And *Birmingham* swears, and Mr. *Kelly* solemnly affirms, that it was for Mrs. *Barnes*, and not for the *Bishop*.

As to the *Three Letters* of the 20th of *April*, we have proved it impossible that the Bishop should write, or dictate, those Letters to Mr. *Kelly*. And your Lordships take Notice, how the *Butler* came to observe these Letters could not be written by the Bishop; and the Servants, tho' under Confinement, and not permitted to see any Body, agree in their Evidence. There is *Gordon's* Affidavit that he never had such a *Pacquet*: And *James Talbot* was here in Town the 29th of *April*.

Thus, your Lordships observe that a *Bill* of the most *extraordinary Nature* that ever was *seen*, hath been supported by the most *extraordinary Evidence*, that ever was *heard*: And we hope, we have set the *dark Passages*, of which the *Charge* is compounded, in such a Light, that every One may

may plainly see the Right Reverend Prelate is *not guilty of any One Offence* charged against him.

Mr. *Wynne* spoke next.

My Lords,

I Shall beg your Patience to close our Defence with an Observation or two on the Evidence that has been given by my Lord Bishop: and I need take up the less of your Lordships Time, because our Witnesses have fully answered all I opened, and in many Things have exceeded my Instructions.

And for your Lordships clearer Apprehension of so many various and perplex'd Facts, I shall just recapitulate what I humbly conceive to have been the Substance of the Charge against my Lord Bishop, and, as briefly as I can, state the Evidence, which we have produced in order to falsify and disprove it.

The first and chief Accusation against his Lordship, was founded on the Informations of *Philip Neynoe*, and therefore the first Part of our Proof was as to his Credit. Your Lordships, I doubt not, remember the Purport of his Information read against us, and the many gross Absurdities and Inconsistencies in his other Information read by us; and likewise how fully they have been all disproved, and the Credit of them entirely blasted, even from *Neynoe's* own Confession, several Times repeated, and confirmed by three unexceptionable Witnesses.

Your Lordships have fully heard of the Terrors and Apprehensions he was continually under; because (as he himself express'd it) he had given false Informations against this Reverend Prelate, and so many other innocent Persons. Your Lordships have heard the Inducements he had to give those Informations, and how often he had declared his Intentions to escape, in order to avoid the Punishment which he apprehended most justly due to him, because he could not make out the Truth of them.

Two of those Witnesses (*Bingley* and *Skeen*) are still in Custody, and destitute almost of all the Necessaries of Life: I say, my Lords, they are still in close and strict Custody, and consequently there could have been no Opportunity to lead or instruct them in what they should say, or so much as to be apprized before-hand (which surely would have been a reasonable Liberty) whether they could say any thing material or not; and we are only beholden to those lights, which the Report of that Honourable Committee has afforded us: And all three of these Witnesses utterly unknown to my Lord Bishop, both in Person and Reputation, as well as his Lordship is unknown to them. They have not conversed together for several Months, but yet are perfectly consistent with themselves, and entirely supported and confirmed by each other. And all three declare, they had very early told, and frequently repeated this Account of *Neynoe* to their Fellow-Prisoners and Acquaintance, as long as they were permitted to have Access to them. Mr. *Skeene* being ask'd in relation to the Discourse between him and Captain *Pancier*, as in the printed Deposition of *Pancier*, *App. D. 1.* has denied on his Oath every Word of it. He says indeed, that Captain *Pancier* us'd all his Endeavours by Treats and Entertainments to induce him to support this Informa-

tions; but that he never gave him, nor could give him Grounds to say any such Thing of him.

We have shewn your Lordships, that Mr. *Stewart* in particular was so far from patching up, or contriving Evidence (as was objected to him by the Counsel for the Bill) after he had seen the Report and Appendix, that he had given this whole Account to several Persons long before. For he says, the Things which *Neynoe* told him were so surprizing, that he could not stifle them in his own Breast. Tho' your Lordships, I doubt not, observed with what Difficulty and Modesty he was brought to speak out in this publick Manner, where his Evidence seem'd to reflect on a great and Honourable Person.

Two of these Persons have likewise been produced to your Lordships. To one of whom (Mr. *Gordon*) he told these Matters some Days even before *Neynoe's* Death; and to Mr. *Kynaston* some considerable Time before the Meeting of the Parliament: and we could have called others to the same purpose, but that we were unwilling to give your Lordships further Trouble in a Matter which already had, as we thought, the fullest, the most satisfactory, and consistent Evidence that could be.

The second Head of Accusation against this Reverend Prelate, was upon Account of the three Letters of the 20th of *April*. The two first we before observed to your Lordships not to be criminal, if really designed for and addressed to the Persons supposed. The third we have likewise shewn by various Circumstances and Reasonings, could not possibly be addressed to the Pretender, whoever wrote it, or whomsoever else it might be wrote to.

And the Evidence offer'd to prove them to have been dictated or wrote by my Lord Bishop, was first by the Subscription of the common Name of *Jones*, which they would have to denote his Lordship. As to this, I doubt not, your Lordships remember, that even in the Cyphers and Letters that have been read, the Name of *Jones* is manifestly applied (as the Committee themselves have observ'd) to many different Persons; sometimes to one, and sometimes to another, as the Circumstances there mentioned seem'd to give Occasion; but cannot once in any Place, with Reason or Justice be applied to my Lord Bishop.

The next Proof that has been offer'd to your Lordships, to prove these Letters to have been dictated or wrote by the Bishop's Privy, is, from the ill State of Health, the Death of his Lady, and the Present of a Dog; Circumstances, which they say, are applicable to the Bishop, and to him only.

That his Lordship did not, nor could possibly write or dictate these three Letters, we have laid before your Lordships such a Proof, as the like hardly ever was before: and 'tis impossible, in my humble Apprehension, for a Negative to be more fully proved in any Case. Your Lordships have heard the great Weakness and Inability of this Reverend Prelate at that very Time for all manner of Business and Conversation. No less than six, if not seven of his Servants, have spoken fully and positively to it, That his Lordship was not able, without their Help, to stir, turn in his Bed, or even to perform the common and ordinary Offices of Life. One would think, my Lords, such melancholy Circumstances, in themselves, sufficient to guard any Man from Suspicion.

But

But the Witnesses have gone much further; for they have told your Lordships, that no Stranger approached the Bishop's Room all that Time; nor had any one been for a considerable Time before and after the 20th of *April* under his Roof. Even some of those Persons that usually were with my Lord Bishop at other times (as his Son, his Chaplain, and his Son's Tutor) happened then all to be absent at the Election of *Westminster* School.

One of those Servants, who happens to be a Prisoner with his Lordship in the *Tower*, being asked, whether my Lord Bishop had not put him in mind of these Circumstances, told your Lordships, that it was entirely his own Recollection, by casually taking up the Report, after my Lord Bishop was gone to Bed, and dipping on that Part of it, in which his Lordship is charged with having writ these three Letters. Upon which, the next Day (he said) talking to his Fellow-Servant, and he agreeing to the very same Circumstances, they acquainted the Bishop with what they had read, and how they could, from their own Knowledge and Remembrance, falsify and disprove that Circumstance.

I must likewise crave leave to observe to your Lordships, that four or five of these Servants, that have spoke to these particular Facts and Times, are still in Custody, under separate Messengers, without any Opportunity to converse together, and were hardly to be found by my Lord Bishop, when he had need of their Evidence; and yet every one of them have been perfectly consistent with themselves, and one with the other, and all equally positive.

The Bishop's Coachman, your Lordships, I doubt not, remember, tho' now under another Influence, and called as Witness against his Master, confirmed what they said, and was as positive and peremptory in his Testimony concerning this Matter, as far as the Nature of his Employment gave him an Opportunity to make such Observations. And upon the whole, I may now, with more Reason, and with greater Confidence, repeat my former Assertion, that it is impossible for them even to devise or frame any Scheme to prove his Lordship to have wrote, or dictated these three Letters, but what will be actually disproved and falsified by some Part of the Evidence.

Another Reason, by which 'tis proved that his Lordship wrote these three Letters, was, from the Subscription of the Number 1378, to the Letter addressed to *Jackfon*. Which Number Mr. *Willes* (a Decypherer) says, denotes the proper Name or Title of a Person beginning with the Letter *R*. The little Time we have had to enquire into this Assertion, and your Lordships not permitting some Questions, put by us to the Decypherer, to be answered, won't enable us flatly to disprove it. But with Submission to your Lordships, it seems impossible to affirm even thus much, with any degree of Certainty, and it must be (as I before observed to your Lordships) Matter of Conjecture only; and it appears manifestly to your Lordships, by several Passages occurring up and down in this Correspondence, not yet decyphered, that either the Art is not so infallible, or that Mr. *Willes* is not so great an Artist as he pretends to be.

But, my Lords, admitting such a Number in

this Cypher does really denote a Person's Name, or Title, beginning with the Letter *R*. what a strange and uncertain Proof is that, to fix a Charge of High-Treason on the Bishop, when there are other Persons Names, and Titles, found like his, and many others which begin with the very same Letter; and this not to be admitted as Evidence in a minute or inconsiderable Circumstance, but in the very Gift of the supposed Offence, in the principal Foundation of the Charge, in the only Letter that is criminal, and which is to magnify and improve the rest into High-Treason?

Another way of proving these Letters to have been dictated by the Bishop, was, because another, supposed to be an Answer to this, mentions the Present of a Dog. I need not here repeat what Mr. *Kelly* himself has constantly said in his Examination, because your Lordships, I doubt not, remember what Mrs. *Barnes* said; that Mr. *Kelly* indeed sometimes told her of another Dog that was for the Bishop, but that she always apprehended that Dog, which she had in her Possession, was designed for her, and never heard of any other Dog that did come from *France*: She owns, that she never received any one Message from the Bishop about it, but still kept it, when it was recovered, as her own; as long as it lived; and tho' his Lordship never had, nor loved a Dog in his Life, yet it would have been natural, and good Manners to the Person that sent it, especially if so considerable a Person as is supposed, to have made now and then some little Enquiry about it, if my Lord Bishop had really known any thing of the Dog.

But we have shewn your Lordships by the solemn Attestation of Mr. *Birmingham*, the *French* Surgeon, that he was the Person who gave this Dog (in *March* 22.) to Mr. *Kelly*, for Madam *Barnes*, of whom he had received Civilities in *London*, and for no other Person, nor with any other Intent. He likewise says, that he never received any such thing as a Dog, or Message from Lord *Marr*, (as alledged in the Report) never had any the least Thought of the Bishop of *Rocheſter*; or his Lady, much less of making either the one or the other (to both of which he was utterly unknown) any such Present.

Your Lordships observe this to have been a solemn notarial Act upon Oath, of a Person not only reputed, but attested likewise by the Lord of the Seignury, to have been a legal Notary, and to have exercis'd his Office as such for some time. That the Testimony of such a Person beyond Sea is a good and unexceptionable Proof in every Case, I need not say; or that it has been often allow'd here, where no other is to be had, nor any other Method to have the Benefit of a Man's Testimony that is beyond Sea. And our Witness has told your Lordships that he has frequently translated such Instruments: That he believes it to be the Notary's Hand-writing, and the publick Seal of his Office. I need not, my Lords, have said thus much; for in all Events it must surely have been of more Weight in your Lordships Judgments, than the Extract of an Information given by a Person, infamous in his Character, absurd and inconsistent in all he said, and without being signed or sworn to, even by that Person.

But yet this Affidavit of Mr. *Birmingham* has the more Credit, because his Majesty's own Resident at *Paris* (Mr. *Crawford*) has been pleas'd to examine him about this Matter, (being employ'd by him in his Profession as a Surgeon) and he has confirm'd the same Account to him, which has been likewise transmitted, and read to your Lordships.

Another way of proving my Lord Bishop to have been concerned in these Letters, was from the Hand-writing, which is suppos'd to have been *Kelly's*, and he is suppos'd to have been his Lordship's Secretary in these Matters. But both these Allegations, we think, with Submission to your Lordships, are still utterly destitute of any proper or satisfactory Proof.

I before observ'd to your Lordships, that the first time the Clerks of the Post-Office have made any Deposition about the Similitude of the Hand-writing, was four and eight Months after they had seen the Original Letters; which is a little of the latest so exactly to remember all the little Strokes and Turnings of a Pen, by which the Identity or Diversity of a Hand can only be made out. That *Malone*, the Footman of Mrs. *Barnes*, was never called upon for his Testimony till *January* last, that is, nine Months after he had seen any of *Kelly's* Writing, and consequently not then very able (if ever he was) to form a Judgment of it.

I have already observed to your Lordships, that this was the first, and the only Instance, that any Evidence of the Similitude of Hands was ever admitted, but where the Papers pretended to be in the same Hand were produced and compared in Court; which is so far from being the present Case, that the Clerks of the Post-Office never had any Opportunity of comparing the Original of the 20th of *August*, with any one of the three Originals of the 20th of *April*, or with any one of the intermediate Letters which they affirm to have been in the same Hand: so that they are made the absolute and ultimate Judges of this Matter, without any Possibility on our Side of detecting any casual or wilful Mistake.

And I would not again repeat an Observation I have before made to your Lordships, that a great part of these Letters are in Figures, and how much more difficult it is to distinguish the Hand of one writing in Figures, from Words and Syllables in length; because we have shewn your Lordships, by three positive Witnesses (well acquainted with Mr. *Kelly's* Writing, one of them above 20 Years, and his School-fellow) that the only original Letter of the 20th of *August*, stop'd at the Post-Office, as a Sample to the rest, (and which is the only Foundation upon which those Clerks have affirmed these three Letters to have been *Kelly's* Writing) really and in fact, was not his, nor like it. This, my Lords, we have fully proved by three Witnesses; and as a Demonstration of what they said, they shew'd your Lordships, among a Variety of Papers produced to them at your Bar, that they could at once distinguish which was *Kelly's* Hand, which was any thing like it, and which was not.

We have likewise produced to your Lordships, the solemn Attestation, on Oath, of ^a *Alexander*

Gordon Junior, the Son, Banker at *Boulogne*, that no such Packet of Letters ever came to his Hands, as mentioned by the Counsel for the Bill; and consequently he could not deliver any such to *Talbot*, (who, they say, called for them at *Boulogne*.) He farther deposes, That he never had any Business or Intercourse with *Kelly*, or *Johnson*, nor ever had acquaintance with any Person so called, in his whole Life.

And we have proved to your Lordships, that *James Talbot*, the tall black Man, ^b described in the Letter printed in the Appendix, and who is suppos'd to have been the Person that called upon *Alexander Gordon* at *Boulogne* for this Packet, was so far from doing it, at the Time suppos'd, that he was at *London* that very Day, as appears by the unexceptionable Testimony of *Edward Crofton*, his Shoemaker, and by the Entries of his Shop-book, to whom he accidentally paid a Bill upon that very Day, at his House in *London*.

We have likewise shewn your Lordships by two Witnesses, Mrs. *Kilborn*, and her Maid *Anne Ellis*, that Mr. *Kelly* was at her House in *London*, on the 20th of *April*, (the very Day upon which my Lord Bishop is suppos'd to have dictated these Letters to him) and by a great Variety of Evidence, impossible to escape any one's Memory, that my Lord Bishop was ill in Bed, at *Bromley* in *Kent*: and *Quod non datur actio in distans*, is an Axiom of Reason as well as of Philosophy.

And I must humbly submit it to your Lordships, that it has not yet, in the least, appeared by any Shadow of Evidence, that Mr. *Kelly* ever was employed by my Lord Bishop to carry on a Correspondence; that he wrote any one Letter for the Bishop, upon that, or upon any other Occasion whatsoever.

That Passage in the Letter to *Weston*, that seems to give countenance to such a Supposition, the learned Counsel for the Bill told us yesterday they had waved, and were angry that we should offer to disprove that which they had not proved. But, with Submission to your Lordships, tho' they have been pleas'd to wave that Part of the Charge against my Lord Bishop, yet, as it makes no small or inconsiderable Appearance in the Report of that Honourable House, and will be so handed down to Posterity; we thought it proper to give an Answer to it; and, we hope, it has been to your Lordships Satisfaction and still in your Memory.

The next thing was the Letter to *Dubois*; and I confess myself at some loss to know for what purpose that was read in Evidence to your Lordships; for the Counsel for the Bill have not, as yet, made any particular and direct Use or Application of that piece of Evidence, and therefore I shall submit it to your Lordships upon the Observations I before made on it.

There was indeed some of your Lordships Time spent in comparing the Seal of that Letter, with that which happen'd to be taken on my Lord Bishop's Servant at the *Tower*: if it was intended as any Proof, I cannot at present judge; however, we thought it proper to follow them in the Course and Manner of their Proof, and your Lordships yesterday have fully heard the Danger and Uncertainty of admitting such a Proof. First, you have had some Account from Mr. *Erasmus Lewis*

^a Rep. Pag. 42. 45. Append. E. 26.

^b Append. E. 26.

of the known Practice of one *Brockett*, who was able to counterfeit any Man's Hand or Seal, in such a manner that even the Person (whose Hand or Seal it was) should not be able to distinguish it from his own.

Then we produced to your Lordships two Seal-gravers, who fully attested the same thing. Mr. *Atkins* said, That he himself could make such an Impression, so as not to be distinguish'd by an Artist, and give it the very same Lustre. That he could even take an Impression from a broken Seal, and tho' there would at first necessarily be some little Flaw in it, yet he said he could mend it, and then make such an Impression from it, that even an Artist could not discover it from the Original.

Mr. *Johnson*, another eminent Seal-graver, likewise told your Lordships, that he could do the same thing: In particular, That he had once such an Impression taken in Paste by one Mr. *Wisembergh*, and from that he made another Impression, so perfect and exact, that Mr. *Wisembergh* himself could not distinguish one from the other: But as to the Seals of these two Letters, he doubted very much whether they were made by the same Seal or not; and from some little Strokes in the Head, that were very visible to any one, tho' not so easy to be expressed, he rather inclin'd to believe, that they could not be made from one and the same Seal.

And when your Lordships were pleas'd to enquire of them, How such a thing was practicable? They did not cover themselves (as their Decypherer did) by saying, It would discover the Secrets of their Art, but frankly told your Lordships the very Manner and Method of doing it.

Their own Seal-graver, Mr. *Christian*, owned, That this might be done, altho' he had never done it: And in the Experiment made on Mr. *Raulus*, their other Seal-graver, he was once plainly in the wrong, as well as once in the right. And it manifestly appears from every one of their Testimonies, that this Practice of taking Impressions is very easy. And, as one of my Noble Lords inform'd the House, his Footman could do it as well as any of them; and, as your Lordships yesterday observed, even to deceive Mr. *Raulus* himself, who, they say, is so great an Artist. And therefore, my Lords, it is a most dangerous sort of Proof, and too uncertain at the best, to receive any judicial Countenance in a criminal Matter.

So that I must humbly insist, that this Part of the Charge against my Lord Bishop has not been proved any better than the former; and that when your Lordships do consider the Evidence that has been given on the one Side as well as on the other, as to this particular Charge, we hope you will be of Opinion, that there is no just or reasonable Ground to presume, that these three Letters were wrote by Mr. *Kelly*, and much less that they were dictated by my Lord Bishop.

The next general Charge against this Reverend Prelate, was, the receiving of two Letters from abroad, in relation to this Conspiracy. The Counsel indeed for the Bill have waded the Letter signed *Digby*, address'd to *Weston*, and (as I apprehended from them last Night) did not now pretend to prove any Thing concerning the Bishop, under the Name of *Weston*.

Neither have they as yet pretended to prove, that the other Letter from *Motfield* to *Illington*

ever came to his Lordships Hands, or in whose Hand-writing it was wrote; tho' if it were the Lord *Marr's* (as it is supposed) many of your Lordships must have been well acquainted with it. Nor has it been yet said, that my Lord Bishop ever returned any Answer to it.

And as we have now proved (and fully too, we apprehend) the Letters of the 20th of *April*, to which this is supposed to have been an Answer, to be a mere Fiction, or Imposition upon the Bishop; this, which is designed as an Answer to it, must likewise fall to the Ground; as Part of the same Contrivance.

The next and last general Charge arises from the Coincidencies of Times and Names in the intercepted Correspondence, the more readily to induce your Lordships Belief, that my Lord Bishop was really meant by that Correspondence.

Some of them I accounted for before, as Truths publickly known, but turned by ignorant and malicious Correspondents to ill Purposes, or else as absolute Falsties, and manifest Mistakes.

We have shown your Lordships by various Reasons, that the fictitious Names supposed to denote my Lord Bishop, cannot be applicable to him, with any Colour, Truth, or Decency; that there is a great doubt to be made, whether many others of those fictitious Names were really intended for the Persons supposed to be denoted by them: and especially, that *Jackson*, to whom the Letter of the 20th of *April* is address'd, we have proved by various Arguments, and even from those Lights the Committee have afforded us, could not possibly mean the Pretender, whomsoever else it may mean; and consequently that that Letter (if it were wrote by *Kelly*, and dictated by the Bishop) cannot be High-Treason.

And as to the Articles of Times, and the Accounts of my Lord Bishops coming and going, it must be owned, they are sometimes right, but as often wrong.

There is no doubt, but the Correspondents on this Side the Water, whoever they were, whether out of Malice or Vanity, or out of any other Inducement, appriz'd themselves as well as they could, of the Bishop's Motions to and fro, in order to give the better Colour or Probability to what they said of him. But yet it has happen'd, unluckily to them, as your Lordships have heard, that out of six or seven Instances occurring in these Letters, two only are true; two of them may be doubted whether true or false, because ambiguously expressed; but three of them are gross Mistakes, as appears even by the Accounts of their own Witnesses.

And the Mistakes are the more remarkable, because they all affirm the Bishop to have been in the Country, when he positively was not: whereas it was ten to one, but that the mere Guessees of a Stranger, at that time of the Year, had been true; and the rather, because his Lordship was really in the Country ten Days to one that he was in Town, all last Summer.

There is another Thing remains for me yet to speak to, and that is the Intimacy of my Lord Bishop with Mr. *Kelly*; which was likewise thrown in to swell the Number of Circumstances, and as another weighty Argument to induce your Lordships belief of the foregoing Matters.

But has any thing appeared to your Lordships like it, even upon their own Evidence? First, a Chairman is brought to tell your Lordships that he carry'd Mr. *Kelly* to the Deanery three or four Times about four Years ago, but the Bishop was not once at home. And a Porter says, he carry'd two Letters from *Kelly* to the Bishop; one of them about *Christmas* last was Twelve-month, and the other Letter some time before that; but received no Answer in Writing, nor Message, but only his Service to Mr. *Kelly*. But there is one extraordinary Circumstance, which shews him, I confess, to be a very willing Evidence, tho' not so very likely and credible; that is, that this Porter, dirty as he must be in the midst of Winter, deliver'd his Message to the Bishop in his Bed-Chamber.

And *Malone*, the Person that usually attended Mr. *Kelly*, and went on his Errands, was asked to the same Purpose; and one might have expected that he should have given some Account of it, and had been often employed on Errands to and from the Deanery: But I submit it to your Lordships Memory whether he did not say, that he never was at the Deanery in his Life-time, nor did know to this Day where it stood.

Mrs. *Kilborn*, with whom Mr. *Kelly* had lodged a considerable Time, says, she remembers a Message once came to *Kelly* from the Bishop; but positively denies that my Lord Bishop's Coach ever came to fetch Mr. *Kelly* at her House, as that Honourable Committee have been pleased to affirm in their Report. And I appeal to your Lordships Memory, whether Mrs. *Barnes*, whom the Counsel for the Bill think so credible a Witness in some other respects, and with whom it must be confess'd *Kelly* frequently lodged, was not equally positive in this Matter, and that she did not believe there could be any Friendship or Intercourse between the Bishop and Mr. *Kelly* without her knowing of it.

Thus the supposed Intimacy and great Acquaintance between my Lord Bishop and Mr. *Kelly* stand upon their own Evidence. And I beseech your Lordships to consider, what sort or degree of Proof all this can possibly amount to. But we have shown your Lordships the direct contrary, by no less than ten Witnesses, Servants to my Lord Bishop, some or other of which were always with him, whether he was in Town or in the Country, and every one of them has lived with his Lordship above two Years; and they say, as it were with one Voice, that they don't remember any such Person or Name as *Kelly* or *Johnson* coming to the House; as they must have remember'd him, they say, if he had been frequent in his Visits or Messages: and some of them say, they usually wrote down the Names of those that did come; and the Coachman in particular, who has liv'd four Years with his Lordship, and appears now as Evidence against the Bishop, and therefore cannot be suppos'd partial to him in his Testimony, is yet as positive and peremptory, that he never saw Mr. *Kelly*, or *Johnson*, at his Master's House, in all his Time. And being carry'd to the *Tower* by a Messenger, to see if he could recollect his Face, then frankly own'd, he had never seen his Face before. And being ask'd how he could pretend to know all Persons that came to the House, whose Business was at the Stables? He told your Lordships,

that he was as often in the House, us'd to wait at Table when Company was there; and that let him come which way he would, he should have seen him coming or going, or have heard of him in the Family, if he was a Person that had frequented his Master's House.

Some of the other Servants likewise spoke as fully to these Circumstances.

We have likewise shewn your Lordships by Mr. *Pope*, who has been for these two or three last Years, the most constant Companion of his Lordship's Hours; two or three Days, he says, almost in every Week, and an Hour or two almost in every of those Days: That his Lordship generally sat in one Room, which I think was his Bed-Chamber; that he was admitted to him at all Hours, and into all Companies, and never found the Discourse change at his coming in: That his Lordship never in the least discover'd any Thoughts or Intentions like those now charged upon him; but had heard occasionally many Things drop from the Bishop, of a Tendency directly contrary. And to this we might have called many others, if it were necessary.

We were likewise ready to lay before your Lordships, several laborious and intricate Searches, several Publick Buildings, and Controversies in Matters of Literature with different Persons, which my Lord Bishop was engaged in last Summer; and would have been a full Employment for some Mens whole Lives: But your Lordships did not think it necessary; being (as we hope) fully satisfied and convinced of my Lord Bishop's Innocency, by that Variety of Proof which we had before made.

There are, my Lords, some other Observations that might be made: but have been, I doubt not, already much better taken notice of by the learned Gentleman that spoke before me: And I think this is the Substance and Purport of the Evidence that has been hitherto offer'd on both Sides.

What the Issue or Success of this long Hearing may be, I know not; That is in your Lordships Pleasure only to determine; to Acquit, or to Condemn: But I hope you will say, We find in him no Fault at all.

The Proof which has been against the Bishop, (if it can deserve that Name) has neither been such as is reasonable in itself, nor agreeable to the known Rules and Proceedings of Law; but chiefly by Probabilities, Circumstances, Conjectures and Suppositions: Whereas we have encounter'd and disprov'd even them, by far greater Probabilities, much stronger Circumstances, and also by such Evidence, as would be convincing and sufficient in any Court of Law or Equity within the Kingdom.

And, upon the whole, I hope I may venture to affirm, That there does not now remain the least Suspicion of the Charge brought against the Bishop; not even a Suspicion of a Suspicion of High-Treason; not one probable Probability, or one presumptive Presumption: I mean, That there is not now remaining before your Lordships, the least Degree of Probability, or the very lowest sort of Presumption that is known in Law: And therefore, shall humbly conclude with the same Prayer Sir *Constantine Phipps* has made before me, That your Lordships will reject this Bill.

The Bishop then spoke in his own Defence, as follows:

My Lords,

I Have been under a very long and close Confinement, and have been treated with such Severity, and so great Indignity, as I believe no Prisoner in the *Tower*, of my Age and Function, and Rank, ever was. By which Means, what Strength and Use of my Limbs I had, when I was first committed in *August* last, is now so far declined, that I am very unfit to make my Defence against a Bill of such an extraordinary Nature.

The great Weakness of Body and Mind under which I labour, such Usage, such Hardships, such Insults, as I have undergone, might have broken a more resolute Spirit and much stronger Constitution than falls to my Share.

Your Lordships were pleased to permit me to appear before the House of Commons, if I thought fit, lest my Silence should be turned to my Disadvantage; as, in fact, the Counsel for the Bill have done their utmost towards it.

I should not have thought to decline any Occasion of justifying myself; but I crave leave to tell your Lordships some Reasons why I did not appear there, and make use of the Leave your Lordships gave me.

After seven Months of close Imprisonment, I was not a little surprized when I heard, that on the 11th of *March*, by the House of Commons, it was thus resolved, 'That it appears to this House, that *Francis* Lord Bishop of *Rochester*, was principally concerned in Forming, Directing, and carrying on a detestable Conspiracy, &c.'

Upon duly weighing which Resolution, and the Copy of the Bill, I found not any thing charged in the Bill, but what was fully contain'd and previously resolved in this Vote; and therefore whatsoever should have been offered on my behalf to that House, would have been an express Contradiction to it. And what Hopes I could have of Success in such an Attempt, I need not say: What they sent me was the Preamble of the Bill only, which they could not alter, consistent with what they had resolved.

The Bill itself was to inflict Pains and Penalties, which followed; but there was no room to object against any of those which they had not then declared; they have since been added, and sent up to your Lordships, in like manner, without any Oath made, or any criminal Act proved against me by any living Witness. And is a Person thus sentenced below, to be deprived of all his Preferments, and his very Function, and to be a perpetual Exile, and to be render'd incapable of any Office and Employment? To be one whom no Man must correspond with by Letters, Messages, or otherwise? And, my Lords, one who is a Bishop of the Church of *England*, and a Lord of Parliament?

It is the first Instance wherein a Member of this House hath been so treated and prejudged, and (as I have once before said to your Lordships) I pray God it may be the last, and that such Precedents in this Kingdom may not be multiplied in After-Times.

My Counsel have amply done their Part, by arguing the Points of Law, by explaining and enforcing the Evidence, and shewing the little Colour, Appearance and Shadow of Proofs against

me, (permit me to call them so) by answering what hath been offer'd against me, and by setting out the Consequence which such a Bill, founded and carry'd on in such a manner, and which enacts such severe Penalties, must and will be attended with.

Yet it becomes me to say something for my self, lest my Silence be construed Consciousness of Guilt, or at least, an Unwillingness to enter into Matters of so dark and perplex'd, so nice and tender a Nature; as if I was not able, or did not care to clear and explain myself, and rather chose to leave it to the Management of others: I thank God, I am under no such Restraint, and can speak to your Lordships on this Subject with great freedom and plainness.

But before I proceed, I beg leave that I may represent to your Lordships some particular Hardships under which I have laboured.

The first is, reading Extracts of anonymous Letters, without suffering any other Parts of the same Letters, tho' relating to the same Subject, to be read. — Another is, — Excusing the Decyphers from answering Questions asked by me, and which I thought necessary for my Defence, lest they should reveal their Art. — The next is, not suffering me to be answered by the Clerks of the Post-Office, lest the Secrets of that Office should be discovered. — Another was, not suffering a Person, who had been at least ten Years out of the Secretary's Office, to answer any Questions, which came to his Knowledge by being some Years in that Office.

Another is, reading Examinations neither dated, signed, nor sworn to.

Another is, reading Letters supposed to be Criminal, writ in another Man's Hand, and supposed to be dictated by me, without offering any Proof that I either dictated them, or was privy to them.

Another is, not allowing me Copies of the Decypher'd Letters, tho' petition'd for, till the Trial was so far advanced, and I so employed and weakened by it, that I had not sufficient time to consider them. — Another is, not allowing me to read out of the Collection of Papers before the House any part of them, in order to discharge myself, but what hath been read by Clerks. — And all this in a Proceeding where the Counsel for the Bill profess they have no legal Evidence, and that they are not to be confined to the Rules of any Court of Law or Equity; tho' as often as it is for their Service, they constantly shelter themselves under it.

My Lords, these are the Hardships which I previously mention, and humbly lay before your Lordships.

By your Lordships Leave, I proceed now to make that Defence, as well as I am able to make it, in the Condition of Health I am now in; humbly praying your Lordships, if I find myself in any degree sinking under it, that you will indulge me, and allow me a little Time to go on.

The general Charge of the Bill is, That I have been deeply concerned in forming, directing, and carrying on a wicked and detestable Conspiracy, and was a principal Actor therein.

The Charge is divided into two Heads:

First, That I traitorously consulted and corresponded with divers Persons to raise an Insurrection, &c. in this Kingdom, to procure foreign Forces to invade it, &c.

Z z z

Secondly,

Secondly, That I traitorously corresponded, with the same Intent, with Persons employed, &c. But neither part of this Charge hath been made good by the Counsel for the Bill, nor have they proved, nor attempted to prove me at one Consultation; nor is there any thing tends towards such a Proof, except the exploded Story of the *Burford Club*,^a and two or three Hearsay Informations which were mentioned of my Lord *Strafford*, Lord *North and Grey*, Lord *Orrery*, and Sir *Henry Goring*, said to be concerned in the Management of this Affair. I have met all these Lords, I own it, but at different Times; and upon the best Recollection I can make, I never was in all my Life with any three of them at once, unless perhaps about some general Matters depending in Parliament. The Earl of *Strafford* hath visited me, and I have, when in Health, dined with him once at his House. At my Lord *North's* Table I have not eat: Tho' I have great Honour for him, yet I never had any Intimacy with him, especially since the Affair of the Dormitory, wherein he appeared so against me, that I certainly had lost the Cause, had not his Affairs call'd him to *Holland*.

Lawson had sworn, that this Lord did often visit me at *Bromley*; but in truth he never was there above twice or thrice in all his life-time.

I have not been once these two Years with Lord *Orrery* on any Business whatsoever; we twice dined together at the House of a Person, whose Name if I should mention, your Lordships would not think there was any Harm at all in dining there. Sir *Henry Goring* I never saw in all my Life, till he saw me at *St. James's*, and he was but once at *Bromley*; and the Occasion of his coming to me, was his placing four Sons at *Westminster-School*, and intending to breed up some of them to the Gospel: The last Time I saw Sir *Harry Goring*, was about twelve Months ago, when I promised to bring down one of his Sons to be upon the Foundation; and I shall be sorry if I can't be as good as my Word.

Your Lordships will excuse me for being so particular, when you consider how dangerous the Charge is, and how fit it is to clear the Persons charged, from such mischievous Correspondence; especially since it is with these, and these only, that I have been speaking of, and it is insinuated that I have held Consultations with, to forward the Conspiracy.

The first is an Intent, and indeed a Conspiracy, without a Consultation. But how hath that too been made good? Your Lordships will observe, that there is not one Overt-Act, or Circumstance of Time or Place mentioned, proved, or alledged. I have not therefore consulted or conspired at Home.

The next, and the only material Part of the Charge is, corresponding abroad with the Pretender, &c.

A high and heinous Accusation, strongly asserted, much insisted upon; but how maintained, is the Question.

The true State of this part of my Charge, as well and as fully as I can recollect, is this, (I will not in any degree dissemble before you:) 1st, That I did the 20th of *April*, 1722. dictate three Letters to Mr. *Dillon*, the late Lord *Marr*, and to the Pretender himself, under the feigned Names

of *Chivers*, *Musgrave*, and *Jackson*; to which Letters the Names of *Jones*, *Illington*, and 1378, were, by my Direction, subscribed.

Secondly, That afterwards two Letters, in answer to these two sent to *Marr* and *Dillon*, one dated *May* the 11th, and the other *July* the 25th, under the feigned Names of *Molfield* and *Digby*, were intercepted.

Thirdly, That there is certain intercepted Correspondence between the Pretender's Agents abroad and *Kelly* here, carry'd on by him; and that I was at the Head of it, and am answerable for what it contains.

This is the Substance of my Charge; all other particular Circumstances are made use of, as they thought would give Light and Strength to one or other of those Articles.

As to the first of these Points, that I did dictate these Letters.

That it could not be possible that I dictated these Letters, hath been made out to your Lordships by such a Concurrence of Evidence, so clear, so full and legal, as I persuade myself can have left no Doubt remaining upon any candid and indifferent Person: A plain Matter of Fact, supported by such Testimony, cannot be overthrown by little Guesses and consequential Surmises.

My Lords, I was under the known Difficulty of proving a Negative, which in many Cases is not to be done; but it so happens in this Case, that peculiar Circumstances attend it as to the point of Time. My being disabled in my Chamber, and attended before and after that Time by some of my Servants, and receiving frequent Messages from others: The agreeing Testimony of my Servants, that no Stranger came near me about that Time, and for some Time before and after; and the full Evidence of the School at *Westminster*, hath enabled my several Servants to recollect the Time, and to furnish such a Proof of my Innocence in this Matter, as is not to be mistaken, and shews the Clearness of the Impossibility of it.

The Clerks of the Post-Office swear, they believe these three Letters to have been in the Hand-writing of Mr. *Kelly*, my supposed Amanuensis. Your Lordships will remember, that their Oaths were at four Months distance from the Time of seeing those Letters; during the whole Series of which Time, it never hath appeared that they have compared one Original with another, and the only Original, as a Specimen, hath been proved at your Lordships Bar, not to be the Hand-writing of Mr. *Kelly*: And be pleased to remember, the very Supposition of Mr. *Kelly's* being my Secretary, or any ways intimate with me, hath been fully sworn to be false.

If it be said, Who then writ those Letters, and with what View were they writ? The Answer to this is obvious: my being here at your Lordships Bar sufficiently explains it. It is enough to prove that I did not write or dictate them, and I have proved it abundantly. Let but any momentous part of the Charge against me be made out with half the Evidence, and I will submit without any Dispute. Eight or nine such Witnesses would have borne down the Evidence of one or two that had sworn: But where there is none on

^a See State Trials, Vol. 8. 570, 571.

the one Side, but all on the other Side who appear, and that give direct positive Evidence, can your Lordships deliberate a Moment for the Reason of giving your Judgment, which in doubtful Cases ought always to lean to the doubtful Side? And so taking this Point as it stands, there is an End of the whole matter; for all other Insinuations, feigned Names, and obscure Passages in Letters, depending upon this, must fall together.

As to the other Part of the Accusation, where it is said the Letter to *Jackson* was a Letter to the *Pretender*, I have nothing to do with it; he that writ the Letter, when known, will best be able, and most concerned, to disprove it.

Since this Objection carries a very odd Sound, I shall briefly shew your Lordships how that stands. *Jackson*, in a Cypher of *Plunket's*, is said to denote the *Pretender*: That Cypher consists of one hundred and fifty Names, of which not one is used in any of the Letters attributed to Mr. *Kelly*; three or four of these Names are used by Persons supposed to have writ to Mr. *Kelly* from abroad, but not one of them is used by him; nor doth *Jackson* ever, in his part of the Correspondence, stand for the *Pretender*, but he is always under other Appellations: Nay, *Plunket* himself, in all his Letters writ in decyphered Names, never styles the Pretender *Jackson*, but either *Joseph* or *Jephson*.—Why should a Name, used in *Kelly's* Correspondence, be explained by *Plunket's* Cypher, when *Kelly* appears to be no ways acquainted with him, and *Plunket* himself did never dictate to him? I forbear Repetition; I only add, that at this Rate, there is nothing that may not be proved.

The Letter to *Dubois* there is little said of, because there is no use made of it; it is charged in the Report as a Letter which I had received from abroad. The Tables are now turned, and I myself designed to have sent this Letter to a feigned Correspondent, but kept it among my Papers under my Seal: For what End? the Letter itself is an errant Delusion: Why, to furnish Proof, which is much wanted, of my receiving Letters that were directed *Jones* and *Illington*; and it is very strange, that I, who am represented as being so very cautious, should be so negligent in this, and preserve something that is of no use, and yet might hurt me so much, when discover'd.

It is absurd to think, that I should by that means mention the Name of my Correspondent, and mention the Name of *Johnson*, which the Committee of the Lower House observe was constantly with me.

I know not what farther can be said for this Matter, till the Counsel have further explain'd it, and shew'd what Use they make of this Letter, which hath given your Lordships so much Trouble, and which I own I do not comprehend.

Here is still a fifth Letter, which I have acknowledged to be my Hand; that which was taken on my Servant. Mr. *Reeves* hath made some uncharitable Observations upon it, which, for ought I know, may be allow'd as the Form of Law in the Ordinary Courts; but, I am sure, in a Court of Equity, the most favourable Construction ought to take Place. I have taken Minutes of his Observations, and I think they are these: He observes that the Bishop doth not in his Letter insist on his Innocence in general, but considers only what Evidence doth affect him.

It comes out, at last, for whom my Letter was designed, and I think that an Answer to Mr. *Reeves's* first Observation, and I shall explain it no further. He observes next, tho' I clear myself from the Knowledge of *Laver*, *Neynoz*, &c. there I say nothing of *Kelly*.

The Gentleman I designed the Letter for, knows it was in answer to one wrote to me about *Laver*, and will swear it himself, if there was room for it.

The third Observation is, where speaking of myself, I say, 'If I cannot ward the Blow, I must be a Prisoner some Years without Remedy:' from which he is pleas'd to infer, not in that good-natur'd way he generally did, my Meaning must be, that I was conscious of Guilt.

I apprehended an Impeachment would have been lodged and never prosecuted; as in the Case of my Lord *Danby* and the Earl of *Oxford*; and then I should have lain without Trial, and without Bread.

The second Article of my Charge, is the two Letters from *Marr* and *Dillon*, under the feigned Names of *Motfield* and *Digby*, which were intercepted.

One of these they have dropt.

That I received them, is not pretended; both Letters, tho' without a criminal Expression or Word of Business in either of them, would yet have affected me in some Degree, if received by me, and I was the Person as is supposed who writ the Letters to which they are Answers. That I used to have any Correspondence, is that proved? Is not one and the same necessary in order to ascertain the Charge?

Any Man that pleases may write to me, and take those Names upon him; I am not to answer for that, unless I have appeared to receive them, and kept up the Correspondence.

The Letter from *Motfield*, dated the 11th of *May*, cannot be reasonably thought to have been wrote with any other View than that of being intercepted, and of fixing upon me the Letter of *April* 20th.

This Letter is committed to the common Post-Office, and sent upon this Errand; one may doubt who writ it, but one cannot doubt with what Design it was writ: your Lordships Wisdom will see thro' those malicious Disguises, and not make me account for Letters which have been banded to and fro, between unknown Correspondents, on a Design to raise a Suspicion of a third Person, altogether a Stranger to what is writ. And here I desire that the Observation made by one of my Counsel may not be forgot; that is, All the intercepted Letters from abroad, mention Persons that lay hid under secret Names, and are discover'd by doing of such Deeds, and by such Circumstances as will fasten those Names upon them: Tho' the Committee were not at a Guess, yet they were often at a Loss.

In my Case the fictitious Names applied to me are often attended with such Descriptions and Circumstances, as very naturally lead those that offer these Letters to fix them on me. The Writers of them use all their Art not to disguise, but to open the thing, and seem to be in pain lest they should not be well enough understood.

This being contrary to the Method of Reserves in all other Cases, smells strong of a malicious Design.

The Letter of July 25th, from *Digby* to *Weston*, is not so well contrived as it should have been; yet I am to be understood by it, because of the Circumstances I was then under, which the Writer was apprised of.

These are the only two Instances of Letters supposed to be writ from abroad: They are not consistent: Shall they affect me in so high a manner?

It remains to be considered in the third place, Whether there was a supported Correspondence between the Pretender and his Agents, and Mr. *Kelly* here? Whether I was at the Head of it, and am justly to answer for it? Mr. *Kelly*, I hear, hath owned at your Bar, and declared, which I also declare, I never knew a Line of any Letter he writ to foreign Parts.

I meddle not with what concerns him any further than when it may affect me.

The chief Part is the Present of the Dog; the Account of that is in a Letter to *Hatfield*, dated May 5. not signed; in which are these Words *The little Dog was sent ten Days ago, and ordered to be delivered to you*: but there is no Intimation in this, or any other Letter from abroad, that this Present was intended for me.

In two Letters from hence, by whom writ it doth not appear, somebody is meant under the different Names of Mr. *Jones* and Mr. *Illington*, in such Manner as designed for the same Person; but the Circumstances are neither applicable to my self nor my Wife, particularly. The Letter dated May 7th, from *Hatfield* to *Musgrave*, being five Days after the Burial of my Wife, cannot mean her; and being but five Days after, it can as little mean me: So that the Writer of this Letter must either have known nothing of my Family-Affairs, or, if he did, must dissemble his Knowledge of them to raise a Suspicion; and in either Case what he says is not to be regarded. The Surgeon and Mr. *Kelly* only knew any thing of this matter, and they can best clear it.

Mrs. *Barnes*, she varies, and sometimes the Dog is for me, and sometimes for her.

As for myself, I never asked for, received, or saw this Present, nor know any thing of it, but from common Fame; nor have I, to this Day, had any Message or Letter whatsoever concerning it. The End of this Design seems to be, to point me out by the Name of *Jones*, and *Illington*, subscribed to the Letters of April 20th, by using them again in relation to this Present.

And perhaps they are not much in the wrong to think, that *one intercepted Dog* should be of as much use as *Ten intercepted Letters*. Both Contrivances then must have succeeded, had I not been able to prove that those Letters were not writ with my Order or Knowledge; and therefore the Use of those Names, in subsequent Letters, is a Continuance of the Fraud, and this obviously runs thro' the whole of the Correspondence: For wherever the Names of *Jones* and *Illington* are, they are used in applying them to me, because they are the same.

These Points have not only been deny'd, but disprov'd with all Manner of Credence and Clearness.

My Counsel have shew'd, that all these suspicious Correspondencies are to the last Degree absurd to apply to me, and no one would apply them: That I could not order the Letters of the

20th of April, to which the Names of *Jones*, &c. are subscrib'd, I think is plain, and then the Evidence falls which depends upon it.

As to the Journeys to and from *Bromley*, where the Prisoner *Kelly* had frequent Access to me, and therefore I might probably dictate those Letters, the Counsel for the Bill have not open'd themselves on that Head; but your Lordships have heard it made out, and because it is material I shall repeat it.

(Here *Wood's* Examination was read.)

By all these Accounts, nothing could have been easier for the Persons themselves to manage here, than getting an Account of my Neighbours, in order to render the Contrivance more plausible.

That Mr. *Kelly* is no Stranger to me I own: but that he is in any Degree intimate with me, or frequently saw me, I deny. And what Evidence is there from them to the contrary; or how is this solemn denial at your Bar contradicted?

The Chairman says, he carry'd him twice or thrice to the Deanery, three or four Years ago; and this *Brown*, the Chairman, he swears, he carry'd me once in three or four Years Time. I believe he may. The Porter he says, that he brought a Letter and some Stockings from *Kelly* to me. The Foundation of this Story is true, for Mr. *Kelly* used to furnish me with *Beaver* Stockings and Gloves: not but that the Circumstance of the Porter coming up to my Bed-Chamber at that dirty Time of the Year, is very extraordinary; and even this Evidence owns, he was never sent by me to him.

Now on the other Side, there is the Evidence of almost all my Servants, who have, upon Oath, attested, that they do not know either the Name or the Face of Mr. *Kelly*, which could not possibly be, did he use frequently to resort to me. Such a slight Acquaintance as I had with him, could not be any Temptation to enter into Secrets with him, of such a dangerous Consequence as these are, which the Report insinuates to have pass'd between us: However, Suspicion is not now the Business. They that prove some Things may be allow'd to suppose more; they that prove nothing have no Right to indulge their Suspicions and Conjectures to the Ruin of any Man: Twenty Probabilities, allow'd to be such, are not equal to any one Matter of Fact, well attested; it may strengthen the Fact, but cannot support it. They cannot be Evidence themselves, because one Probability may be set against another.

I use this Distinction between Evidence in Law, and reasonable Evidence, because the Counsel for the Bill have asserted something like it.

I own I always thought the Publick Law of the State, the Publick Reason of the State; and whatever it is in another Country, yet, in this Country, no Evidence can be reasonable that is not legal. But I ask, What sort of Evidence, either in Reason or Law, is brought against me? How am I prov'd to consult and correspond, to raise an Insurrection against his Majesty and his Kingdom, and to procure a foreign Force to invade the same in Favour of the Pretender?

How am I prov'd in the second Place, to have corresponded with the same Pretender, and with Persons employ'd by him? Is one Article of these Charges made out against me with any Colour

Colour of Reason? Suppositions without Proof, Suppositions disprov'd, and shewn to be vain, and unjust.

If the Proof in these Cafes wants Strength, can the Hearsay of *Neynoe* supply the want of Proof, and render it valid, since *Neynoe* pretends, for ought that appears, not to have known any thing of me? He only heard *Kelly* say so, and Mr. *Kelly* denies it; and there is, I think, no Reason why such a dead Evidence should affect me, or *Kelly* himself, much less me thro' him. Was *Neynoe* alive, and *Kelly* dead, and incapable of contradicting what *Neynoe* said, I believe what *Neynoe* said would not be of any Weight; besides, what *Neynoe* dead says, and *Kelly* now alive denies, ought not to have any Force.

Concerning Hearsay Evidence in general, and concerning the due Regard to it, I humbly desire your Lordships, that a Passage may be read out of Sir *John Fenwick's* Bill of Attainder. [The whole Preamble read.]

My Lords, I humbly desir'd to have this read, because I thought it would take away a Distinction between Legal and Parliamentary Evidence; that what was not Legal might be Parliamentary. I believe here is a Condemnation of him by Parliament; therefore, I think, the Condemnation of him must be by Parliamentary Evidence. It is recited in this Act, as one of the Inducements that mov'd the King, Lords, and Commons to pass that Act, that Sir *John Fenwick* had contriv'd and fram'd several Papers, &c. only by Hearsay.

Shall that be accepted in this Parliament for Evidence, which is declar'd the only Motive of attainting a Man in another? If it was judg'd hard in Sir *John Fenwick's* Case to charge a Man by Hearsay, can the being thus charg'd be any Proof against me? Sure the House of Commons in 96, that brought that in, would have so thought, nor would those of your Lordships consented here, or elsewhere, to have pass'd it.

As for those that did not consent, I will venture to say, I am exceedingly puzzled to know why they did not oppose Sir *John Fenwick*, but favour'd his Case, and are yet against me. Is the Guilt objected to me, if prov'd, in any Measure like his? Or is there any Comparison between the Proof against him and me?

As to the Paper and Information given in by *Neynoe*, and printed in the Appendix, it is plain he was drawn in to have sworn backward or forward, to have affirm'd or deny'd any thing. He knew a certain Lord of the Council, that gave me Notice of my being taken up some Days before it happen'd. He knew what Use and Purpose the Protests of your Lordships were chiefly design'd for and calculated; and it appears by his Paper that was taken in his Pocket after his Death, that he had undertaken to give a positive Account, and design'd either to ask or receive such a Sum of Money.

'Tis said he was the late Earl *Marisball's* Bedfellow for several Months, and had drawn up Heads for Memorials to be delivered to the Regent; but he had kept no Copy of these Heads, or foul Draughts which would have shewn whether they were given in to promote it, or discover it; in either Case the Evidence of being then employ'd, would have been of Service: but they have not been able to produce a Line of such Heads or Memorials, yet the Report of the

House of Commons, upon the Basis of these Memorials, builds the whole Fabrick. He knew that I went under the Names of *Jones* and *Illington*, and undoubtedly he knew Mr. *Dubois*: If the Scheme of writing that Letter myself had been seen, he would have found out a Reason for the Correspondence; and 500*l.* would have made him affirm, That he carry'd the Letter himself. He knew the Pretender's particular Opinion of me, or of any Body else, and that he rely'd on Advices from me: How did he know that? He told him so. Who told him? It is not suppos'd Mr. *Kelly* had it from himself, but from Persons of high Estate, and that were near the Pretender.

Let me speak, my Lords, as always I hope I shall, with that Modesty as becomes Justice, but yet with Freedom, to you.

Hath nothing been open'd to you concerning this Man's Character, and his secret Transactions? Is it possible to believe this Pretender to Secrecy could have had, or shall he still have any Degree of Weight, that threw away his Life, rather than venture to stand to the Truth of what he said before his Death, and then he could have been contradicted, or Pangs of Conscience might have made him unsay what he had said? But a dead Man can retract nothing; what he hath writ, he hath writ: The Accusation must stand just as it did, so far as it concerns him; and we are depriv'd of the Advantage, which Truth and Remorse once extorted, and would have again extorted from him. However, I would have been glad to have had all that ever this Wretch said; and would hope that by comparing of the several Stories, which he several Times told, some Light might have been gain'd, which is now wanted: — Particularly by the Knowledge of what he said freely and voluntarily, when he was in good humour, and before his rough Usage, on his Return from *Rome*, had frighted him; but I think we have the Evidence only of a few of the last Days of his Life, all the preceding Time is blank. He underwent frequent Examinations, but they were not, it seems so maturely weighed and digested as to be thought worth the committing to writing: but he is gone to his Place, and hath answer'd for what he hath said at another Tribunal. I desire not to disturb his Ashes, farther than what is necessary for my Defence.

Your Lordships will observe first, the Inconsistency of some Part of the Charge. Secondly, the Improbability of it. The Report takes Notice of three several Periods, or Stages of Time, when, by Consequence of some Informations from the Regent, the Design did not take Place: The first was, during the Election; the second was, the King's going to *Hanover*; and the third was, the breaking up of the Camp. There is not the least Hint as to the last of these three Designs, in any of the Papers; tho' in the Recital of the Bill it is mention'd as the third Part of the Plot, and the most detestable Part of the Design, to lay violent Hands on his Majesty and his Royal Highness.

There is not the least Colour of Proof, as to the first Part of the Conspiracy, which was to take place at the Election; their only Reason for that, is from a Passage, where it is said, that the present Opportunity is elaps'd, that is the Opportunity of the Election.

I shall recite the Passage, as it lies in the intercepted Letter, and make some Reflections on it: *Notwithstanding the Opportunity is elaps'd,* (says the Writer to Jackson) *I agree with you, another may offer before the End of the Year, tho' not perhaps every Way so favourable.*

The Committee suppose this Letter to be from Kelly, and dictated by me; and they suppose the Words to refer to the time of the Election, and from those Suppositions infer that I knew something of it. On the contrary, I shall, on the two first Suppositions shew the Impossibility of it; if this was a Letter from me, or from any other Person, dictated by me to the Pretender, I must write as in Answer to some Letter sent from them to me, in repeating the Expression; and his Opinion in the Letter must have been founded on Intelligence before receiv'd: This Intelligence, considering the Distance between London and Rome, must have been communicated two Months, if not longer, before the Date of this Letter, if we go back two Months, and talk of *the Election being elaps'd*, it was not begun; consequently that Opportunity in the Letter could not possibly mean the *Time of the Election*; and if so, it is impossible that it should be a Letter to the Pretender, that can consist with the Charge of the Person's writing in April 1720.

If it be a Letter writ in good Earnest, it appears they had given over all Thoughts at that Time: *I agree with you,* says he, *another may offer before the End of the Year*: and yet he finds some Words in a Letter writ ten Days after, wherein, under the Name of Jones, I am made to be deeply concern'd in a Conspiracy.

How can this be consistent, if I writ and directed that Letter, and was engag'd in the second Part of the Conspiracy.

Both cannot be true, both may be false? and I hope I have satisfy'd your Lordships, that as I did not dictate the one, so I was no ways concern'd in the other.

Can any one believe, that under the sad Circumstance of being afflicted by the Death of my Wife, I should be concern'd in an Affair of this dangerous Nature? Was that a Time to provide for a Stranger? And for a Man, unless under the Power of Prejudice, to believe such an Improbability, or that I had such a Conjecture? I forbear former Instances.

I shall now consider the Improbability, as well as Inconsistency of the Charge brought against me without positive Proof. You will allow me to answer the Indictment in the same Manner as it is laid.

Is it probable that if I were engag'd in any such Design, no Footsteps should be seen of any Correspondence I had with the late Duke of Ormond, to whom, of all Persons abroad, I was best known, and to whom I had the greatest Regard, and still have all the Regard that is consistent with my Duty to my King and Country?

Is it probable that I would choose rather to engage in such a Design with Mr. Dillon, a Military Man I never saw, and with the Earl of Marr, whom I never convers'd with except when he was Secretary of State?

Did I not know, what all the World thinks, that he had left the Pretender several Years, and had a Pension abroad? Is this a Season for me to

enter into Conferences with him about restoring the Pretender; and do this not by Messages but by Letters, not sent by Messengers but by the common Post? That by thus writing to him by the Post, I should advise him after the same manner to write to me, and by these Means furnish Opportunities towards detecting the Persons, and bringing myself into Danger? How doth that consist with the Caution and Secrecy which are said to belong to me? Must not I have been rash to have laid myself open in such a Manner? This is an inconsistent Scheme, the other a bold Assertion. Is it probable, when attending the sick Bed of my Wife, and expecting her Death, not daily but hourly, that I should enter into Negotiations of this kind?

There was no need of dispatching any of those three Letters, merely to excuse my not writing: The Circumstances of my Family had been a sufficient Apology, and more effectual.

Is it probable, that when I was carrying on publick Buildings of various kinds at Westminster, and Bromley, consulting all the Books from the Westminster Foundation, engaging in a Correspondence with learned Men, about settling an Important Point of Divinity; that at that very Time, I should be carrying on a Conspiracy? Those that entertain such Thoughts without Reason, may also condemn me without Argument.

Is it probable that I should meet, and consult, in order to carry on and forward this Correspondence with no Body, and no where?

That I, who always liv'd at home, and except at Dinner-Time, never stir'd out of my Chamber; receiv'd all Persons that visited me, and was deny'd to none, should have an Opportunity to be so engag'd? And if I had, that none of my Domesticks and Friends should ever observe any Appearance of any such Thing? No Evidence among my Papers, tho' they were all seiz'd at both my Houses, and confining all my Servants, but one now, for about 10 or 11 Weeks, searching him twice in the Tower, and searching myself, nothing of Consequence appears, nor is there any one living Witness that charges me with any thing that is really true.

Is it probable, that I should form and direct a Conspiracy, and carry it on with any Success, that am not us'd to Arms, which I am no more acquainted with, than with the Persons employ'd on those Occasions? My way of Life hath not led me to converse with such Men and such Matters, except on the Occasion of meeting in Parliament; but in a Council of War I never was. Have I yet in any Instance of my Life meddled remarkably out of my own Sphere, in Affairs foreign to my Business or Character? I might have been thought to have been too active in my proper Station and Business; but I was never charg'd with War, nor any ways inform'd in the Art of it.

Is it just, that Persons concern'd in the Military Way, should be punish'd without any Proof?

And must I, whose Way of Life is set at the greatest Distance from such Persons, and from the very Suspicion of being concern'd with them, suffer all the Pains and Penalties, short of Death, which the Parliament can inflict, for a suppos'd I know not what, and what I don't to this Day apprehend?

Here

Here is a Plot of a Year or two standing, to subvert the Government with an armed Force, an Invasion from Abroad, an Insurrection at Home; just when ripe for Execution it is discover'd: and 12 Months after the Contrivance of this Scheme, no Consultation appears, no Men corresponding together, no Provision of Money, Arms, or Officers — not a Man in Arms — And yet the poor Bishop has done all this.

*L*ayer and *Plunket* carry on a Treasonable Correspondence: They go to *Rome* and receive Directions from the Pretender himself, to promote his Cause — It does no where appear that the Bishop has the least Share in, or is any way privy to their Practices — And yet the Bishop has done all; He is *principally concern'd in forming, directing, and carrying on this Detestable Conspiracy.*

What could tempt me to step thus out of my Way? Was it Ambition, and a Desire of climbing into a higher Station in the Church? There is not a Man in my Office farther remov'd from this than I am; I have a hundred Times said, and sincerely resolv'd, I would have been nothing more than I was at a Time when I little thought of being any thing before; and I could give an Instance of this Kind if I thought proper.

Was Money my Aim? I always despis'd it, too much perhaps, considering what occasion I am now like to have for it: for out of a poor Bishoprick of 500 *l. per Annum*, I have laid out no less than Two Thousand Pounds, towards Repairs of the Church and Episcopal Palace; nor did I take one Shilling for Dilapidations. The rest of my little Income has been spent as is necessary, as I am a Bishop. Nor do I repent of those Expences now, (tho' since my long Confinement I have not receiv'd the least Part of the Income in my Deanery) not doubting in the least, but that God who hath liberally provided for me hitherto, will still do it, and on his good Providence I securely rely.

Was I influenc'd by any Dislike of the Establish'd Religion, and secretly inclin'd towards a Church of greater Pomp and Power? I have, my Lords, ever since I knew what Popery was, oppos'd it; and the better I knew it, the more I dislik'd it.

I begun my Study in Divinity, when the Popish Controversy grew hot about that immortal Book of *Tillotson's*, when he undertook the Defence of the Protestant Cause in general; and as such I esteem'd him above all.

You will pardon me, my Lords, if I mention one thing.

Thirty Years ago, I writ in Defence of *Martin Luther*, and have preach'd, and writ to that Purpose from my Infancy; and whatever happens to me, I will suffer any thing, and will, by God's Grace, burn at the Stake, rather than depart from any material Point of the Protestant Religion, as profess'd in the Church of *England*.

Once more: Can I be suppos'd to favour Arbitrary Power? The whole Tenor of my Life hath been otherwise: I was always a Friend of the liberty of the Subject, and to the best of my Power constantly maintain'd it: I may have been thought mistaken in the Measures I took to support it.

It matters not by what Party I was called, for my Actions are uniform.

To return to the Point: The Charge brought against me in the Manner it is brought, is impro-

bable: if I could be guilty of it, I must have acted under a Spirit of Infatuation; yet I have never been thought an Idiot or a Madman.

My Lords, as to the Pains and Penalties contained in this Bill, they are great and grievous, beyond Example in their Nature and Direction.

I am here, my Lords, and have been expecting an immediate Trial. I have, my Lords, declin'd no Impeachment. The Correspondence with the Earl of *Clarendon* was made *Treason*, but with me it is only *Felony*. He was allow'd the Conversation of his Children, by the express Words of the Act: Mine are not so much as to write, so as to be sent to me.

What is most particular in my Case I will repeat distinctly, that my Reverend Brethren may hear it. I am render'd incapable of using or exercising any Office, Function, Authority, or Power Ecclesiastical, not only in his Majesty's Dominions, but any where else. Very hard! That such Spiritual Power as is not deriv'd from Men, but God himself, should be taken from me!

And I am not only *deprived of all Offices, Dignities, and Benefices Ecclesiastical*, and for ever *banish'd the Realm*, but likewise precluded from the Benefit of Royal Clemency, and *made utterly incapable of any Pardon by his Majesty, his Heirs and Successors.*

My Lords, I insist on my Innocence, that I am not guilty; and if I am not prov'd so, your Lordships will thus judge; if otherwise, I persuade myself I shall find some Degree of Mercy.

You will not strip a Man of his Substance, and then send him where he cannot subsist; you will not send him among Strangers, and then hinder others from performing Humanity to him; you will not give him less time to order his Affairs and depart the Kingdom, than the Bill hath taken in passing thro' both Houses.

The Great Man, I last mention'd, carry'd a great Fortune with him into foreign Parts, and had the languages; was well acquainted abroad: The Reverse of all this is my Case; I indeed am like him in nothing but his Innocency, and his Punishment. It is in no Man's Power to make us differ in the one, but it is in your Lordships Power to make us differ widely in the other, and I hope your Lordships will do it.

But to sum up the Arguments: It hath been frequently observ'd, that the higher the Crimes are, the fuller the Proofs ought to be. Here is a Charge of High-Treason brought against me, with no Evidence at all.

My Lords, pardon me, what is not Evidence at Law, can never be made so by any Power on Earth: for the Law that requir'd the Evidence, is as much the Law of the Land, as that which declares the Crime.

It is equally unjust to declare any Proof legal, because of my Prosecution: As extraordinary would it be, to declare the Acts themselves, *ex post facto*.

Never was there a Charge of so high a Nature, and so weakly prov'd.

A Person dead, so that there is not an Opportunity to falsify him by contradicting him, a Charge not supported by any one Evidence, nor by any one Proof of any Thing that hath been writ or receiv'd by me, nor even by any one criminal Word prov'd to have been spoken by me: but by intercepted Letters and Correspondence, in which appears not the least Certainty.

Some of those letters, shown to Persons, with a Design to fasten something on them; others writ in Cyphers, and fictitious Names, throwing out dark and abstruse Hints of what Persons went by those Names, sometimes true and sometimes doubtful, and often false, who continue all the while strangers to the whole Transaction, and never make the Discovery, till they feel and find it advancing itself towards them: My Lords, this is my Case, in short.

I have a hard Task to prove my Innocency: Shall I stand convicted before your Lordships on such an Evidence as this? The Hearsay of an Hearsay; a Party dead, and that deny'd what he said; by strange and obscure Passages, and fictitious Names in letters, by the Conjecture of Decyphers, without any Opportunity given me of examining and looking into the Decyphering; by the Depositions of Post-Office Clerks about the Similitude of Hands; their Depositions made at distant Times, and without comparing any one of the Originals, by a strange Interpretation of them: for nothing more, I am persuaded, can be made of the Arguments, than what is call'd the intercepted Correspondence.

Shall I, my Lords, be depriv'd of all that is dear to me, and in the Circumstances I am in, scarce able to bear up, and by such an Evidence as would not be admitted in any other Cause or any other Court; and would hardly affect a *Jew* in the Inquisition of *Spain*?

And shall it be received against a Bishop of this Church, and a Member of this House? God forbid. Give me leave to make mention of a Text in Holy Writ: *Against an Elder receive not an Accusation, but before two or three Witnesses.* It is not said, Condemn him not upon an Accusation, &c. but receive it not: I am something more than an Elder; and shall an Accusation against me be countenanced, without any one Instance of Proof to support it?

This is not directly Matter of Ecclesiastical Constitution: There you read, one Witness should not rise up against an Elder; but here, at the Mouth of two Witnesses, or three Witnesses, shall the Matter be establish'd: And as this Rule was translated into the State of the Church, People always thought fit to allow it.

Shall I be the first Bishop in this Church, condemn'd upon Conjecture, on fictitious Names and obscure Passages in letters, instead of two or three Witnesses?

Will not others endeavour to make the same Precedent, and desire the same Influence of it to succeeding Ages; and even concur in such an Act, in order to render me incapable of using or exercising any Power or Authority, &c. Is this good Divinity, or good Policy?

As to the Justice of the Legislature, in some Respects it hath a greater Power than the Sovereign Legislator of the Universe: For he can do nothing unjust. But tho' there are no Limits to be set to a Parliament, yet they are generally thought to restrain themselves, to guide their Proceedings in Criminal Cases, according to the known Law.

The Parliament may order a Criminal to be tortured: Who can say they cannot? But they never did, nor never will, I hope; because Torture, tho' used in other Countries, is not known here.

Is it not torturing, to inflict Pains and Penalties on Persons only suspected of Guilt, not plainly

prov'd guilty? It is not much unlike it. The Parliament may, if they please, as well upon Bills of perpetual Imprisonment, as upon Bills of perpetual Exile, reserve to the Crown a Power to determine the one as well as the other. They have reserv'd it in the former Case, but have not reserv'd it here in the other. The Law knows nothing of such absolute perpetual Imprisonments.

The Parliament may, in like manner condemn a Man on a Charge of Accumulated and Constructive Treason. They did so in the Case of the great Lord *Strafford*, and that by Accumulated and Constructive Proof of such Treason; that is, by Proofs so interpreted, as plainly to communicate Light and Strength to each other, and so to have all the Force without the Formality of Evidence. Was such proof ever admitted by any one to deprive his Fellow-Subject of his Fortune, of his Estate, his Friends, and Country, and send him in his old Age, without Language or Hope, without Employment to get the Necessaries of Life, to starve? I say again, God forbid.

My Ruin is not of that Moment to any Number of Men, to make it worth their while to violate, or even to seem to violate the Constitution in any Degree, which they ought to preserve against any Attempts whatsoever.

But where once such extraordinary Steps as these are taken, and we depart from the fixed Rules and Forms of Justice, to try untrodden paths, no Man knows where this shall stop.

Tho' I am worthy of no regard, tho' whatsoever is done to me may, for that Reason, be look'd upon to be just; yet your Lordships will have some regard to your own lasting Interest, and that of Posterity.

This is a proceeding with which the Constitution is not acquainted; which, under the pretence of supporting it, will at last effectually destroy it.

For God's sake lay aside these extraordinary proceedings; set not up these new and dangerous precedents; I, for my part, will voluntarily and cheerfully go into perpetual Banishment, and please myself that I am, in some measure, the Occasion of putting a Stop to such precedents, and doing some Good to my Country, and will live, where-ever I am, praying for its prosperity; and do, with the Word of Father *Paul* to the State of *Venice*, say *Esto perpetuo*: It is not my departing from it I am concern'd for; let me depart, and let my Country be fix'd upon the immovable Foundation of Law and Justice, and stand for ever.

I have, my Lords, taken up much of your Lordships Time, yet I must beg your Attention a little longer.

Some part of my Charge hath been disproved by direct and full Evidence, particularly that of writing the letters of the 20th of *April*, or that I knew who wrote them; which I utterly deny that I ever did, or as yet do know. Other parts of the Charge there are, which are not capable of such Disproof, nor indeed require it; there I rest. But my Lords, there is a Way allow'd of vindicating myself, it is generally Negative; that is, by protesting and declaring my Innocence to your Lordships, in the most deliberate, serious, and solemn Manner; and appealing to God, the Searcher of Hearts, as to the Truth of what I say, as I do it in what follows. I am charg'd in the

the Report with directing a Correspondence to Mr. *Kelly*; but I solemnly deny that I ever, directly or indirectly, saw a single Line of any of their Letters, till I met with them in Print. Nor was the Contents of any of them communicated to me. I do in the next place deny, that I was ever privy to any Memorial to be drawn up to be deliver'd to the Regent. Nor was I ever acquainted with any Attempt to be made on the King's going to *Hanover*, or at the Time of the Election. Nor did I hear the least Rumour of a Plot to take place after the breaking up of the Camp, till some Time after Mr. *Layer's* Commitment. I do with the same Solemnity declare, that I never collected, remitted, receiv'd, or ask'd any Money of any Man, to facilitate these Designs; nor was I ever acquainted with, or had any Remittances whatsoever, from any of those Persons. I never drew any Declaration, Minutes, or Paper in the Name of the Pretender, as is expressly charg'd upon me. And I never knew of any Commission issu'd, Preparation of Arms, Officers, or Soldiers, or the Methods taken to procure any, in order to raise an Insurrection in these Kingdoms. All this I declare to be true, and will so declare to the last Gasp of my Breath.

And I am sure, the further your Lordships examine into this Affair, the more you will be convinc'd of my Innocency. These contain all the Capital Articles of which I am accused, in the Report of the House of Commons.

Had the Charge been as fully prov'd as ascertain'd, it had been vain to make Proteftations of my Innocency, tho' never so solemn.

But as the Charge is only supported by the slightest Probabilities, and which cannot be disprov'd in any Instance, without proving a Negative, allow the solemn Affeuerations of a Man in behalf of his own Innocence to have their due Weight, and I ask no more, than that they may have as much Influence with your Lordships as they have Truth.

If on any Account there shall still be thought by your Lordships to be any seeming Strength in the Proofs against me: If by your Lordships Judgments, springing from unknown Motives, I shall be thought to be guilty; if for any Reasons, or Necessity of State, of the Wisdom and Justice of which I am no competent Judge; if your Lordships shall proceed to pass this Bill against me, God's Will be done: *Naked came I out of my Mother's Womb, and Naked shall I return; and whether he gives or takes away, blessed be the Name of the Lord.*

May 13. was appointed for the Reply of the Counsel for the Bill, who were Mr. *Reeve*, and Mr. *Wearg*, Mr. *Reeve* spake as follows.

May it please your Lordships,

TO permit me to offer something, by way of Reply to the Arguments that have been made use of, and the Evidence that hath been given, in Behalf of the Bishop of *Rocheſter*.

My Lords, I shall not trouble your Lordships with entering far into the Arguments so much insisted on by the other Side, concerning the Power of the Parliament to pass Bills of Attainder.

They have been spoken of by the Counsel of the other Side, as inconsistent with our Constitution; Bills of Pains and Penalties, and Bills of Attainder, have been treated by them as un-

known to our Constitution, unless in a few Instances, which afterwards have been condemned.

And yet they have mentioned the Case of Sir *John Fenwick*, which is a Precedent of a Person attainted without legal Evidence, tho' he were forth-coming and amefnable to Justice, and his Attainder remains still unreversed. And as to Bills of Pains and Penalties, they should, before they inveigh'd so much against them, have consider'd, that two such Bills have now already pass'd your Lordships House; and the Bills against *Counter*, *Bernardi*, and others, and against the late South-Sea Directors, are Precedents of Bills of this Kind.

They have mention'd many Instances, where Persons have been prosecuted according to the known Rules of Law, and the Parliament did not think fit to interpose. And doubtless, my Lords, generally speaking, where Evidence is to be had and to be produced, and the Persons are forth-coming, it is right to proceed according to the known Rules of Law, in the ordinary Courts of Justice.

But where Conspirators are carrying on their Designs with Art, and contriving to shelter themselves from those known Rules of Law; we apprehend, my Lords, the ordinary Prosecutions at Law will be no Argument against the Legislature's making use of their Authority, when the Circumstances of the Case, the Preservation of the publick Peace, and the Safety of the Constitution require it.

But I beg leave to mention one Instance, in which they are mistaken: They have said, that in the Case of the Regicides (that horrid and detestable Treason!) they were all prosecuted according to the ordinary Course of Law! but if they had look'd into the Acts of Parliament, they would have found, that some of them were punish'd by Bills of Pains and Penalties. The Lord *Monſon* and others, who sat as Judges in the pretended High Court of Justice, were reserv'd by two Acts of Parliament that pass'd, to have Pains and Penalties inflict'd upon them; and tho' there was Evidence in that Case to have attainted them according to the ordinary Course of Law, the Parliament did proceed to punish them by Pains and Penalties, and they were not try'd according to the ordinary Course of Law.

This I beg leave to observe to your Lordships, in relation to the Power and Usage of Parliaments, in passing Bills of this Kind.

My Lords, in the next place I beg leave to take Notice, that the Observations that have been made, and the Evidence that hath been given by them, as to Facts mention'd in the *Report* and *Appendix*, concerning which we have given no Evidence at all, ought to be laid out of this Case, as foreign to the Matter before your Lordships. The Matters we have given in Evidence, it was proper for them to answer; but they have gone into the *Report* and *Appendix*, in order to disprove Facts mention'd there; tho' we gave no Evidence concerning them; and we humbly apprehend, it is not necessary for us to follow them as to those Facts; for if we maintain the Charge we have given, it doth not concern us to make good every Article in the *Report* and *Appendix*, relating to this Reverend Prelate now before your Lordships.

My Lords, we must admit the Evidence produced to charge the Reverend Prelate at your

Lordships

Lordships Bar, is not all of it Evidence strictly legal against him, if he was to be try'd according to the ordinary Course of Justice in *Westminster-Hall*. But, my Lords, we humbly apprehend you are not tied to the Rules of *Westminster-Hall*; for if your Lordships are satisfied that the Facts proved, laying them all together, do conclude the Reverend Prelate at the Bar guilty, notwithstanding they do not amount to Evidence according to the ordinary Rules of *Westminster-Hall*, your Lordships will be of Opinion, that it is fit he should be punish'd.

My Lords, the Evidence that hath been given by us, as to Facts committed by the Bishop of *Rocheſter*, hath been chiefly from three Letters, dated the 20th of *April*, 1722; each of these was written in the Hand of Mr. *Kelly*, and dictated by my Lord Bishop of *Rocheſter*.

My Lords, these Letters are writ, some Part in Cyphers, and some Part not; they are sign'd by the Names of *T. Jones*, *T. Illington*, and the Figures 1378. My Lords, if these three Letters are proved, to your Lordships Satisfaction, to be the Letters of my Lord Bishop of *Rocheſter*, we humbly apprehend they do prove all the Allegations in the Bill, which my Lord Bishop of *Rocheſter* hath been pleased to call upon us to shew that he hath been guilty of. They do contain, as we say, and as plainly appears from the Letters themselves, Matters relating to consulting and conspiring to invite a foreign Force into this Kingdom for an Invasion, and to promote an Insurrection. And if the Name of *Jackson* is the Name by which the Pretender is signified, that Letter will prove the other Part of the Bill, that the Bishop of *Rocheſter* hath held Correspondence with the Pretender himself.

My Lords, I beg leave to observe upon the Word *Jackson*: It hath been insisted upon, that tho' it is contain'd in *Plunket's* Cypher, yet *Jackson* may signify in Mr. *Plunket's* Cypher one thing, and in these Letters another; and these Letters are contrived in Figures, and not those Cant Words and Names, as in Mr. *Plunket's*; but so far they go, to admit that in *Plunket's* Cypher the Name of *Jackson* stands for the Pretender.

My Lord Bishop of *Rocheſter* was pleased to observe, that in all the Correspondence between Mr. *Kelly* and the Persons with whom he corresponded abroad, there is no Name contain'd in Mr. *Plunket's* Cypher, which *Kelly* hath made use of in any of his Letters, but this.

My Lords, it appears to your Lordships, that in the Correspondence between Mr. *Kelly* and the Persons abroad, several other Names, mention'd in *Plunket's* Cypher, have been used: and it is not material, whether these Names are contain'd in the Letters writ by *Kelly* himself, or in those of his Correspondents writing to him. When his Correspondents write to him, in answer to his Letters, they use several other of the Names which are contain'd in *Plunket's* Cypher; which, my Lords, we humbly apprehend is the same Thing as to this Purpose, as if they were used in Mr. *Kelly's* Letters; for he must be presumed to know the Meaning of those fictitious Names, when they are contain'd in Letters that come in answer to Letters from him, in the Correspondence which he carries on; and we humbly apprehend, my Lords, that is as strong an Evidence, as if they had been contain'd in the Letters writ by *Kelly* himself. Therefore, my Lords,

I beg leave to take Notice of several Names that are in Mr. *Plunket's* Cypher, and used by Mr. *Kelly's* Correspondents, in their Letters to him.

There is the Name of *Xoland*, which stands for *Wogan*; the Name of *Lane*, which stands for Lord *Marr*; the Name of *Cane*, which stands for *Dillon*; and the Name of *Howell*, for *Glascock*. My Lords, all these Names are in Mr. *Plunket's* Cypher, and made use of in the Letters that pass'd between Mr. *Kelly* and his Correspondents.

My Lords, I shall beg leave to submit it to your Lordships, when, among Persons concerned in carrying on the same Conspiracy, Cyphers are made use of, and in the Cyphers of some of the Conspirators, the Names comprized in Letters writ by others of the Conspirators are contain'd, whether it is not a reasonable Evidence, that those fictitious Names contain'd in the Cyphers of one of the Conspirators, and made use of in the Letters of the other, signify the same Persons; unless there is something to distinguish the Case, and shew that the same Names are made use of to denote several Persons.

My Lords, we humbly submit it to your Lordships, that it is plain from the Evidence we have given, that these three Letters are writ by the same Hand; and by the Circumstances in the Letters, they appear to be dictated by one and the very same Person. Therefore, my Lords, the Enquiry will be, who is the Person described by the Names of *T. Jones*, *T. Illington*, and the Figures 1378: for if we have proved the Bishop of *Rocheſter* to be denoted in this Correspondence by the Names of *Jones* and *Illington*, and that these Letters were written by *Kelly*, and dictated by *Jones* and *Illington*, then the Bishop of *Rocheſter* is the Person by whom these Letters were dictated.

This will appear to your Lordships from other Facts contained in Letters intercepted in this Correspondence; Facts that, all of them together, can relate to no Person but the Bishop of *Rocheſter*.

The Circumstances of the Bishop and his Family, are exactly described in the three Letters of the 20th of *April*; and those Circumstances plainly shew, that all the three Letters were dictated by the same Person, and that the Figures 1378 denote the same Person that *Jones* and *Illington* do.

My Lords, there are several other Facts contain'd in the intercepted Letters, that denote *Jones* and *Illington* to be the Bishop of *Rocheſter*. One of them is, the Fact relating to a Dog sent over to Mr. *Kelly*, which appears, by the Evidence given, to have been design'd for the Bishop of *Rocheſter*: Therefore in the Letter mark'd *E. 32.* (that is, a Letter to Mr. *Kelly* by the Name of *Hatfield*, and directed to Mr. *Hatfield*, under Mr. *Anthony Saunders's* Cover, which is one of the Persons describ'd in the List of Directions taken in *Kelly's* Pocket-Book) the Letter mentions *the little Dog was sent ten Days ago, and order'd to be deliver'd to you, &c.*—My Lords, afterwards Mr. *Kelly* by a Letter dated the 30th of *April*, 1722, *E. 35.* (it is a Letter from *J. H.* one of Mr. *Kelly's* Names to *Howell*, and which have been proved to be Mr. *Kelly's* Hand-writing) says, *I received the Present sent by the young Lady, but in such a bad Condition, that I am afraid he never will do well; for he had a Leg broken in his Journey, which is still*
very

very bad with him; however, I will take all the Care imaginable of him, and inform Mr. Jones soon of it, to whom, I know, any thing from that Quarter will be very acceptable.

My Lords, it appears by this Letter of Mr. Kelly's, that this Dog, that is there mention'd, was not a Dog for Mr. Kelly himself, but for Mr. Jones; a Dog for a Person denoted and understood by the fictitious Name of Jones: So that if the Evidence that hath been given of this Dog being design'd for the Bishop of Rochester, is true; then it follows that Mr. Jones, mention'd in this Letter of Kelly's, denotes the Bishop of Rochester.

There is another Letter relating to this Dog, E. 42: there is mention'd the Concern Mrs. Illington was in for poor Harlequin; Mrs. Illington is in great Tribulation for poor Harlequin, who is in a bad Way, having slipped his Leg again before it was thoroughly well, however his Obligations to the Lady are as great as if he had come safe, which he desires you to let her know.

My Lords, this shews that Jones and Illington are the same Persons. It appears by the former letter, that the Present was for Mr. Jones, and he should soon know of it; this letter says, that Mrs. Illington is in great Tribulation, &c. However his Obligations to the lady are as great, &c. Tho' in the first Part of the letter it is Mrs. Illington, in the latter Part it is HIS Obligations to the Lady are as great as if he had come safe, which HE desires you to let her know. That shews, that the Person in the former letter, described by the Name of Jones, is in this letter described by Illington, and consequently Jones and Illington are the same Person.

My Lords, the next Circumstance observable in these letters, the intercepted Correspondence between Mr. Kelly and his Friends abroad, is the letter dated the 30th of April 1722, E. 35. which says, Mrs. Jones died last Week, and when the Days of Mourning are over, he will, I hope, be fit for Business.

My Lords, it hath been given in Evidence, that the Bishop's Lady, his own Witnesses as well as ours, have given an Account, that the Bishop's Lady died the 26th of April: This letter is dated the 30th of the same April, consequently this suits exactly with the Bishop's Circumstances as to his Lady being dead.

My Lords, that Jones and Illington are the same, appears likewise by the Answer given to this letter, dated the 20th of May, 1722, E. 43. which says, Mrs. Chivers gives you her kind Service, and prays you will condole in his Name on the Death of Mrs. Illington. My Lords, this letter is in answer to that of the 30th of April, for it begins, Yours of the 30th of April, which should have come by last Post, is come to hand; and this letter condoles on the Death of Mrs. Illington, whereas the letter of the 30th of April gave an Account that Mrs. Jones was dead. So that Jones and Illington appear by these letters to denote the same Person.

My Lords, these are letters writ by Correspondents, concern'd, one with another, in carrying on this Conspiracy. It hath been objected, on the behalf of my Lord Bishop of Rochester, that he is not concern'd in writing of these letters, nor did any of them come to his Hands, nor were they writ by his Directions, but that they passed between Mr. Kelly and his Correspondents abroad.

Your Lordships, we hope, will be of Opinion, in a Correspondence of this Nature, (unless they shew something to induce your Lordships to believe, that there hath been a malicious Design in the Parties between whom these letters pass'd, to denote the Bishop of Rochester, in order to charge him) that these are Facts, which amount to a certain Proof who the Person is, that used to go by the Names of Jones and Illington.

Your Lordships observe how the Matter stands: Mr. Jones and Illington is a Person described, by the Letters of the 20th of April, to be in great Pain himself, to be in melancholy Circumstances in other Respects: He appears by the Evidence at that Time to have been ill of the Gout, his lady appears to have been ill, and dying; Mrs. Jones and Mr. Illington is a Person to whom a Dog was sent, and it appears by the Evidence, that this Dog was design'd for the Bishop of Rochester. Mrs. Jones, in one letter 'tis said, died last Week; and in another letter they condole the Death of Mrs. Illington: and it appears the Bishop's Lady died the Week before the 30th of April.

My Lords, there are other Circumstances, which I should mention, in relation to the Times when the Bishop was in London, and when in the Country; which, we apprehend, is an additional Proof who was meant by the Names of Jones and Illington. Therefore in Letter E. 41. a. Kelly says, Mr. Illington is now in Town, and presents his kind Service to you; he is glad to hear you received his Letters by Crow, and wishes his next may be more to your Satisfaction.

This letter is dated the 7th of May; there it is said, Mr. Jones is now in Town: It appears, by the Examination of Wood the Coachman, that on the 7th of May my Lord Bishop of Rochester was in Town.

There is another letter dated the 7th of May 1722, directed to Musgrave, E. 42. which I beg leave to make some Observations on. There it is said, I had the Favour of yours, which I communicated to Mr. Jones, who is come to Town only for a Day.

My Lords, this letter shews, that the Person denoted by the Name of Jones was come to Town. But they object, that this letter cannot be apply'd to denote the Bishop of Rochester, because it appears by the Deposition of Wood, that the Bishop of Rochester staid in Town till the 10th of May; so consequently he did not come to Town only for a Day, and consequently can't be the Person meant in that letter.

My Lords, as to that it appears, that the Fact concerning Mr. Jones, applying it to the Bishop of Rochester, of his being come to Town, is true; as to the Bishop's being come to Town only for a Day, that is not Matter of Fact, but of the Apprehension of the Writer: He apprehended he was only come to Town for a Day, but he might be mistaken in that; but the Fact of his being come to Town is true, the Apprehension of the Writer that he came only for a Day, is false. But we must submit it to your Lordships; the Apprehension of the Writer is not sufficient to avoid the Truth of the Fact contain'd in that letter, when we have proved that my Lord Bishop of Rochester was in Town on the Day when Mr. Jones is mention'd to have been in Town in that letter.

Another letter dated Thursday the 10th of May 1722, E. 44. says, Illington is gone to the Country;

Country, and sent me Word he would be in Town on Tuesday Night, when he hath desired to see me at a particular Hour, by which I conclude it may be about Business; and the Tuesday following that Thursday happen'd to be the 15th of May. Another letter E. 45. dated the 14th of May, 1722, says, Mr. Jones is still in the Country, but he hath sent me Word he will be in Town to-morrow. My Lords, upon the Examination of the Coachman Wood, it doth appear, that the Bishop of Rochester was out of Town the 10th of May, out of Town the 14th of May, but that he came to Town the 15th of May, which is the Day mention'd in those letters that he had promised to come to Town: So that here are additional Circumstances, all agreeing to prove that the Bishop of Rochester was denoted by the Names of Jones and Illington. My Lords, we must submit it, that this is not probable conjectural Evidence only, as has been objected.

These letters contain Facts, and the Consequence from them is, that Jones and Illington is the Bishop of Rochester, in whom all these Facts agree. It is almost morally impossible, that all these Facts should agree in the Case of any other Person, as they do in the Case of the Bishop of Rochester.

It has been argued, as to the letters of the 20th of April; Was he the only Person that was in Pain and melancholy Circumstances at that Time? A great many might be so. They go thro' the Particulars of his being in Town and in the Country; a great many Persons might be in Town and in the Country on those Days besides him. It is true, it might be so. Was there no body whose lady died the Week before the 30th of April, but the Bishop of Rochester? Certainly, there are a great many to whom that Circumstance may be applied. But, my Lords, taking the Circumstances together, they cannot all of them concur in the Case of any other Person, as they do in the Case of my Lord Bishop of Rochester.

It may not be improper here to take Notice of some other of the intercepted letters, that have been given in Evidence to your Lordships, which mention the Names of Jones and Illington.

In Mr. Kelly's letters, giving an Account of his being taken up, and his Examination before the Council, he takes Notice of his being examined concerning the Persons that were meant by several fictitious Names, and, among the rest, Jones and Illington, who, he says, are chiefly struck at. This is to give an Intimation to his Correspondents abroad, that there had been a Discovery, that the fictitious Names, concerning which he had been examined, were made use of in their Correspondence.

My Lords, he comes afterwards and writes a letter, after such Time as he was bail'd (he was taken the 19th of May, and bail'd the 7th of June) wherein he says, it is absolutely necessary now, that there should be a new Book of Accounts; says he, they must use no more their present Book of Accounts, since those, who have got Part, may have got the Whole.

My Lords, we humbly submit it, that he having given an Account of his being examined concerning those several fictitious Names, after when he comes and says it is absolutely necessary to have a new Book of Accounts, it is a plain

owning of Kelly by this letter, that the Names enquired after were the Names made use of in the Correspondence, and therefore he says, it is necessary to have a new Book of Accounts; that is, other Cyphers and fictitious Names, by which to carry on their Correspondence: He owns they have got Part, and fears they may have got the Whole.

From that Time the Names of Jones and Illington are no more met with in the Correspondence that follows. We have gone no farther in our Evidence to fix any other Names to mean the Bishop of Rochester, but only the Names of Jones and Illington. But there are other Names, which, in the Letters that follow, probably are design'd to mean the Bishop of Rochester; but they will be out of the Case, because we have given no Evidence concerning them: and the plain Reason why Jones and Illington are not made use of any longer, is, because it appears on the Examination of Mr. Kelly, that those Names were mentioned: therefore they were afraid, by making use of those Names, the Correspondence might be discover'd, and it might prejudice the Persons who went by those fictitious Names.

My Lords, this is the Substance of the letters, writ to and from Mr. Kelly and his Correspondents, concerning the Person that goes by the Names of Jones and Illington.

Tho' my Lord Bishop of Rochester insists, that he is not proved to be the Person concern'd in writing these letters, and that he had no Notice of them, and therefore they ought not to be look'd upon as Evidence against him; my Lords, we submit it to your Lordships, in a Correspondence of this Nature, when we pursue Facts and Circumstances that are stated and arise from the intercepted letters, which when they come to be apply'd together, are a plain Indication of the Person that is meant by them; when these Circumstances and Facts can fit none but the Bishop of Rochester; we hope, tho' it is not legal Evidence in Westminster-Hall, yet it is satisfactory Evidence to induce your Lordships to believe and be convinced, that no Person can be denoted by these Names but the Bishop of Rochester.

My Lords, this is a Matter that the Bishop of Rochester could not, with all his Care, be aware of; he takes Care that the letters of the 20th of April are in Cyphers, and not writ with his own Hand; fictitious Names are made use of, and he thinks he shall be sheltered by this Means from being found out to be the Person. The other Facts could not be supposed would come out to explain the Person.

But, my Lords, very often there is a Providence in detecting Things of this Nature; and where the greatest Caution and Care is used, Circumstances (that human Prudence could not guard against) are so strong and convincing, that they discover such secret Correspondence, and plainly prove who is the Person carrying it on.

Some Texts of Scripture have been cited on the other Side, my Lords, I beg leave to use one on this Occasion; and that is, *Curse not the King, no not in thy Thought, for a Bird of the Air shall carry the Voice, and that which hath Wings shall tell the Matter.*

In these treasonable Conspiracies and Correspondences against the King and Government, (notwithstanding they are carried on so secretly, that

that the Conspirators think nothing can discover them) there happen sometimes, thro' Providence, such Circumstances which the Persons cannot be aware of, that bring those things of Darknes to Light: and we hope this may be an Example, that may deter any Person from going in the most secret and concealed Way to engage in any thing of this Nature.

My Lords, there is a Matter I shall beg leave to mention to your Lordships, because my Lord Bishop hath insinuated as if I made hard and harsh Application of the letter taken upon his Servant. My Lords, he says that the Construction I put upon that letter was not a natural but an ill-natur'd Explication. The letter mentions an Impeachment, and says the Bishop in the letter, *if the Impeachment cannot be stopt, I am Prisoner for some Years without Remedy.*

My Lords, I did observe to your Lordships on that Expression in the letter, that it seem'd to import a Sense of my Lord Bishop's Guilt, because he said he was unavoidably a Prisoner for some Years. My Lord Bishop says, this is by no means a natural, but a forc'd and ill-natur'd Explication; for in that place he meant no more than, if an Impeachment were lodged, it would not be prosecuted, but made use of only that he might be detained a Prisoner for some Years.

My Lords, I must submit to your Lordships, which is the most genuine and natural Interpretation, that which I put upon the Words, or that which my Lord Bishop of *Rochester* doth; which so highly reflects on the Honour and Justice of your Lordships and the House of Commons.

My Lords, I shall beg leave in the next place to take notice of the Evidence that hath been given on the behalf of my Lord Bishop of *Rochester*, and to consider, whether that is sufficient Evidence to satisfy your Lordships of his Innocence.

My Lords, we did read the Examination of Mr. *Neynoe*, one of his Examinations, and the last that was taken; they on the other Side called for three other Examinations, of which the last Examination, which we read, was an Abstract; they read them all, and, my Lords, the Examination which we read, was consistent with three other Examinations, with relation to my Lord Bishop of *Rochester*: and I must own that the Charge, in the Examination of *Neynoe*, upon my Lord Bishop of *Rochester*, is only Hearsay from *Kelly*; that Mr. *Kelly* did tell *Neynoe*, that the Bishop of *Rochester* held Correspondence with the Pretender and his Agents; and that he was employed by the Bishop in writing for him, and carrying on the said Correspondences: So far, my Lords, it is Hearsay, what Mr. *Kelly* told *Neynoe*. Now, as to Mr. *Kelly* himself, it did affect him, by charging that he had confess'd to *Neynoe*, that he did carry on such a Correspondence: but as to my Lord Bishop, it cannot affect him but as Hearsay; and we must agree that if there was nothing else in the Case but this, all the Arguments made use of against such Evidence would be of great Weight.

My Lords, I can't say that this Charge from *Neynoe's* Examination is of Weight to charge the Bishop of *Rochester*, so as to condemn him. My Lords, they have urged that if this Charge is not to be believed, all comes to nothing: This, say they, is the Foundation, and if *Neynoe's* Exami-

nation is not sufficient to affect the Bishop of *Rochester*, then all the subsequent Evidence falls to the Ground.

My Lords, I beg leave to observe first, that if we had not *Neynoe's* Examination, the Proof against my Lord Bishop of *Rochester* is as strong without it as with it; it is certainly Evidence of the Conspiracy in general, but as to the Bishop it is only a Circumstance, to shew that another Man had said of the Bishop of *Rochester*, that he was carrying on a Correspondence with the Pretender, &c.

But, my Lords, taking the Examination of *Neynoe* out of the Case, and considering the other Facts mention'd and prov'd to your Lordships, there is no Occasion of *Neynoe's* Examination; whether *Neynoe's* Examination be false or true, is not material: There is sufficient to prove the Bishop of *Rochester* guilty, for they can't destroy the other Facts and Circumstances; and as long as they subsist, they prove the Bishop of *Rochester* to be the Person concerned in carrying on this Correspondence.

My Lords, I beg leave to observe in *Neynoe's* Examination, there is something more than Hearsay, there is a Fact in it, and we are able to support that Fact by other Evidence. *Neynoe* says, that he hath gone several Times with *Kelly* to the Bishop of *Rochester's*, and hath staid a considerable Time for him. My Lords, we shall prove by another Witness, that *Neynoe* about that Time came several Times to a House, where he said he waited for a Friend of his that was gone to the Bishop of *Rochester's*, and he staid and waited for him three or four Times, for an Hour, and an Hour and an half together. This will confirm what *Neynoe* said in that respect to be true.

They say there are several Improbabilities contained in *Neynoe's* Examination, and Inconsistencies; as to the Improbabilities, some of them are mentioned as if there was great Weight in them. That so much insisted on by my Lord Bishop himself, is, that *Neynoe* says, he was employed to write Memorials, and the last he wrote was in *December*, and that was to desire the Regent of *France* to furnish a Body of 5000 Men, to come and invade these Kingdoms: The Observation made by the Bishop of *Rochester* is, Where are these Memorials? Why did he not keep Copies of them? For he was at that Time concerned in a Design to serve himself one way or other; if he designed to betray those Persons he corresponded with, it would have been of Service to have kept those Memorials, to have delivered them to the Government: If, on the other side, he had kept to his Friends, it would have been proper to have kept them, in order to create a Confidence in him, and to shew the Part he had in the Conspiracy. These Observations can have no Weight, when your Lordships come to consider this was in *December*, and there was never any Application by him to make any Discovery of this Conspiracy till *July* following. As to the Service it might be to keep them with respect to his Party, my Lords, we humbly apprehend that, considering him as a Man engaged in a Correspondence of this kind, a Memorial of this Nature drawn up by him can be of no Use, but to detect himself and injure his Party, if he happens to be taken up, and such a Memorial found upon him; therefore it was necessary to destroy it.

My Lords, there is another thing mentioned with relation to *Watson*, and the Improbability of his being the Earl *Mareschal*; but *Neynoe* does not say that he was the Earl *Mareschal*, but says, there was one *Henry Watson*, which he took to be a fictitious Name, and does not know who he really was, but he took him to be the Earl *Mareschal*, and he gave him the Heads to draw up these Memorials.

My Lords, we apprehend it is not material, who *Watson* was; he is a Person that employed *Neynoe* to write these Memorials, and he might be the Earl *Mareschal*: *Neynoe* says he took him to be so. Say they, if it was the Earl *Mareschal*, why should he lie several Nights with *Neynoe*? this, say they, is very improbable. If it was him, he was to conceal himself, and take the fittest Place for that Purpose; therefore conversing with *Neynoe*, and not owning himself who he was, is not improbable. It is probable he would not discover himself to every Person; and tho' *Neynoe* was a Person engaged in the Conspiracy, if *Neynoe* did not know him to be the Earl *Mareschal*, it might not be proper for him to discover himself to *Neynoe*.

My Lords, I think these are the principal Things objected; there are some other little Matters, but I think dwelling on such Objections as these, is but mispending your Lordships Time.

My Lords, that which we humbly insist upon is, Whether *Neynoe's* Examination is an Examination to be credited or not credited? We agree it is only Hearsay, as to the Bishop of *Rocheſter*, and if we had not other Matter, it would not be sufficient; so that we humbly apprehend it's being true or false won't affect this Case. If your Lordships are of Opinion 'tis false, there is sufficient Evidence against the Bishop of *Rocheſter* without it.

My Lords, in the next Place they have produced in Evidence several Persons that come and give your Lordships an Account of *Neynoe's* Confessions to them. There is one Mr. *Bingley*, Mr. *Steward* and Mr. *Skeene*, and two other Persons, that give an Account of what Mr. *Skeene* and *Steward* had told them *Neynoe* had said.

Bingley by his Evidence would have it believed, that *Neynoe* had told him, he was employed by some Person in Power, to fix several things upon several Persons that they were innocent of; that he had said several things that were false, and had imposed upon a great Man he had made Application to, and had got great Sums of Money out of him.

My Lords, I don't know how far they would carry this; for by what hath been insisted upon by my Lord Bishop of *Rocheſter*, and his Counsel, it should seem as if they were labouring to shew from these Persons, that they have call'd to be examin'd, that all the letters relating to this Correspondence, the letters of the 20th of *April*, and subsequent letters, that relate to the particular Facts, that denote *Jones* and *Illington* to be my Lord Bishop of *Rocheſter*, were contrived between *Neynoe* and some other Persons, in order to charge my Lord Bishop of *Rocheſter* with being concern'd in this Conspiracy. This seems to be what they are labouring at by this Evidence.

My Lords, as to *Neynoe's* being a Person employ'd in writing these letters of the 20th of *April*, or any subsequent letters, in manner as

is suggested, we shall shew your Lordships that it's impossible to be true; we shall shew that the letters of the 20th of *April*, and all the other letters that mention the Facts which denote the Bishop of *Rocheſter*, were all intercepted and in the Hands of the Government, before such Time as it was known among the Ministry that there was such a Person as *Neynoe*: for *Neynoe* made Application to the honourable Person mentioned by their Witnesses, subsequent to all this Correspondence, when these letters were in the Hands of the Government, as a Person that could make Discoveries to the Government. Therefore that Insinuation must vanish, that *Neynoe* was employ'd to forge letters, which contain Facts under the Names of *Jones* and *Illington*, to charge the Bishop of *Rocheſter*; and that even those letters of the 20th of *April* were forged by him.

My Lords, we shall go into the Character of Mr. *Bingley*, who hath, at your Lordships Bar, owned, that he hath been whipt, pilloried, and imprisoned: and as he hath taken his Degrees, as he owned at your Lordships Bar, consequently he hath taken the Oaths.

As to the Character of Mr. *Skeene*, he hath likewise been produced as a Witness, and he carries his Evidence farther than the Evidence of Mr. *Bingley*; for whereas Mr. *Bingley* says, that *Neynoe* confessed he had imposed upon that Honourable Person, and had mentioned things that were false, yet he could not say that after the Time of his Examinations, after *Neynoe* was brought from *Dover* to Town, he had confess'd to him that what he had said on those Examinations was false: But *Skeene* says, that after his Examinations he own'd that they were false. The last Examination was the 27th of *September*, and he was drown'd that Night; but as to the Examinations before the 27th of *September*, and out of which that is collected, Mr. *Skeene* says, *Neynoe* said to him, that they were false.

My Lords, as to Mr. *Skeene*, we shall shew what sort of a Man he is, a Man attainted of High-Treason; and tho' he is pardoned, as to his having his life and liberty given him, he is in all respects an attainted Person: He was tried and condemned in the County of *Surry*, for being concerned in the *Preston* Rebellion, and consequently a Man of no Credit. And as to what he and *Steward* swear, relating to a Conversation with *Neynoe*, when in Custody, we shall shew they never were together after the first Night, when they supp'd together. He was asked, whether it was the first Night that he had this Conversation with *Neynoe*, and he did not pretend he had any Conversation of this Nature with *Neynoe* the first Night; and if it was not the first Night, we shall shew it could not be afterwards, for *Neynoe* was kept in a Room by himself, *Skeene* and *Steward* by themselves in a Room underneath; and therefore this seems to be a Story contrived between *Skeene* and *Steward*.

We shall shew it could not be possible for them to converse together, for *Skeene* and *Steward* were locked up in their Room; *Neynoe* was lock'd up in his Room separate and apart from theirs; so that they could never have Correspondence with him, nor come near him.

Another thing is sworn by one of them, about a Message sent to him by *Neynoe*, and a Paper, while

while they were in Custody of the Messenger; and he says, this Paper was brought to him by the Messenger's Maid from *Neynoe*, and that this Paper contain'd a Justification of my Lord *Orrery*, expressing that he knew nothing of my Lord *Orrery*, but what he had said of him was utterly false; that the Messenger finding he had some Paper, he, to conceal this Paper, burnt it. But that the Maid came to him with such a Message or Paper is false; the Maid never did, nor did the Messenger know of the Paper, as we shall prove to your Lordships.

My Lords, when we have proved this, we humbly apprehend we have taken off any Credit that could be given to what these People have said, if they have said any thing material. My Lords, before I leave this Head, I beg leave to observe another thing as to *Skeene*. He, upon his Examination concerning a Discourse with *Pancier*, denies it intirely; but says, that what *Pancier* hath inform'd in relation to him, is false. We shall call *Pancier*, who will inform your Lordships, that *Skeene* hath own'd that he was privy to this Conspiracy, and knew who were concern'd in it.

I own there are several noble Persons named to be concern'd; that there is no Reason to say, from what *Skeene* may have said of them, that they are guilty: But such as he may have used the Names of great Persons designedly, to keep up the Spirit of their Party, by telling them such and such Persons were concerned: and if there is no other Evidence but what such a Person hath said, the noble Persons mentioned will not be affected by it.

My Lords, there is another Head I shall beg leave to mention, and what they have insisted upon under this Supposition; that they would have it taken that there was a Design to forge Letters, in order to charge my Lord Bishop of *Rocheſter*, and several other Persons. Say they, it was easy to get Information of such Circumstances relating to the Bishop and his Family, as are mentioned in the intercepted Letters, and then to write such Letters, with a Design falsely to charge the Bishop with having been concerned in carrying on a treasonable Correspondence. Your Lordships will please to consider who this Charge must fall upon, of forging the Letters of the 20th of *April*, or the Letters that shew *Jones* and *Illington* to be the Bishop of *Rocheſter*.

My Lords, we have proved them all to be Mr. *Kelly*'s own Hand-writing, or Letters that have come in Answer to them. They have objected we have not given sufficient Proof of *Kelly*'s Hand: Say they, it is proved by Clerks of the Post-Office, who never had compared one original Letter with another, but at last they stop an original Letter, dated the 20th of *August*, after the Correspondence had been carried on several Months; and then come and swear that the original Letters, that were forwarded, were of the same Hand-writing with that of the 20th of *August*. Can this be looked upon as sufficient Proof? But we submit it, their Evidence is much stronger than if they had only compared one Letter with another, for they not only had these Letters come every Week, but they were employ'd every time these Letters came, to copy them; so that the Hand-writing of these Letters must, by the constant stopping of these Letters, and their copying of them, be so imprinted on their Memo-

ry, that they are much better Judges of the Hand than if they had two of these letters to have only compared them together: And the Hand-writing was so well known to them, that they could, as they have informed your Lordships, when any of these letters came, distinguish them by the Hand-writing of the Superscriptions, before they had open'd them, and they never were mistaken. And this, we humbly apprehend, is as satisfactory an Evidence as can be given, that these letters were the Hand-writing of Mr. *Kelly*, provided the letter of the 20th of *August*, which I shall take Notice of by and by, is sufficiently proved to be of his Hand-writing.

Taking it then, my Lords, that these letters are the Hand-writing of Mr. *Kelly*, and of his Correspondents in answer to them, I don't find that my Lord Bishop of *Rocheſter* hath charged Mr. *Kelly* with having any Malice to him. And if he had no Malice to the Bishop of *Rocheſter*, what should induce him to write those letters, on purpose to charge the Bishop of *Rocheſter* with being concerned in this Conspiracy?

My Lords, we humbly apprehend the Pretence of these letters being forg'd, must insinuate, that *Kelly*, a vile Fellow, intending to charge the Bishop of *Rocheſter* with being concern'd in this Conspiracy, and make him liable to forfeit every thing that was dear to him, hath contrived letters containing Circumstances, in order to fix him to be the Person denoted by the Names of *Jones* and *Illington*; he hath written Letters, and by Combination received others in answer to them, for this Purpose; and by these wicked and malicious Practices, hath furnished this Evidence against the Bishop, who is an innocent Man.

My Lords, this is the Substance of the Defence on this Head; and whether your Lordships will believe this, we must submit to your Lordships. Your Lordships have had *Kelly* before you, and by his Behaviour have had no Reason to think that he had any Malice against my Lord Bishop of *Rocheſter*, or any Design or Intention to prejudice him.

My Lords, the next Part of the Evidence I shall beg leave to observe, is a Part very considerable, and is so far from being a Defence, that the Defence attempted, hath confirm'd and strengthen'd the Evidence against my Lord Bishop of *Rocheſter*; that is, with relation to the letter taken among my Lord Bishop's Papers, directed to *Dubois*; a letter, which, they observe, don't contain any Treason, or is of any treasonable Import; but it seems to be a letter of Indifference, and, I believe, as such, it was not taken care to be destroy'd, as it would have been, had there been any Apprehension that Use would have been made of it, as now, against the Bishop of *Rocheſter*.

My Lords, the Use we make of it is, to shew that Mr. *Johnson*, or Mr. *Kelly*, was a Person employed by my Lord Bishop of *Rocheſter* in writing Letters for him. My Lords, your Lordships will observe by the Letter, he says, *I have heard nothing from you since the Letter I had about two Months ago by Mr. Johnson, to which I immediately in his Hand returned my Answer.*

My Lords, if this is the Bishop of *Rocheſter*'s letter, either in his own Hand, or his letter writ by another Person, it plainly proves what we infer from it, that *Johnson*, i. e. *Kelly*, writ for the Bishop. Your Lordships will observe, it is

a letter writ in a Hand which no man writes, a stiff Hand almost like Print; and it is plain that it is writ to disguise the Hand of the Writer, whoever he was. At the latter End of the letter, when the Person that writ it comes to be tired and off of his Guard, there are several Letters which compared with the Writing of my Lord Bishop of *Rocheſter*, and what is own'd to be his, appear to be his writing. In the Date of the Letter, which is *December*, the D you frequently find in the Bishop's Hand-writing; your Lordships observe the Letter E that frequently occurs in the Bishop's writing; and your Lordships by comparing that with the Letter produced, will find that they exactly agree.

Whether or no your Lordships won't think it, on those Circumstances, to be the writing of my Lord Bishop of *Rocheſter* in a disguised Hand, we must submit to your Lordships. But, my Lords, suppose it was not his Hand-writing, here is Evidence that it was his Letter; and that is evident, because it is under his Seal, it is sealed with his own Seal, a Seal that he had in his Custody, and made Use of no longer ago than the 26th of *February* last: I think that is the Day a Letter was taken from his Servant. That we humbly apprehend, my Lords, will plainly shew it is the Bishop's Letter, because it was sealed with his Seal, and the same Seal is made Use of by the Bishop, on the letter that was taken upon his Servant in *February* last.

My Lords, this Matter hath been controverted by my Lord Bishop. He hath call'd Engravers, who believe Seals may be counterfeited, and Impressions may be taken off the Wax, and another Impression made, so as to make it difficult to know which is which. They were a little loose in answering the Question, Whether or no, if the Seal, from whence the Impression was to be taken, was broken in the Middle, it could be done. But one said, the Seal might be mended, and it might pass unobserved, but I find it is extremely difficult. But they did say, Seals may be so counterfeited, that it may be difficult to discover one from the other. My Lords, this is to insinuate, that after such Time as the letter was taken upon my Lord Bishop's Servant, the Person in whose Custody this other Letter of *Dubois* was (which is proved to have been taken the 24th of *Aug.* amongst the Bishop's Papers) hath caused an Impression to be taken off the Seal with which the letter to *Dubois* was sealed, (the Wax broken in two as it was) in order to fix it upon the letter that was taken upon my Lord Bishop's Servant, so as to prove the letter to *Dubois* to be the Bishop's Letter. Who is this to be fixed upon? *Neynoe* was gone; I don't know, unless upon the Committee of the House of Commons: for the Bishop's Letter was taken on his Servant the 26th of *February*, the Committee of the House of Commons made their Report on the 1st of *March*, and the letter to *Dubois* had long before the 26th of *February* been in Custody of that Committee. And yet while this letter is in Custody of a Committee of the House of Commons, they will have it, here, is an Impression taken off a broken Seal, and put on this other Letter, in order to shew that these are Letters of the same Person. Who can believe this to be the Case?

An Observation hath been made, that truly the Committee of the House of Commons have not made any Observation of this Kind, with relation to this letter to *Dubois*, that it is the Bishop's letter: which is true; for they had not this Matter relating to the Identity of the Seals, under their Consideration; but this is a new Discovery made since: And therefore, my Lords, they apprehended that this was a letter directed to the Bishop by the Name of *Dubois*, it being found amongst his Papers, and nothing to the contrary did appear, till after they had made their Report.

My Lords, there are other Things your Lordships would have expected to have had an Account of, in answer to this Evidence. Here is a letter found among my Lord Bishop's Papers; consequently so far we apprehend that this Evidence is a legal Evidence against the Bishop, as being a letter found in his Custody; this letter is directed to *Dubois*, and mentions the Hand of *Johnson*. Doth my Lord Bishop of *Rocheſter* give any Account who *Dubois* is? who this *Johnson* is? how this letter came there? No, my Lords, none at all. Doth his Lordship give you any Account of the Seal? and hath his Lordship said that the Seal, that sealed the letter taken on his Servant, he hath not? or that the Letter was not sealed with his Seal, or that he did not seal it himself? His Lordship did not say one Word to that Purpose, or make any Denial of the Matter, nor give your Lordships any Account who *Dubois* and *Johnson* were; nothing at all, but hath left it to your Lordships on that Foot: That the letter to *Dubois* had an Impression taken off, after it was in the Custody of the Committee of the House of Commons, and that Impression made use of on the other Letter: and that this is another Part of the Contrivance, in order to charge my Lord Bishop of *Rocheſter* with being concern'd in this Conspiracy.

My Lords, as to the Seal's being the same on the two letters, we humbly apprehend, the Evidence given on the other Side hath strengthened ours. We have produced two Engravers, one of them they own to be the top Engraver of *England*, Mr. *Christian*; he gave your Lordships an Account, that he verily believed these two Impressions to be taken off from the same Seal. Mr. *Rollus* said the same thing, and that he had used the Art long, and could judge. They made no Endeavours on the other Side to try the Skill of Mr. *Christian*: but as to Mr. *Rollus*, they hoped they should be able to puzzle him; and therefore have produced six several Impressions made on Wax by Seals to try his Art; and after he had look'd upon them, he gives you such an Account, that, I believe, your Lordships are satisfied that he is a Man of Skill and Art, and that if these Impressions had been taken off, as they would insinuate they were, he must have discover'd it.

My Lords, here is an Artist brought to make this Experiment on *Rollus*, to try his Skill; yet, notwithstanding all the Art hath been made use of in the Case, that could be, the Man was able not only to distinguish how many Seals the Impressions were made with, but also to give an Account that they were cast Seals, and not grav'd Seals, that made those Impressions.

This, my Lords, will have such a Weight with your Lordships, that we hope your Lordships will believe his Evidence is true; and if it is true, what Answer hath been given it, your Lordships have heard. Whether therefore any satisfactory Answer hath been given, to an Evidence so strong and convincing of *Johnson's* being employ'd in writing Letters for the Bishop of *Rocheſter*, we muſt ſubmit to your Lordships.

My Lords, the next Evidence they went upon was in relation to the Dog. Say they, we will ſhew that this Dog was not for the Bishop of *Rocheſter*, or any other Perſon but Mrs. *Barnes*. As to that, my Lords, I beg leave to remind your Lordships of the Evidence given by Mrs. *Barnes*, that Mr. *Kelly* told her it was for the Bishop of *Rocheſter*. It is a little improbable, if the Dog had been for Mrs. *Barnes*, that he ſhould come and deliver it to her, and tell her 'tis for the Bishop of *Rocheſter*. But it appears by Mrs. *Barnes*, that another Dog was deſigned for her, and that this Dog was for the Bishop of *Rocheſter*. They have read in Evidence a Certificate, ſign'd by Mr. *Birmingham*, and likewise an Affidavit, that there was, in the Month of *March*, a Dog deliver'd to *Kelly* in *France* for Mrs. *Barnes*. That, my Lords, muſt be another Dog, and not this, which we ſay was for the Bishop of *Rocheſter*; for this was not deliver'd to Mr. *Kelly* in *France*, but was ſent over to him after he was in *England*, as appears by the letters; and after he had receiv'd it, he writes, that *he would inform Mr. Jones ſoon of it, to whom any thing from that Quarter would be very acceptable*. So that, my Lords, if there was another Dog, and by Mr. *Kelly* deſign'd for Mrs. *Barnes*, we humbly apprehend it cannot be applied to this; for this Dog was deſign'd for Mr. *Jones*, and Mrs. *Barnes* ſays, that is the Bishop of *Rocheſter*.

My Lords, the next Evidence given by them is in relation to the letters of the 20th of *April*. They have endeavour'd to prove that, as to my Lord Bishop of *Rocheſter*, it is impoſſible that theſe letters could be written or dictat'd by him. He came to Town the 11th, and went to *Bromley* again the 12th of *April*; he had a Fit of the Gout ſoon after; had Servants that conſtantly attended him, more than one; and theſe Servants give an Account, that no Perſon whatſoever came near him, or could be employ'd by him to write thoſe letters.

My Lords, I beg leave to obſerve, *firſt*, That as to the applying their Evidence to the Writing of thoſe letters on the 20th of *April*, it is very poſſible that the letters were writ on another Day than when they bear Date: Therefore if they prove, that it was impoſſible that theſe letters ſhould be writ or dictat'd by the Bishop of *Rocheſter* on the Day they bear Date, yet they might be writ on another Day, and it is very probable they were.

Your Lordships will obſerve, that theſe letters are in Cyphers; and, I believe, where a Perſon dictates a letter to another, he doth not reduce the letter into Cyphers as it is dictat'd, but he firſt writes it out in Words at length, and afterwards puts it into Cyphers, and when it is proper to ſend it, then is the Time to date it; and if it be left with the perſon that puts it into Cyphers to ſend, as probably it was in this Caſe, it is left to him to date it when he pleaſeth: So that if they ſhould have ſhewn, that upon the 20th of

April the Bishop was incapable of dictating or writing, it is no concluſive Answer to the Charge againſt the Bishop as to theſe letters.

Your Lordships will pleaſe to obſerve, that upon the 11th of *April* the Bishop of *Rocheſter* came to Town, on the 12th he went into the Country; notwithstanding what they have attempted to prove as to the Times that *Kelly* was in Town, and the Bishop was in the Country, yet upon the 11th and 12th they were both in Town; for *Kelly* came to Town from *France* the 11th, and the Bishop came to Town the 11th from *Bromley*.

When the Servants came to be examin'd, what time of the Day the Bishop came to Town on the 11th, they could not give any Account of that: When they were aſked, what time of Day it was when he went out of Town on the 12th, they could give no Account of that.

There hath been no Account given to your Lordships who was with the Bishop of *Rocheſter* the 11th and 12th when he was in Town, or where my Lord Bishop was at that Time: So that, my Lords, it is poſſible, from theſe Circumſtances, that theſe letters might be writ when the Bishop was in Town, and *Kelly* was in Town.

But ſuppoſe it ſhould not be ſo; the Queſtion is, whether they could not be writ at *Bromley*. On the 12th of *April* Mr. *Kelly* was at Mrs. *Barnes's*, he did not lie at home that Night; on the 13th he did not lie at home; on the 14th he came, and went to his old lodgings at Mrs. *Kilbourne's*. Theſe two Nights it doth not appear where he was; he might have been at *Bromley*, it is but an Hour's Ride. As to the Servants, ſay they, they ſhould have remember'd his ſetting up his Horſe;---He might ſet up his Horſe at an Inn, and go privately to my Lord Bishop.

Notwithstanding my Lord Bishop was ill, and tho' he ſhould have proved to your Lordships Satisfaction, that after he was ſo, he did not, nor could admit of Company, yet we ſubmit it to your Lordships that it is no Answer; for he was not very bad till he had been in the Country two or three Days, and theſe letters might be dictat'd or written in thoſe two or three Days before he was ſo ill.

My Lords, I beg leave to obſerve, what the Servants have ſworn. Here is *Grant*, that is my Lord's Butler, he ſays, that my Lord Bishop went the 12th of *April* to *Bromley*, and he attended him there till the 21ſt, and on the 21ſt he was ſent to Town upon ſome Matters relating to the *Weſtminſter*-Election; and another Servant about him gives an Account, that two or three Days after my Lord Bishop came down, he was taken ſo ill in his Hands and Feet, as not to be able to help himſelf.—Theſe are two or three Days beyond the Time that *Kelly* was out of his lodging, which was the 12th and 13th, (and theſe two or three Days muſt be the 14th and 15th) it may be my Lord Bishop was ſo diſabled indeed as he ſays; he ſays he is almoſt certain that no Stranger was with the Bishop; but he ſays the Apothecary or the Miniſter might be with him in his Illneſs, tho' he did not ſee them himſelf. If it is poſſible for the Apothecary or the Miniſter to be with him, and he not ſee them, why is it not as poſſible that Mr. *Kelly* might be there, and he not ſee him there?

The next Witneſs that is called only ſpeaks to the 18th and 19th; when *Grant* came to the Election,

tion, another Servant was sent for, and he went, and he says my Lord Bishop was very ill. *Samuel Steele* gives an Account of my Lord Bishop's Illness, and his attending him.

My Lords, they have brought all the Servants of the House, the very Stable-Boy, to prove that my Lord Bishop could not see any body without their Knowledge; even the Nurse that attended his Lady when she was dying. The Servants that were waiting upon his Lady swear, That it was impossible any body should come to my Lord Bishop, and they not know it; and they are as positive, in relation to any body's coming to my Lord Bishop, as the Servants that immediately attended him.

But, my Lords, there is a Matter, which we shall offer in Evidence, that entirely destroys this Evidence of my Lord Bishop's being so ill, that he could not move Hand or Foot, and of his not being in a Capacity of dictating Letters: that he did actually send a Letter the 21st of *April* to a person in Town; and this very *Grant*, that hath given this Account to your Lordships, brought up the Letter to Town on the 21st of *April*. We have this to give your Lordships in Evidence; then what is the Evidence of all those Servants, who swear that it is impossible these Letters should be writ on the 20th of *April*, and that no body was admitted to come to him in order to write these Letters?

My Lords, as to the Evidence that hath been given, in relation to *Kelly's* Hand-writing, they have called Witnesses to disprove the Evidence on our Side, who, looking upon the Letter of the 20th of *August*, swear they do not believe it to be *Kelly's* Hand-writing. Our Witnesses do believe it; their Witnesses do not believe it to be his Hand-writing, and say that it is not like it.

There are several Letters shown them, tho' in a less Hand, that are agreed to be *Kelly's* Hand-writing; and your Lordships may judge, by looking on them, whether they are not of the same Hand with the Letter of the 20th of *August*; tho' the Character is something less, we humbly apprehend they will appear so to be. Besides, there are those Circumstances relating to the Hand-writing of Mr. *Kelly*, that put it beyond all Dispute that it is his Hand, and that is the Answers he hath received to those Letters which we charge to be written by him. We have traced him from place to place, where the Letters that came in answer to his Letters, were directed; to Mr. *Andrews* at the *Dog and Duck*, there *Kelly* employ'd a Person to take them up, and they were deliver'd to him; and at *Burton's* Coffee-House *Kelly* took up the Letters that were directed thither, in answer to those Letters that were of his Hand-writing. So there is not only the Evidence of Witnesses, that knew his Hand, and believe it to be his Hand, but here are the Answers to them actually taken up by *Kelly* himself: and that we humbly apprehend is so strong an Evidence, joined with the other, that, when one or two Witnesses come and say they do not believe it to be his Hand-writing, their Testimony shall not overthrow it.

My Lords, there is another piece of Evidence given by them, relating to the Letters of the 20th of *April*, which were enclosed in a Packet sent to *Boulogne*; the Packet is directed to Mr. *Alexander Gordon* Banker, at *Boulogne*: they have produced

a Certificate from *Boulogne* upon Oath, wherein it is said, that he is no Banker, and denies that he received any Packet from *Kelly*, or that he knew him: This is a Certificate, and prov'd by a Person who believes it to be so. Your Lordships will please to observe what this Paper is, and that it is brought here by a person that knows nothing of its being sworn, but says, he is used to Transactions of this kind, and he believes it to be a Certificate from *Boulogne*.

My Lords, we shall produce a Gentleman, who was at *Boulogne* at the Time that the printed Report and Appendix of the House of Commons came there, and he was at Mr. *Gordon's* House; when they were discoursing about this Matter; and what they then said, we humbly submit will be believed; for what they then said was spoken as of an indifferent Thing, and they did not then see it could be of any Consequence to disguise the Truth. Mr. *William Gordon* the Father said, that he was at *Paris* when this Packet is supposed to have come: but Mr. *Alexander Gordon* the Son own'd that he was at home, and that this Packet came to him, but, said he, what was in it I know not, but I deliver'd it as is mentioned in the Appendix.

My Lords, there is another piece of Evidence, they have given, with relation to *James Talbot*, to whom the Packet was deliver'd at *Boulogne*. Here is a Witness produced to prove that he was in Town the 29th of *April* 1722, and he could not be mistaken, because he had paid him Money, and he had entred it in his Book. The Evidence goes no farther than to prove, that one *James Talbot*, that was a tall black Man, was then in Town; but it doth not appear that this was the person mentioned to have taken this Packet at *Boulogne*, and carry'd it to *Paris*: So that their proof, as to this Matter, is insufficient.

But we shall shew your Lordships, from an Account we have here from Mr. *Crawford*, his Majesty's Resident at *Paris*, that this *James Talbot* came to *Paris* that very Day, as he is mentioned to have brought those Letters to *Paris*, and was actually there at that Time: and that we humbly apprehend will be a full Answer to them, and take away any ground of Supposition, that the Evidence they have given concerning *James Talbot*, can be apply'd to that *James Talbot* who received the Packet at *Boulogne*.

As to the Evidence relating to Mr. *Kelly's* being in Town the 20th of *April*, we humbly apprehend from what hath been said, it is not material whether he was there or not; but they have not proved it, for Mrs. *Kilbourne* and her Maid, the two Witnesses produced by them for this purpose, say that he came to Mrs. *Kilbourne's* House the latter end of *April*, they believe the 20th, but they are not positive as to the Day. If he had been at Mrs. *Kilbourne's* the 20th of *April*, it is no Answer at all to our Evidence, and the strong Circumstances there are to induce a Belief, that the Letters might be dated at another time than really they were written.

My Lords, another Evidence is Mr. *Pope*, a Gentleman of Learning, with whom my Lord Bishop of *Rocheſter* used to converse; and he gives you an Account that he knew nothing of this Conspiracy, that the Bishop never open'd his Mouth to him about it, nor acquainted him with it; that he

was frequently with him, and their Discourse was only about Matters of Literature.

No doubt my Lord Bishop hath conversed with Persons on different Subjects, to whom he would communicate nothing of an Affair of this Nature.

My Lords, upon the whole Matter we must submit it to your Lordships, whether we have not made out the Charge against my Lord Bishop of *Rochester*, to your Lordships Satisfaction, if not by legal Evidence, yet by Evidence that will satisfy and convince any Person that will consider it.

My Lords, a great deal of Regard is due to the Character and Function of the Reverend Prelate at the Bar: but if my Lord Bishop of *Rochester* hath departed from his Character and Function, and hath gone and engaged in a traitorous Conspiracy, and been guilty of Treason towards his King, and Perjury towards his God, we humbly apprehend, if this be proved, that his Character and Function are so far from being a Mitigation, that they are a great Aggravation of his Crime.

We shall submit it to your Lordships, to do what your Lordships think is consistent with Justice and Equity.

Mr. *Wearg* spoke next.

My Lords,

IT must be admitted, that the Reverend Prelate at the Bar, has made his Defence with the utmost Force and Beauty of Eloquence.

Was I capable of answering it in the like manner, which I own I am not, yet I should not think myself at liberty to do it, under the present Circumstances.

For, tho' it may be excusable, in a Person upon his Defence, to make use of that powerful Instrument of Error and Deceit, which always imposes upon the Reason, and misguides the Judgment in proportion as it affects the Passions; yet, I can't think the same Methods justifiable in a Person employ'd to carry on the Prosecution.

I shall therefore examine the Force of what has been offered on behalf of the Reverend Prelate, stripp'd of the Ornaments and Colours of Rhetorick.

I shall, in the first place, consider that Catalogue of Hardships, which his Lordship has complain'd of.

1. The first Complaint was that of Severities and Indignities offer'd him during his Confinement: but the Subject of this Complaint not arising from any of the proceedings before your Lordships, I can give it no other Answer, than by saying, that I am very credibly inform'd 'tis a Complaint without Foundation.

2. Reading Extracts of Letters was the next Hardship complain'd of by his Lordship, and represented as if they were read as Evidence against him; when it was declared by the Counsel for the Bill, that they were only read upon the general part of the Bill, and did not affect his Lordship.

3. The third Hardship was, excusing the Decyphers from answering such Questions proposed by his Lordship, as tended to a Discovery of their Art; that is, in other Words, refusing to do an Act which must prejudice another Person, and could be of no Service to his Lordship: for the Truth of what they testified, depended upon the Skill and Integrity of the Decyphers, and not

upon the Method of coming at that Skill, which they could not disclose in so publick a manner, without doing a manifest Prejudice to themselves, which no Witness is ever compell'd to do.

4. The next Hardship is of the like nature, the not suffering the Clerks of the Post-Office to be examin'd, as to the Method and Authority by which they open'd Letters, by which they might have been subjected to the severe Penalties of the Statute 9 *Annæ*, if they had not exactly pursued the Methods prescribed by that Statute. But his Lordship's Innocence could not possibly have been manifested by it; for are the letters less criminal, if the Person who stopped them did not punctually pursue the Directions of that Statute? It would be thought a strange Defence in a common Offender, if, instead of proving his Innocence at his Trial, he should object that he was taken without a proper Warrant; which, if true, don't make him the less criminal.

5. The fifth Hardship was refusing to let Mr. *Lewis* declare any thing that came to his Knowledge by his being employed in the Secretaries Office some Years ago. This Hardship could be added only to fill up the Catalogue of Complaints, since, notwithstanding your Lordships Order, Mr. *Lewis* did declare what he was call'd for, tho' he afterwards own'd, that he came to the Knowledge of it by being employ'd in that Office.

6. The sixth Hardship was in reading an Examination not dated, sign'd, or sworn. But I apprehend the Counsel for the Bill have more reason to complain of Hardships of this sort, in reading Papers on behalf of his Lordship, as Examinations sign'd and sworn, without ever proving that they were sign'd or sworn to, or that any such Persons were ever examin'd; whereas the Examination hinted at in the Bishop's Complaint, was read as an Examination, or rather Confession of a Person since dead, not sign'd nor sworn to, and fairly left to your Lordships, to have such Weight as the nature of the Evidence deserved.

7. The next Hardship, *viz.* that of reading Letters wrote by another Person, without Proof that they were wrote with the Prelate's Privy, is begging the Question upon the whole Proceeding. For whether there was Proof of their being wrote with his Privy or not, is the Subject of the present Enquiry.

8, 9. The two last Hardships complain'd of, seem to be calculated for Persons without Doors, who are Strangers to what pass'd at your Lordships Bar, that he was denied a Copy of the letters in Cypher, until the Trial was so far advanced that he could not make the proper use of those Copies. Will any one who reads this Complaint in his Lordship's Speech imagine, that after he had a Copy of those letters, he had twice as much time for his Decyphers to peruse them as he himself desired?

Or will a Person who shall read the next Complaint in his Lordship's Speech, that he was refused to read any of the Papers contain'd in the Trunk that had not been read by the Counsel for the Bill, ever be persuaded that his Lordship read the three first Examinations of *Neynoe*, that had not been read by the Counsel, the Papers taken in *Neynoe's* Pocket, the Certificate of the Surgeon return'd by Mr. *Crawford*, neither of which had been read by the Counsel for the Bill; that his Lordship was expressly told, he was at Liberty to read

read any Paper in the Trunk he should think necessary to his Defence; and was only refused reading one Paper, because he own'd it was for no other purpose, but to raise an Objection to a Matter which had not been insisted on by the Counsel for the Bill, that he might answer the Objection which he himself should raise?

These things will seem incredible to one who shall read this Catalogue of Complaints in his Lordship's Speech; and yet these are some of those Complaints, which with the Assistance of a warm and masterly Style, drew Tears from some of your Lordships Eyes:—

But when stripp'd of that false Beauty, and examined by the sure and unerring Rules of Reason, appear to be without Foundation; and to have been made without that strict Regard to Truth, which, I presume by some part of his Lordship's Speech, he would be thought always to have.

From these Complaints his Lordship proceeds to support some of the Objections taken by his Counsel to the Bill.

And one of the first Objections is of the same nature with some of the Hardships that have been complain'd of; that is, it might be an Objection, did it not want the Foundation of Truth.

The Objection I mean is, that it is a Bill *ex post facto*: Your Lordships have heard a great deal said upon the Hardships of Bills *ex post facto*.

We have been call'd upon to shew against what Law he has offended: it has been said, if he has not offended against any Law, will you make a Law in his Case, which will not be a Law in the Case of any other Man? This is a surprizing Objection.

The Notion I always had of a Law *ex post facto* was, where a Fact was made criminal by a Law, which was not so at the time that Fact was committed.

But is that the present Case? Was it no Offence, before this Bill was brought in, to correspond with the Pretender and his Agents, in order to subvert our Constitution?

Are we to be call'd upon to shew against what Law this is an Offence?

Or to have a Complaint made, that in punishing a Man for such an Offence, you are making a Law in his Case, that will not be a Law in the Case of any other Person?

I hope it will be a Law in the Case of every Man that equally deserves it.

But his Lordship is sensible of this Answer, and therefore gives it a very artful Turn, by applying it, not to the Fact, but to the Evidence. His Lordship seems to argue, that accumulative Evidence is as unreasonable as accumulative Treason; and objects that Proofs which communicate Light and Strength to each other, have only the Formality, without the Force of Evidence.

This Objecton is destructive of all Proof that is not Mathematical; for all other Proof must necessarily be what he calls accumulative.

That is, it consists of a variety of Facts and Circumstances laid together, sufficient to induce a Belief which any of them singly would not do. This is the very Principle upon which the Trial of every Matter of Fact, not capable of a Demonstration, does and must proceed.

Your Lordships in the next place have heard a

string of Objections, that have been repeated against each of the Bills.

That a Subject of *England* ought to be tried according to the Laws of *England* and *Magna Charta*:

To be convicted by legal Evidence:

And that Distinction between legal and parliamentary Evidence is absurd.

All these Positions I agree to;

But at the same time I must affirm, that this is a Trial agreeable to the Laws of *England* and *Magna Charta*; and that a Proceeding of this Nature is as necessary a part of our Constitution, as the Establishment of the ordinary Courts in *Westminster-Hall*.

The difference between parliamentary and legal Evidence, taken in the general Sense of the word, Legal, is improper.

And I affirm, the Evidence which has been offered in support of this Bill, is legal Evidence.

What is legal Evidence, depends upon the Nature of the Inquiry, and the Judicature before which the Inquiry is made.

Depositions in writing are not legal Evidence in a Court of Law, but they are legal Evidence in a Court of Equity.

Upon an Indictment for Felony, or any other Misdemeanour, one single positive Witness, or Circumstances only without any positive Witness to the Fact, is legal Evidence.

But upon an Indictment for Treason, the Law requiring two Witnesses in the Courts below, one Witness, or Circumstances, is not legal Evidence.

In parliamentary Enquiries, which are excepted out of that Act and not restrained by any other, every thing is legal Evidence which may properly tend to a Discovery of the Truth.

I can't think myself at liberty at this time of Day, to mention what fell from the other side, against the Power of the Parliament in general, and the rather because the next Objection which they relied upon was introduced with an admission of that Power.

But they say it ought never to be exercised but in Cases of Necessity; and instance particularly in the Bill against the *South-Sea* Directors, as a Case of that Nature. Is there any Comparison between the Offence of those Men, and of one who has endeavoured to subvert our whole Constitution, to destroy our Religion, our Liberty, and every thing that is valuable?

When we reflect that these Endeavours have been constantly carrying on ever since the happy Establishment of the Protestant Succession;

That the many Discoveries of their Plots, the many Examples of publick Justice, have had no other Effect, than to make them more subtle and cunning how to avoid the common Forms of the Law:

These Reflections shew the Necessity of such a Proceeding, to convince the World, according to your Lordships Report, that as Artifice and Disguise don't lessen the Danger to the Publick, nor mitigate the Guilt of the Offender, so neither ought they to protect him from Punishment.

The next Objection was addressed chiefly to one part of your Lordships, who were told that no civil Power upon Earth could deprive a Bishop of the Exercise of his holy Function, but that must be done by another Judicature; and therefore

fore it was observ'd by one of the Counsel, that wherever Issue is join'd in the Common Law Courts, whether Bishop or no, the Court where such Issue is depending, must write to the Metropolitan to try it, according to the Law of the Church.

Whether an Act of Parliament can deprive a Bishop, so as to make the Acts done by him afterwards invalid, is a Controversy not proper at this time; but it will be admitted on all hands, that an Act of Parliament may restrain a Bishop from the Exercise of his Function within any part of this Kingdom, so as to make the Exercise of it Criminal in him, or in any that assists him. And I believe if this Bill should pass into a Law, and there should be a Question whether his Lordship was afterwards Bishop of *Rochester*, the Courts of Law, upon producing the Act of Parliament, would hardly think it necessary to trouble the Metropolitan.

His Lordship has been pleas'd to say, that this is the first Instance where a Member of this House has been judged in another.

I wonder that his Lordship, who is so great a Master of our *English* Constitution, should have forgot the Case of one of his Predecessors in the See of *Rochester*, in the Reign of *Henry VIII.* against whom a Bill was brought in the House of Commons, inflicting severe Pains and Penalties, which pass'd in that House, and afterwards received the Approbation of this, and the Royal Assent.

They have clos'd their Objections to the Bill, with a very pathetick Admonition against the Consequences of it.

They say the wisest Man can't foresee, nor the most innocent Man declare himself safe from the Consequences of this Bill.

That a wise Man should not be able to foresee what will happen hereafter, is not very strange;

But he must be a very wise Man indeed, in my poor Opinion, who can foresee any danger to Innocence from the Proceedings upon this Bill. Your Lordships have attended with the utmost Patience, for seven Days together, to the Proofs for and against this Bill; and have given the Person accus'd all the Opportunities, afforded him all the Assistance possible to make out his Innocence.

And whoever shall use this Precedent as a handle for Oppression and Injustice, would certainly be guilty of the same Oppression and Injustice without this Precedent.

The next Part of their Defence, consisted in Observations upon the Evidence for the Bill.

They raise great Triumph from *Neynoe's* Examination, which they would represent as the Foundation of the whole Charge, or offered as such by the Counsel for the Bill.

But if it was, they have been so far from weakening, that they have added strength to that Foundation.

As to the Inconsistencies in it, they are not *Neynoe's*, but *Kelly's*. As to the Tale they have told, that at the very Time when he was deluding a great Man with Confessions, either to get Money out of him, or to find an opportunity of making his Escape, he should declare to *Skeene* and to *Steward* that what he had confess'd was false; I say, as this is improbable in itself, so it appears by our Evidence to be a mere Fiction of their own, without any possibility of being true.

It appears to be an Attempt, by a parcel of desperate People engaged in the same Interest, to weaken *Neynoe's* Evidence, whom they looked upon as a Betrayer of their Cause and Party.

From the Evidence of *Neynoe* they proceed to the other Evidence.

And here they tell your Lordships that we have supported the Bill by Innuendo's, Arbitrary and Invidious Interpretations; that when a Woman is named, it means a Man; that two different Names signify the same Person; that Books of Account, and mercantile Terms, by a new kind of Metaphor, are taken in an ill Sense: and all this assisted with the Whimsies and Conjectures of Decyphers.

These are pretty sounding Expressions; but, when consider'd, are nothing but Sound.

Is it an arbitrary Interpretation, when a letter says, I saw Mrs. *Illington*, He is in great Tribulation for poor *Harlequin*, but *his* Obligations are the same, which he desires may be made known; to apply this to a Man? When two letters are wrote by the same Person, but sign'd by different Names, to apply those two Names to that Person?

When letters give a Caution not to write any more, till new Books of Account can be settled and sent over by safe Hands;

Because those who have got part may by the same means have got the whole:

To express a doubt whether they have been betray'd by false Friends, or an open Enemy:

To talk of having Wine, but wanting Barrels: of the absence of the King and Court, as affording a proper opportunity of sending over and selling their Wine:

A Man must have laid aside his Reason, that can think this the language of Persons really dealing in a mercantile way: 'Tis the plain and common Cant of a treasonable Correspondence.

They next object to the unreasonableness of applying the Circumstances which relate to *Jones* and *Illington*, to the Bishop of *Rochester*.

Was no body else besides the Bishop out of Town? Was he the only Man that had the Gout, or who lost his Lady at that time?

Were these Questions to be asked singly, they might be answer'd, that there were other Persons in the like Circumstances.

But then the Answers would be nothing to the Purpose.

The only Question applicable to the present Case would be, Is there no other Person who was in Town on the seventh of *May*, out of Town on the tenth and fourteenth, in Town on the fifteenth; whose Wife died the Week before the thirtieth of *April*, he himself then ill of the Gout; to whom a Dog was sent from *France* of the name of *Harlequin*, that broke its Leg, and was brought to Mrs. *Barnes*, by Mr. *Kelly*, in order to be cured?

These are the Circumstances of *Jones* and *Illington*, and they are every one prov'd true of the Bishop of *Rochester*; and I believe your Lordships can hardly think they are so of any other Person.

They said they should falsify several of these Facts; but they have only said it.

In the Papers they have produc'd from the Surgeon concerning the Dog, he contradicts himself.

In the first he says, he gave Mr. *Kelly* a Dog for his own use, to dispose of as he pleas'd;

In the second he says, he gave it for Mrs. *Barnes*:

But Mrs. *Barnes* tells you, that the Dog design'd for the Bishop was in her Custody, when the other given by the Surgeon was expected over.

Their Attempt to disprove the Circumstances of being in Town, has met with as little Success.

In a letter of the seventh of *May*, 'tis said Mr. *Illington* is come to Town for a Day only:

We shewed that the Bishop was in Town upon that Day; they answer us by saying, he stay'd in Town two Days after.

Does this disprove his being in Town upon the seventh? or does it weaken the Proof of his being then in Town, because he alter'd his mind, and staid two Days longer than perhaps he at first intended?

This is the only Attempt they made to disprove any of the Circumstances relating to Mr. *Jones* and *Illington*. As to the other Instances which they pretend to disprove, they relate to *Weston* and *Rig*, and were not mentioned by the Counsel for the Bill.

They next object to the Method of proving the Similitude of Hands, and observe that the original letter prov'd to be Mr. *Kelly's*, and the three letters applied to the Bishop of *Rochester*, are dated at four Months distance; and how is it possible, that the Clerks of the Post-Office should be able to swear upon their Memories that they are of the same Hand-writing?

This is not a fair Representation of the Evidence: For the Clerks told your Lordships that there was not any one Post, during all that time, which did not bring some letter in the same Hand, all which they copied, and had by that means contracted a perfect Idea of the Hand; so that they did not swear from Memory, but from a Knowledge gain'd by Experience, and many constant repeated Observations upon the same Hand.

There have been some other Objections made, that are scarce worth taking notice of.

'Tis said Mrs. *Illington* is in great Tribulation for poor *Harlequin*, which *Kelly* could never say of the Bishop of *Rochester*.

Surely there is nothing in this;

'Tis an Expression that might be used of a Man of the gravest Character in a letter of this sort, to the Author of such a Present.

Mrs. *Illington* is mentioned eleven Days after the Bishop's Lady was dead. This is the Instance where 'tis said Mrs. *Illington* is in great Tribulation for poor *Harlequin*, but *his* Obligation is the same, which he desires may be made known.

That *Jones* is mentioned in other Cyphers for other Persons, as in one for the Duke of *Norfolk*, in *Plunket's* for a different Person.

But does it therefore follow that in *Kelly's* he can't mean the Bishop of *Rochester*?

It certainly does not.

And they seem to be convinced that the Bishop is too well described in this Correspondence, under the Names of *Jones* and *Illington*, to doubt whether he is meant by them.

And therefore they endeavour to give it another Turn, by saying this may be a malicious Contrivance of some Persons, who have inform'd themselves of his Lordship's Motions, and the Circumstances of himself and Family: And to make this the more probable, they say that *Jones* and *Illington* are the only Persons mentioned in this Corre-

spondence of Mr. *Kelly's*, with Circumstances of this Nature.

One would not imagine the Persons who made this Objection, had so often heard the letters read.

E. 41. 'Tis said Hore is laid up with his old Distemper, Hobbert is pretty well recovered.

E. 45. Mr. Hore is laid up, and so is Jemison with the Gout.

E. 49. Rep. is said to be in the Country.

E. 59. Ho. and Den. are said to be gone into the Country.

E. 62. Nic. W. is now in Town, he is well as to Health.

E. 64. Trotter is said to be out of Town the next Morning.

E. 69. Den. is said to come to Town, Rep. and Ho. to be in the Country.

E. 73. C. Saunders is well, and with a Friend in the Country.

These are all Instances where the same Circumstances are mentioned of other Persons, that are mentioned of *Jones* and *Illington*.

If *Jones* and *Illington* are oftneft mentioned, it is because he was the principal Person in this Correspondence.

But this malicious Contrivance must be carry'd on by Mr. *Kelly*: for

It has been proved that the Letters were wrote in his Hand, that the Answers were address'd according to his Directions;

That he received the Letters so directed.

I believe your Lordships have no Suspicion that Mr. *Kelly* bore an Ill-Will towards the Bishop:

I am sure there has been no Proof of it, nor of any malicious Contrivance against him.

But, my Lords, this is the common trite Excuse of every petty Offender.

Your Lordships can scarce read a Trial, where the Defendant don't complain that it is all a malicious Contrivance of his Enemies.

I heard this very thing warmly insisted upon a few Terms ago, at another Bar, and with as much Proof, by a Person concern'd in a Part of this Conspiracy, who has since been attainted and own'd his Guilt.

But we have gone still further, we have shewn that *Kelly* was an Acquaintance of the Bishop of *Rochester's*.

Which is indeed acknowledged, without any satisfactory account given for what Purpose his Lordship should contract an Acquaintance with a young Fellow, that has deserted his Orders, and is a professed Nonjuror.

Your Lordships, I presume, from the Behaviour of Mr. *Kelly*, can hardly be persuaded that he had no other Employment under the Bishop than to furnish him with Beaver-Stockings, which the Bishop owns to have received from him as a Present.

But we have proved by the strongest Evidence that can be, by a letter under his Lordship's Seal, and I may venture to say (from the Observations that have been made from the letter itself) under his Hand, that *Johnson*, i. e. *Kelly*, is the Person in whose Hand the Bishop returns his Answers. No Account is given of this letter, by whom it was wrote, nor to whom, nor how it came among his Lordship's Papers.

All that is said in answer to it is, that 'tis possible Seals may be counterfeited, or there may be

be several Impressions of the same Seals: but is there any proof of this?

It appears that the Impression on the first letter was broke when seized; that it was in the Hands of the Committee of the House of Commons before the second letter was taken; which makes it impossible to imagine an Impression should be taken off the first to put upon the second.

But his Lordship is pleased to ask, Is it agreeable to the Cunning with which he is charged, to keep such a letter by him on purpose, as it were, to furnish his Adversaries with Evidence?

No, my Lords, neither do I imagine his Lordship knew he had it by him.

It was found amongst his papers, and, no doubt of it, was left there accidentally; and 'tis by such little Accidents that the most cunning Men are detected; there is no Danger of their committing greater Oversight.

His Lordship is pleased to observe, that at first the House of Commons represented this letter as a letter wrote to him; but now 'tis discovered to be wrote by him: It is so, and very plainly, and his Lordship may thank himself for the Discovery; and the not discovering it sooner is surely no Objection to the Truth of it when discovered.

It may be urged, and has been insinuated, that if Mr. *Johnson* is the person in whose hand the Bishop returns his Answers, yet how does it appear that these particular letters which are applied to the Bishop, were wrote by his Directions?

If it appears that *Johnson* is the person in whose Hand he writes, and that these letters are of the Hand-writing of *Johnson*, signed by that Name, which denotes the Bishop in the Correspondence, this will be thought a reasonable proof that they were wrote with his privity.

But they said they should prove it impossible that these three letters should be wrote with the privity of the Bishop; for they bear Date the 20th of *April*, whereas the Bishop came to Town the 11th, went to *Bromley* the 12th, and within two or three Days after was taken so ill with the Gout, that he had neither the use of his Hands nor Feet, and had a Servant always attending him, who will prove that no Stranger came near him all that time.

If this had been made out, it would not be a proof that the letters were not dictated by him; for both *Kelly* and the Bishop were in Town upon the 11th and 12th, and the Bishop was not confined at *Bromley* upon the 13th and 14th, when Mr. *Kelly* was out of Town, and probably at *Bromley*. And tho' the letters bear Date upon the 20th of *April*, yet 'tis not to be imagined, that they were wrote upon that Day; for it requires a good deal of time to reduce three letters into Cyphers; and the Method generally used, where letters are to be sent in Cyphers, is, to write them in common Hand first, and then reduce them to Cyphers after: so that it's probable the Substance of these letters was dictated many Days before they were perfected and sent.

But the Evidence given by the Bishop's Servants is not to be regarded.

The first Servant, when he had sworn what he thought was material for the Bishop, being pressed by a noble Lord with a Question relating to the letter directed to *Dubois*, refused to give any An-

swer, till the Bishop publickly gave him leave; tho' he was sworn to speak the whole Truth: which shews too great an Attachment to his Master's Interest, to deserve much Credit.

He and the second Witness did admit, that the Apothecary, or the Minister of the Parish, might be with the Bishop without their Knowledge; and if so, why not Mr. *Kelly*, whose Visits required more Secrecy than either of the others?

And I must here observe, that what the Reverend Prelate insisted upon, to add Credit to the Evidence of these Witnesses, is the greatest Objection to their Testimony imaginable.

They tell your Lordships, that tho' they were with the Bishop in the Tower, yet he never once spoke to them concerning the Matter they had given in Evidence, till they themselves recollected it upon reading the Report; and finding that the Bishop was charged with being the Author of three letters, dated the 20th of *April*, they immediately recollect that the Bishop was ill at that time, and they constantly about him. This seems to be a Story scarce credible,

That the Bishop himself, who was so nearly concerned, should not, upon reading the Report, recollect the Circumstances he was under at the time when those letters bore Date, if the Truth was as they would represent it; but that the Servants should first recollect this, and suggest it to their Master.

Or if the Bishop did recollect it, 'tis strange he should not mention it to those Servants, who were present with him in the Tower, and the only Persons, who, as they say, were capable of clearing his Innocence.

This had been very natural, and proper under his Circumstances: and his not speaking to them first, could hardly proceed from an unreasonable Scruple, lest he should be suspected of laying a byass upon them; since his Lordship has, after he knew they were to be Witnesses, given each of them a place under him as Dean of *Westminster*.

The rest of the Servants that were called, tho' they contradict the first, by admitting that two other Gentlemen were at the Bishop's at *Bromley*, during the Time in question; yet they plainly shew a greater Regard for their Master's Interest, than for Truth: for tho' one of them was but the Helper in the Stable, and another the Nurse that attended his lady in her Illness, yet they take upon them to swear, that they verily believe no Stranger could be with their Master in private, but they should have known of it, and that they never knew of Mr. *Kelly*'s being there.

Every body's Observation must suggest to them that such a Belief must be without Foundation.

The next Arguments used on behalf of the Reverend Prelate at the Bar, were raised from his unambitious resigned Temper of Mind, and from the Style of the letters laid to his Charge, That it's not probable he should use so indecent an Expression of persons he was concerned with, as to call them *pretending unsupported People*.

What Weight there is in these Arguments, I must submit to your Lordships, who are much better acquainted with his Temper and Style than I can pretend to be.

The last thing pressed by the Reverend Prelate, is a solemn Protestation, I cannot say of Innocence,

cence, because it seems to me to be conceived in such Terms as not to contradict any part of the Charge insisted upon by the Counsel for the Bill:

It is chiefly calculated to answer some particular Circumstances of Times, without any Denial of the general Charge, or the least Declaration of Affection or Loyalty towards his present Majesty.

But if his protestations amounted to a direct and positive Denial of the Charge, they ought not to have any Weight with your Lordships, since this is a Defence equally in the power of the most guilty as well as the innocent: a little proof is better than many protestations.

And I can't help observing upon this Head, and I hope his Lordship won't impute this Observation to ill-nature, but a Sense of my Duty, which obliges me to make all proper Observations, That it appears his Lordship has not always that strict Regard to Truth, which he ought to have, by the Papers taken upon his Servant at the Tower.

The Nature of the punishment has been much talked of in the Course of these proceedings, and great lamentations made upon it, but surely without any Reason.

For this Argument supposes the party guilty of the Charge, or else it's ridiculous to object to the Severity of the Punishment.

And I may venture to affirm, this is the mildest punishment that ever was inflicted for such an Offence.

His life is not touched; his liberty nor property affected; he is only expelled the Society whose Government he disapproves, and has endeavoured to subvert; and is deprived of the publick Employment which that Government had intrusted him with: The Enjoyment of his life, his private Estate, and his liberty, under any other Government that may be more agreeable, is allowed him.

This is scarce to be called a punishment, being nothing more than what was absolutely necessary for the publick Security.

The Commons of *Great Britain* have done their part towards providing this Security, and I don't doubt but it will meet with the Concurrence of your Lordships.

The Counsel having done, the Lords in a grand Committee went thro' the Bill, and about ten of the Clock at Night, adjourned to *Wednesday, May 15*.

Their Lordships being then sat, the aforesaid Bill was read the third time, and a Motion being made, that the Bill should pass, it occasioned a long Debate, in which the Bishop of *Salisbury* spoke as follows.

My Lords,

AS I have sometimes troubled your Lordships with what I had to say in other Debates, I believe it will be expected that I should say something in a Case so extraordinary as this is; and wherein a Brother Bishop is so nearly concerned. I beg leave to begin with taking Notice of some Things that were peculiarly addressed to this Bench, both by the Reverend Prelate, and his Counsel, from the Bar.

The first is, That we would consider how agreeable it may be to the Canons and Discipline of the Church, in this extraordinary Manner to

deprive a Bishop of all his Preferments; and to prohibit him the Use and Exercise of his Function for his life.

As to this Objection, whatever influence it may have abroad among ignorant people, when the Speeches come to be printed; yet, as to your Lordships, who know our Constitution so well, I cannot imagine that it can have any Weight or Influence at all. And indeed when I consider all the Acts of parliament relating to the Supremacy, that have been made for near two hundred Years, when I consider the Articles of our Church, our Canons, and the Subscriptions that the Bishop himself must have made, and must have required from others, in the Exercise of his Function as a Bishop; when, I say, I consider all these things, it is matter of Wonder to me, that such an Objection should be made, either by a Bishop of the Church of *England*, or by a lawyer of the Kingdom of *England*.

I do not indeed recollect above one instance of a particular Act of parliament made to deprive a Bishop; which is, that of *Fisher*, Bishop of *Rochester*; who was so deprived in the Time of *Henry VIII*. But, as to general Acts of Parliament, whereby both Bishops and Presbyters have been deprived of their Preferments, we have a good Number. Thus, in the beginning of *Queen Elizabeth's* Reign, almost all the Bishops of *England* were so deprived: And at the Revolution, many were so; and all might have been so, if they had not complied with the Terms of the Act of Parliament: And at the Restoration, many hundreds of Presbyters were deprived in the same manner. And I conceive that it cannot well be doubted, but that the same Authority which can make laws by which the whole Bench may be deprived, may exert itself in a particular Case, if they have just Reasons for it.

As to the Trial of Bishops for any Crimes they shall be guilty of, we are to consider the different Nature of the Crimes of which they are accused; and the Trial by law must be accordingly. If the Crime be of an Ecclesiastical Nature, such as Ecclesiastical Courts can take Cognizance of, as Simony, Heresy, and the like; the Trial regularly must be by the Arch-Bishop of the Province, taking to his Assistance some of his Suffragan Bishops. But even in this Case, if either the Arch-Bishop shall, upon Complaint, neglect to try him; or, if upon Trial he shall acquit and absolve him; the Accuser may appeal to the King in Chancery: Which Court may appoint a Commission of Delegates, who may, by the Authority of the Crown, judge him, deprive him of his Bishoprick, prohibit him the Use of his Function for his life (if the Crime deserve it) tho' he were before acquitted by the Arch-Bishop. But if the Crime be of a Civil Nature, such as Treason (which is the Case now before us) the Ecclesiastical Authority has nothing at all to do with it; and should any Ecclesiastical Judge attempt to meddle with it, he would be judged to attempt against the King's Crown and Dignity, and quickly have his Proceedings stop'd, by a Prohibition out of the Temporal Courts. And I would beg leave to observe further, that were this Bishop to be tried in the common Course of law, for the Crimes whereof he is accused in this Bill, it must be either by your Lordships, as a Member of this House; or by the Judges and

and a Jury in *Westminster-Hall*. I would not at present say which, because it would lead me out of the way : But in this Case, if either your Lordships, or the Judges below, should pass Sentence upon him for the Treason of which he is here accused, that Sentence would, *ipso facto*, deprive him of the Bishoprick : It would also make him liable to lose his life ; but it would not, *ipso facto*, take it away, as it would his Bishoprick : He might notwithstanding that Sentence live many Years ; but from the Moment of it, would be no more Bishop of *Rocheſter*.

These Things, I humbly conceive, are abundantly sufficient to answer this first Difficulty ; and therefore I shall add no more but this one Observation : That the way that is now taken to deprive him, is the only way that I know of, wherein the Bishops can have any Part in the Sentence of Deprivation.

The next Thing that was suggested from the Bar, particularly to this Bench, was, That we should consider well what we are doing, and have a care that we do not, by concurring in this Bill, make our Titles to our Bishopricks precarious.

As to this Admonition, the Answer is very easy, That it becomes us, as we have the Honour to have Seats in Parliament, to take care to do Justice ; as, on the one side, to the Prisoner, so on the other side, to our King and Country ; and to trust in God, that in so doing we shall neither hurt ourselves, nor our Successors. But, so far as just Judges may look to Events, the Argument seems to me to lie the other way : For, if for want of doing Justice against Traitors to King *George*, the Pretender should happen to prevail, (which God avert) the Title of Protestant Bishops is like to be very precarious indeed.

As to the power of Parliament to pass Bills of this kind, the Parliament always had it, has frequently exercis'd it, and always must have it ; it being essential to the very Being of the Supreme Power. The lives and liberties of every Man in *England* are subject to it : and tho' the Exercise of this Power may be dangerous to Persons who will venture upon treasonable Practices, trusting to their Cunning and Artifice to screen them from the Law ; yet I have that Confidence in the Integrity and Justice of the Crown, and two Houses of Parliament, that, so long as this Example is followed, of giving a full and fair Hearing to the persons accused, innocent Men cannot easily suffer ; or, in all Events, that if Corruption or Faction should ever so far prevail, that there should be Danger to innocent Persons, it will be much easier to corrupt Witnesses or Juries, or to find other Methods to destroy them, than it will be to prevail upon a Parliament to do it : As I am persuaded that, in this particular Case, had there been any Corruption, some other Method would have been found out, more effectually to come at the Person concerned than this is like to do.

The last Particular that the Bishop peculiarly address'd to this Bench, was, That we would consider the Words of *St. Paul* to *Timothy* ; *Against an Elder receive not an Accusation, but before two or three Witnesses*, 1 Tim. 5. 19. The Sense of which Words his Lordship understood to be, That an Accusation should not be so much as re-

ceived against an Elder or Presbyter, and much less against a Bishop, but upon the Oaths of two or three Witnesses.

In answer to this, I beg leave to observe, that our Translation renders the Words, not, *upon the Oaths*, but, *before* two or three Witnesses : which seems to import a very different Sense from that his Lordship puts upon them. But, not to enter into any critical Examination of the Truth of our Translation, or what the real Sense of the Words is, I would only make these two short Observations : First, that the Sense the Bishop puts upon them, that an Accusation against a Presbyter or Bishop, must not be so much as receiv'd into Court, but upon the Oaths of two or more Witnesses, is not practis'd in the Church of *England* ; and, I believe, never was practis'd in any Christian Church whatever.

The second Observation I would make, is, That whatever be the Sense of these Words, it regards only the Conduct of a Bishop towards his Presbyters ; but certainly was never intended to give a Law to the Supreme Power of a Kingdom, in its Proceedings in Cases of High-Treason, against any Subject whatsoever.

But the Bishop urges further, that the *Jewish* Law did require at least two or more Witnesses in all Judicial Proceedings ; and from thence infers, that it ought to be so amongst us.

In answer to this it may be reply'd, That this is a part of the Judicial Law of the *Jews*, which was not given to us, and therefore doth not oblige us any more than the rest of that Law doth ; except where the Reason of the thing lays an Obligation upon us. But indeed, I am of Opinion, that that Law doth oblige us, so far as it was intended to oblige them, and so far as it can be adapted to the infinite Variety of Cases that must happen in Judicial Matters. That Law is very short, and therefore must leave many Questions that may be made about it undetermined : I shall at present take notice of these two only, which may be material to our present Dispute ; the first is, Whether the Meaning of it be, that all Controversies and Accusations whatever, must be determined by Witnesses and no other way ? or, Whether upon Supposition that the Matter be to be determined solely by Witnesses, and no light can be brought to it any other way ; that then the Witnesses must be at least two ? The second is, Whether those Witnesses must swear directly to the Fact ; for Instance, that they saw such a Man murder another, or the like ; or whether it may not be sufficient, that they swear to such Circumstances, as infer a strong and violent Presumption, that such a Fact was committed by such a Person ?

These things are left undetermined in that short Law of the *Jews* ; but, I humbly conceive, are sufficiently determined by the Nature of the thing, and by the Laws of all Nations, and particularly of our own. It is true indeed, that in Cases of High-Treason, we have from Political Considerations determined, that there must be two positive Witnesses, to some one or more Overt-Acts of the same Treason : but, as to all other Crimes, that equally affect the Lives and Estates of all the Subjects of *England*, this is not the Case ; and Men may by Law lose their lives when there is not so much as one positive Witness to the Fact.

I beg leave to explain this in the Words of my Lord Chief Justice Coke; ‘*When a*
 * 1 Instit. ‘*Trial is by Witnesses, * regularly the*
 fol. 6. ‘*Affirmative ought to be proved by two or*
 ‘*three Witnesses; but when the Trial is by Verdict of*
 ‘*twelve Men, there the Judgment is not given upon*
 ‘*Witnesses, or other kind of Evidences, but upon the*
 ‘*Verdict; and upon such Evidence as is given to the*
 ‘*Jury, they give their Verdict; and many times Ju-*
 ‘*ries, together with other matter, are much induced*
 ‘*by Presumptions.*’ And indeed, if no Man could be convicted of Murder, or Robbery, or other Crimes of that Nature, but by two positive Witnesses that saw the Fact done; nothing would be easier or safer than the Commission of those Crimes; and no Man could have any Security, either for his Person or his Estate: And therefore, if in Cases of High-Treason our Law requires positive Witnesses, it is not from any moral Necessity, or point of Conscience; but from political Reasons, which must, and always will be, subject to the Judgment of Parliament.

Having now done with what was from the Bar peculiarly applied to this Bench, and having, I hope, given a very plain Answer to it, I now beg your Lordships leave to proceed more directly to the Bill itself. And here, two things are necessary to be considered, in order to convince your Lordships, that it is a Bill fit to be passed: The first is, the Lawfulness of it; the second is, the Prudence or Expediency of it.

As to the Lawfulness of it, it will be necessary also to consider two things; first, Whether your manner of Proceeding in this Bill be lawful: secondly, whether the Bishop be really Guilty of the Crimes charg’d upon him.

As to the manner of Proceeding, many things have been objected: That it is by way of Bill, and not a Trial in the Course of Law; That Evidence has been admitted, that would not have been admitted in any of our Courts; That these Things are contrary to the liberty of the Subject; That every Subject has a Right to the Laws of his Country; and That he has an Injury done him, if he be denied the Benefit of them. This I take to be the Sum of what has been objected against the Justice of your proceedings in this Bill.

In Answer to these Objections, I beg leave to consider, first, wherein the liberty of *England* consists; which is a Point commonly pretty much mistaken. Many People are apt to imagine, that the Difference betwixt us, and some of our neighbouring Countries, is, that they are under Absolute Power, and we are not; whereas in truth all Countries, that are Supreme within themselves, have equally an Absolute Power; and in the Nature of the thing it cannot possibly be otherwise: No Government can subsist, if there be not a Power in it to change, to abrogate, to suspend, or dispense with its Laws, as Necessity or Conveniency shall require; which is what we call Absolute Power: and therefore, the Difference betwixt one Government and another, does not lie in this, that one has such a Power and the other has not; but lies merely in the Difference of the Hands in which this Power is placed. Where this is placed in one Hand, in the King, we call that an Absolute Monarchy: Where this is not solely in the King, but only as he acts in conjunction with the States of the Kingdom, that we call a Limited Monarchy; and the

People that live under such Government, are called a Free People; because they live under Set Laws, which could not at first be made, nor can afterwards be altered or dispensed with, but by their own Consent. However, there is still in such Countries, a Power equally above all their Laws, as there is in the most absolute Monarchy in the World.

What I have said upon this first Head, will in a great measure explain a second Question: What that Right is, which the Subjects of this Country have to its Laws; which is, in short, a Right to claim the Benefit of them against the Crown, or any Court acting under the Crown, till the States of the Kingdom (which are virtually every Man in the Kingdom) think fit to consent to the Alteration of them. The King is indeed Supreme, but his power is only according to the Laws in being: By them he is bound to act, and if any of his Officers act contrary to them, what they do is null and void; and they are punishable for it; and the Subjects have a Claim of Right against them. But if the King and his People think fit to come to a new Agreement to alter any such Law, there’s an end of all Claim of Right in the Subject: the Claim is taken away by their own Consent; for, as I said before, every Man in the Kingdom virtually consents to what is done by an Act of Parliament.

And there is an absolute Necessity that there should be such a Power as this in every Country; for the State of human Affairs is so changeable, that it does not admit of any Set of unalterable Laws. What is good at one time, may be destructive at another; and what is generally good, may, under particular Circumstances, require a Dispensation by a proper Authority. And here, give me leave to observe to your Lordships, the Difference there is, betwixt the eternal Laws of Justice and Righteousness, and all positive Laws whatever. That as to the first, we are made for them, and the nearer we do in all things conform to them, the more noble, and lovely, and excellent Creatures we are: but as to positive Laws, they are all made for us; and the more they conform to us, the more they obviate all our Wants and Difficulties, the more they answer to all our Necessities, the better they are.

As to what is complain’d of, that your Lordships have admitted Evidence to be read, that would not have been admitted in the Courts below: I conceive, that acting in the Capacity you now do, you have a full Power to do it, and have not broken any of the general Rules of Justice by it. You have let in all the light that you thought might be proper to give you a full Knowledge of the Matter; and in the Capacity you now act, I cannot but humbly be of Opinion, it was your Duty to do so: but in forming of your Judgments, I take for granted, that your Lordships will distinguish, and lay no more Weight upon any thing than it deserves.

As to the Rules of receiving Evidence in *Westminster-Hall*, I conceive, that they are no part of natural Justice, but only artificial Rules fram’d for Conveniency; and bind no Courts, but as they have agreed to them, and so are become the Customs of the Court. That these Rules are no part of natural Justice appears from hence, that even among ourselves they are different in different Courts: That those used in our Courts, are very different

different from those used in other Countries: That they differ here, according to the different Causes or Crimes that are to be tried. Nay, they are so far from being fundamental Parts of Justice, that they must require a good deal of Time and Art to form them. And I am persuaded, that was a Person of good natural Sense, who knows nothing of the Law, asked his Opinion; he would be apt to think it to be a Part of natural Justice, that every Person that prosecuted a Cause in any Court, should be at Liberty to produce before that Court, whatever he thought material to his Cause. And there is no doubt, but that this was the original Way of Proceeding: but that in process of Time, when Courts came to have a good deal of Business, and they found by Experience, that this Way of laying every thing before 'em, tended to lengthen Causes, (which was especially inconvenient where Juries are concerned, who must end a Cause before they part) these Rules were gradually found out; which, tho' they may be, for the Reasons above specified, generally convenient, yet may sometimes hinder Justice, by not suffering all the Light to come into Court, that may be material in the Cause.

Having said thus much concerning the Justice of your Method of Proceeding, I now come to consider the second and the main Point of Justice to be regarded in this Bill; which is, Whether the Bishop be Guilty, or not, of the treasonable Practices charg'd upon him in it. And in this I shall be the shorter, because your Lordships have heard the Evidence on both Sides, and all that has been said from the Bar by both Sides upon it; and because there are many Noble Lords in the House, much abler to lay things of this Nature distinctly and clearly before your Lordships, than I am.

The Cause of *Kelly* is so connected with that of the Bishop, that I must beg leave to speak a few Words to the one, before I proceed to the other. As to *Kelly*, I would observe in the first Place, that one strong Presumption of his Guilt is, that when he was first taken up, he resisted the Officers; that he seized his Sword, and some Papers that had been taken away from him; and was resolute to burn those Papers, tho' with the apparent Hazard of his own Life, and being guilty of the Murder of one of the Officers that had seized him.

In the next Place, it is prov'd before your Lordships, that after he was taken up, the People at his lodgings burn'd the rest of his Papers; a plain Evidence, that they who knew his manner of Life and Conversation, suspected that he was Guilty. And this is agreeable to what *Neynoe* told the Chancellor of the *Exchequer*; that there was at that time, a general burning of Papers.

Thirdly, Another Presumption of his Guilt, is, that when he was taken up the second time, he offered several Sums of Money to the People of the House where he was in Custody, to suffer him to escape, as appears from their Oaths at the Bar. These things I mention, not as full Proofs of his Guilt, but as strong Presumptions, that make every thing else that is sworn against him very credible.

The chief Evidences of his Guilt, are, a great Number of intercepted letters, both from him, and to him, containing treasonable Matters. Those from him, are by several Witnesses prov'd to be his Hand-writing, particularly by the Officers of the *Post-Office*, who took them and tran-

scribed them. And as to those to him, several Witnesses have prov'd that he gave Orders at several Publick-Houses to take them in, when they came from the Post; that he himself received them from thence, opened, and read them: And it is also farther proved, that Answers were returned to them in his own Hand-writing. These things all together, I take to be such plain and strong Evidences of his Guilt, that I shall trouble your Lordships no farther about him.

As to the Person concerned in this Bill, tho' it be a great Trouble to me, to think that any Bishop of this Church should be guilty of so foul a Crime, as that objected to him; yet I cannot but be of Opinion, that if he be really guilty, the Interest of our Church, as well as Justice to our King and Country, do require, that he should be convicted and punished. And indeed, I cannot but be humbly of Opinion, that whoever believes *Kelly* to be guilty, must believe the Bishop to be guilty too.

I shall not insist upon what is commonly called Hear-say Evidence, tho' there be a great deal of it against the Bishop; only must observe, that the Conduct of a Protestant Bishop must have been very odd and unaccountable, if he be innocent, that so many Jacobites (as have done in this Case) should declare, that they not only esteemed him to be in the Plot, but to be the chief Conductor of it. It is, however, fit to say something as to the Case of *Neynoe*; because the Bishop and his Counsel have taken up so much of your Lordships Time, and produced so many Witnesses to prove him a Knave. I did indeed myself always think him to be a Knave, and that nothing that he said was to be believed, merely upon his Authority: But on the other side, the Testimony of the greatest Knave in the World, may be taken against himself: and they themselves have proved, that he was a Jacobite, and thoroughly in that Interest, even when he was making some Discoveries against them; and therefore, what he says, in that respect, bears some Weight; as being against Persons whom he favoured, and would hurt as little as possible. Some other Things that he had said are also confirmed by concurrent Circumstances, and other Discoveries; and these may have their Weight, tho' he were never so great a Knave. One of the Things that he said in his Confession, was, that he frequently went with *Kelly* to the Bishop of *Rockester's*, and left him there (as *Kelly* told him) to write his letters. This is confirmed by a credible Witness at your Bar, who swears, that *Neynoe* used to be frequently at his House, and told him, at least three or four times, that he waited there for a sensible ingenious Gentleman, that was gone about Business to the Bishop of *Rockester*: He did not indeed tell him his Name; but the thing seems to me to look stronger than if he had; because it would have looked more like a Piece of Art and Contrivance, to have told the Name of a Man, whom he knew to be gone to the Bishop about a criminal Correspondence. I would only beg leave to take notice to your Lordships of one thing more relating to *Neynoe*: the Bishop's Witnesses have fully proved, that *Neynoe* told them, that the Chancellor of the *Exchequer* had given him several Sums of Money, to endeavour to get out of *Kelly*, the Explication of the Cant Names that were used in the Correspondence;

dence; and that he had promis'd him much greater Sums, if he would go to *France*, and get it out of *Dillon* and the Jacobites there: The Inference from which I take to be very plain, that the Court did not then know, who the Persons were, that were designed by those Cant Names; and that they did believe that *Kelly* did know, and that *Dillon* and the Jacobites in *France* knew too: which effectually and fully confutes that Suggestion of the Bishop, of which he did not bring the least Proof, that the Plot was a Contrivance of Persons in Power.

The next Thing I would beg leave to take notice of, relating to the Bishop, is a letter (taken among his Papers) from a lady of great Quality; of which the Bishop, tho' it was objected to him by the Counsel for the Bill, has taken no notice; which I conceive he would and ought to

* *The Dutches of Ormond.*

have done, had it been possible to give any fair Account of it. The Lady * in that letter tells him, that she sent something that she had received, she could not tell for whom; but let it be for whom it would, she thought He might be trusted, and that it could not be put into better Hands. A strong Suspicion this, considering all Circumstances, that here was a Correspondence by Cant Names, which the Lady did not certainly know, but believed the Bishop might; or however, that he was in all Events a Person to be trusted.

Another very suspicious Circumstance against the Bishop, is, the letters from Captain *Halfstead*, and what has been proved at your Bar, that this same Captain *Halfstead*, a little before he went in his Ship to fetch over the Duke of *Ormond*, waited upon the Bishop, and stay'd with him an Hour. This Thing indeed directly proves nothing; but all things considered, is very suspicious: and the more so, because the Bishop has given no Account, either of his Acquaintance with him in general, or of the particular Reason of that Visit, at a time that leaves so much ground to suspect the worst.

The next Particular that deserves your Lordships Consideration, is, the letter to *Dubois*, found among the Bishop's Papers when he was taken up, and found now to be sealed with the same Seal with that letter taken upon the Bishop's Servant, which he confesseth to be his own Hand-writing. It is not indeed proved, that the letter to *Dubois* is the Hand-writing of the Bishop: but any body that reads it, will easily be persuaded, that it is not the natural and ordinary Way of Writing of any Person, but a disguised Hand like a Print; except only some few letters which escaped the Care of the Writer, and are very like those of the Bishop. But after a long Examination, which has taken up a great deal of your Lordships Time, it appears plainly, that the Seals are the same, and that the one could not be counterfeited from the other; because, the first letter was originally taken with the Seal broken, and was in the Possession of the House of Commons when the second letter was taken upon the Bishop's Servant. It appears plainly by this letter to *Dubois*, that the Person who wrote it was in a secret and dangerous Correspondence; that he was an Acquaintance of Mr. *Johnson*, or *Kelly*; that he received letters by his Hand, and wrote an Answer in his Hand. How far all these Circumstances, taken together, prove the Bishop to

be the Author of this letter, I must submit to your Lordships Judgment: for my part, I think they do; especially considering, that the Bishop has given no Account of it, which he ought to do by Law, of a letter of this Nature, plainly proved upon Oath to have been in his Possession.

I now beg leave to proceed to that which is the principal Charge against the Bishop, the dictating to Mr. *Kelly* the three letters of the 20th of *April*; sign'd, one, by the Name of *Jones*; another by the Name of *Illington*; the third by the Figures 1378; which the Decypherers explain by the Letter *R*. The first, directed to Mr. *Chivers*, or *Dillon*; the second to Mr. *Musgrave*, or Lord *Marr*; the third, to Mr. *Jackson*, or the *Pre-tender*.

It may be proper, before I take notice of the Proofs which shew that the Bishop did really dictate these letters, to take notice of an Objection with respect to the Time: The letters are dated the 20th of *April*, and the Bishop has produced five or six of his Servants, who swear, that about that Time he was so very ill, that he could not write himself; and that he did not see any Person to whom he could dictate these letters. Now in answer to this, it may replied: That it does not appear, that all the Servants which the Bishop then had, were produced before your Lordships; and you cannot but be sensible, that treasonable Practices are commonly carried on in a very secret Way: and it appears, that the Bishop's Correspondence with *Kelly* has been so carried on; for tho' there is plain Evidence, that they were frequently together, and that they were acquainted is confess'd, both by the Bishop and *Kelly*; yet, scarce any one of the Servants produc'd, would confess, that ever they had seen *Kelly*, or so much as ever heard of the Name of *Johnson*, which was the Name by which he went. In the next place, none of these Witnesses prove, that the Bishop was so bad that he could see no Company, till about the 16th or 17th of *April*; and it's very probable, that the letters must have been dictated so long, if not longer, before the 20th on which they are dated; because *Kelly* was to transcribe and put them into Cypher, which is a Work of Time and Care; and perhaps after all, they might be designedly post-dated, that the Bishop finding himself going into a great Fit of the Gout, might have all that to plead which your Lordships have heard, if the Matter should ever be called in question.

Upon all these Considerations, I cannot but think it very clear, that the Bishop might have dictated these letters: We are now therefore to examine whether he did or no.

The first Thing that brought any Light into this Matter, was the small Accident of a Dog being sent from *France*, which, by the intercepted letters appeared to be sent to one that went by the Names of *Jones* and *Illington*. When Mrs. *Barnes* was examined before the Council, upon *Kelly*'s being taken up, it appears plainly she was upon the Reserve, and would confess nothing that she thought might tend any way to hurt *Kelly*: but being ask'd about this little Dog, who it was for, she readily answered, that *Kelly* had told her it was for the Bishop of *Rochebester*; which she has since confirm'd by Oath at the Bar of this House. This little Accident, not suspected at the time of the Discovery to be of any

any Consequence, has given Occasion since, to look into so many Circumstances, as plainly bring the matter home to the Bishop. And indeed, if all the particulars in the intercepted letters be compared, with those things that are in proof with respect to the Bishop, I believe your Lordships will be of Opinion, that they cannot all belong to any one Person in the World besides himself. In the first place, since it's proved that *Kelly* wrote these letters, the person who dictated 'em must have been an Acquaintance of *Kelly's*; it is confessed on all hands that the Bishop was so. In the next place, it is implied in one of the intercepted letters, that the person that went by the Name of *Jones* and *Illington*, was a Clergyman; so far still agrees to the Bishop. Again further: this person is mentioned in all the intercepted letters, as a person of great Consequence and Credit, upon whose advice the party very much depend: and indeed the very Air and Manner of writing the three letters, plainly shew, that the person who wrote 'em, thought himself so; this also agrees with all the other Discoveries about the Bishop. Were there no other particulars but these, it will be hard to imagine that they could well belong to any other person. But if we consider further, that this *Jones* or *Illington* came to Town such a Day of the Month, went out of Town such another Day of the Month, came back again to Town such another Day, was himself sick at such a time, that his Wife was sick at such another time, and that she died at such a time; all which are in Evidence with respect to the Bishop; if we do, I say, consider all these Circumstances together, it will plainly appear, that they can belong to no other Man in the World but the Bishop.

After this, I humbly apprehend nothing need be said; however I beg leave just to mention something relating to the letter that was taken upon the Bishop's Servant; by the whole Air of which letter, it looks as coming from a person who did not esteem himself to be innocent, but who thought, that nothing could be legally proved against him: and therefore there is not one Word of his Innocence in it, which is the first Thought that must naturally have come into the Head of any one that really was so. He writes wholly with the air of a Man that had been used to Intrigues; speaks of the Concern that his Friends should have for him and the Cause; discourses largely about the Kind of Evidence that was against him; takes notice in particular what cannot affect him: *If (says he) the Narrative* * *relates chiefly to Neynoe's Sample's, and Laver's Affairs, so far it cannot affect me; for I never heard of the Names of either of the Three, till after this Plot broke out.* It is plain by these Words, that he did not then know what was in the Narrative against him; but he is very sure, that neither *Neynoe* nor *Sample*, nor *Laver* could affect him. Could an innocent Man have thus distinguished, and could not they have affected him as much as any body else, if he really was innocent? Nothing can affect such a Person but Forgery, and that may come from any Quarter: but in the whole letter he does not express the least Suspicion of Forgery; and yet, as I said before, this is the first thought that must naturally have come into the Head of an innocent Person, because nothing but Forgery could do him any harm. I would only just beg leave to

hint at this one thing more; That as he says, that these three Persons could not affect him, because he never knew 'em; so accordingly they have not affected him, or said any thing of their own Knowledge about him; which is one good Evidence, that what is said against him is not forged but real.

I am afraid that I have troubled your Lordships too long, tho' with a very imperfect Representation of the Justice of this bill; and therefore shall be shorter upon the next Head, which is the Expediency or Prudence of it.

Had there been what we call legal Evidence against the party concerned, your Lordships, I take for granted, would not easily have gone to this extraordinary Method of Proceeding: for tho' it cannot be doubted but that the Parliament have this Power, whenever they think proper to make use of it; yet, I do agree with other noble Lords, that it is a Power not fit to be used, but where and when the Publick Good requires we should use it, which I humbly conceive is the Case at present. A most dangerous Plot against the Government has been discovered: a great number of letters and papers relating to it have been laid before the two Houses of Parliament: these have been printed and published by Order of both Houses: The Eyes, not only of our own Country, but of all *Europe*, are upon us, to see what we will do. Tho' the Evidence of a Plot in general, be as clear as the light; and the Evidence against several particular Persons very plain; yet, as our laws are, it is not what we call legal Evidence: The Parties concerned will make no Confession, and we have not the Methods used in all other Countries, to extort Confession from them. What then? Shall we see our *King* and *Country* in Danger, and do nothing for them? Shall Conspirators go on with total Impunity, only because they are obstinate, and artificially screen themselves behind the law? I doubt, my Lords, that if this prove the Case, we shall appear ridiculous in the Eyes of all the World: That our Friends and Enemies both at Home and Abroad will think, that we have no Zeal for the Preservation of our King and Government; and if once they do think so, your Lordships cannot but be all sensible, how this must encourage our Enemies and discourage our Friends, and bring us into that contemptible State, in which no Government was ever long supported.

But a noble Lord has been pleased to observe, that the best way to serve the Government, is to do popular Things, and by that to procure the love of the people. I perfectly agree in this with the noble Lord, and cannot but be humbly of Opinion, that this Government has done so, as far as it has been able: Our Religion has been preserved; Justice has been equally administered to all sorts of People; none of our Rights or Liberties have been invaded; we have lived at Peace at home, while many other Countries have suffered all the Miseries of War: these are, or I am sure should be esteemed, popular things; and if some other things, which might have been for the Good of the People, have not been done, it has been the Fault of those that complain most, and not of the Government. And if there be Discontents now in the Kingdom, it's plain that the Foundation of 'em was laid long ago, by the Enemies to our present Happy Settlement: For I am persuaded, that the Discontents were higher

and greater within four Months after the King came to *England*, and shewed themselves much more, in a number of Rebellious Riots and Tumults, than any thing that appears at present; and yet nothing then could be objected to the Government, but that some Persons were not preferred, who both before and since have made it too plain that they were not fit to be trusted.

But as it is the Duty of those in Power, to do all the popular things they can; so I must beg leave to observe, that it is the Duty of all the Subjects (and the greater they are the more it is their Duty) to put the best Interpretation upon the Actions of the Government, that things will bear; not to misrepresent; not to put false Colours upon things; and much more not to invent lyes and slanders, and disperse 'em up and down the Kingdom, in order to alienate the Affections of the People. These things have been done, and done with great Care and Diligence, and by some too, who would take it very ill to be called Jacobites. These are the chief Causes of the Disaffection among us, and indeed of all the real Grievances we labour under. Is the King forced to put the Nation to Charges, to keep up a greater Number of Forces than otherwise would be needful? It is intirely owing to this Cause. Are our Debts not paid? Is our Credit not so good as we would be glad to have it? Let this artificial Raising of Discontents once cease, and these things will quickly mend of themselves. Indeed, were this a time for it, I think it might plainly be proved, that the Debts we labour under had never been contracted, but for this absurd discontented Humour: Nay, it is to this, that we intirely owe the Danger we are in from this very plot; for it's plain from all the Intelligence we have about it, that it was carried on upon the Confidence, that all discontented Persons were Jacobites: and tho' the Conspirators did in this greatly deceive themselves: yet it's certain that they built their Hopes upon this Foundation.

But it's further said by the same noble Lord, that this extraordinary way of Proceedings will not procure Friends to the King; but will rather anger and provoke, and so hurt his Interest instead of helping it.

To this I answer, that I do indeed suspect, that many People will be angry; as I hear that the Jacobites thro' the Kingdom are: A plain Evidence this, that they do not think that the Friends of King *George* are worrying one another; for they would not be angry at that. Those that most desire to destroy our liberties, are become, upon this Occasion, the great patrons of liberty; as indeed they have been in a great measure ever since the Revolution, when any thing has been proposed for the Support of the Government. No sooner were their Schemes of Arbitrary Power in the Time of King *James* overturned, and a new Government settled which they did not like; but they, in order to destroy it, set themselves against every thing that was necessary for it's Defence, under the Colour of liberty; that is, they desired to have their own Hands as loose as possible, to hurt it; and the Hands of the Government as much tied up as possible, that it should not be able, either to hurt them, or defend itself. Thus at present, they clamour against the Additional Forces, tho' established by Parliament; and against all Methods, either to discover or punish

the Conspiracy. And they judge right in this for their Cause; because, if they could have carried these points to their mind, they might then be more free in carrying on their Plots, and with less Danger put them in Execution. For these Reasons I take it for granted, that all these people will be angry; but I cannot but humbly be of Opinion, that it is much better they should be angry with us for defending ourselves, than that they should first sneer at us, as Fools for neglecting our Defence; and then be able more easily to undo us.

As to others, that possibly may be displeas'd at what we are now doing, I would hope, that a little Time and consideration will set them right, and convince them, that it is not only just, but (all things considered) necessary to be done; because, if the Parliament do, upon this occasion, shew their Zeal in the Defence of the Government, it will animate and give Courage to the Friends of it both at home and abroad. Foreign Powers will be apt to court the Friendship of a Prince, at the Head of a mighty Kingdom; if they see, that he and his Posterity are like to continue there: All the Affairs of the Kingdom, which respect them, will be managed with more Ease, with more Honour, and with less Expence; and they will be inclined, not to foment but to discover Plots, if they came to their Knowledge. But on the contrary, if we give 'em any Reason to suspect, that we look another way, they will quickly do so too, and strive which shall be forwardest to help the Pretender to involve us in Blood and Ruin. And as to the Subjects at home, I would only observe, that all Mankind are apt to shew most Zeal for a Government, when they think it safe, and like to stand, and be able to protect them: But to suspect the contrary is a most dangerous Temptation to the Fidelity of Subjects as has been seen by the Experience of all Ages. And therefore I hope, that your Lordships will, by your Unanimity and Zeal in this matter effectually convince the World, that the Danger does and shall lie in opposing, and not in defending the present Government.

I hope that what I have now been saying, has convinced your Lordships, both of the Justice and Prudence of this Bill; give me leave to observe, that your Moderation has been very great too, both in giving so full and fair a Hearing, and in making the Penalties so much less than the Crimes deserve.

It is now above a Year since the Plot was first discovered; a Plot of a most desperate Nature, to seize the Persons of the King and Prince, and to bring in a Popish Pretender upon us. The Execution of which, was to be begun by seizing the *Tower*, and attacking the City of *London* on all sides; and was thence to spread itself into all parts of the Kingdom. Lord! what Confusion; what Murders; what Plundering; what burnings must this have caused? Whatever had been the Issue, the very Attempt must probably have occasioned the Sacking and Burning of this great City: The utter loss at once of all publick Credit: The Murder of infinite Numbers of People: The Astonishment, and Amazement, and Undoing of almost all, but of those vile Wretches who would have had the plundering of all sides. If it had gone on, how many of the Noble Lords that I now see, would have been
before

before this in their Graves? But I forbear going any further in this Tragical Representation, and desire only to observe, That tho' it has been discovered above a Year, how very little of it we yet know: and I do appeal to your Lordships Consideration, who know the State of the World very well, whether there be any Country in it either Bond or Free, which, had they discover'd but a fifth part of what we know of a Plot of this Nature, would not in a Week's time have found means to get to the Bottom of it. However, my Lords, I still commend your Moderation; and do hope, that we shall never find Reason to repent of it, and that this little which is now doing, will be a Warning to Conspirators, not to provoke further the Patience of an injured Nation.

I doubt not but upon this and all other Occasions, your Lordships will be ready to stand by a wife, a good, and a merciful Prince; and that you will, according to your Oaths, defend him, against all Treasons, and Traitorous Conspiracies whatsoever.

And in the last place, give me leave, as a Christian and a Protestant Bishop to hope, you will do your best, that a Popish Pretender may never be set at the Head of this Protestant Church: One, who must think himself bound in Conscience to destroy it; and instead of that pure Religion which we now enjoy, bring in horrible Superstition and Idolatry, Nonsense and Tyranny; attended with all the sad Calamities, which Popish Princes always have brought, and always must bring upon Protestant Countries.

After whom the Duke of *Wharton* spake as follows:

SOME Words which have fallen from the Reverend Prelate, who spoke last, have made it, in some measure, necessary for me to trouble your Lordships with the Reasons that induced me to differ with him in Opinion, and to give my Negative to the Bill now depending before us.

If I don't misunderstand his Lordship (and if I should mistake his Meaning, I hope he will set me right) he was pleased to say, That Persons without Doors would be apt to cast different Reflections on the particular Behaviour of every Lord this Day: That those who were for the passing of this Bill, would be accused of Malice and Partiality; and those who were of contrary Sentiments, would be branded with Disaffection to the present Happy Establishment.

For my Part, I am far from thinking, that Considerations of this Nature will have the least Weight with any of your Lordships; and am very certain, that every one, who gives his Vote on this important Occasion, has attended, with the greatest Care, to the Evidence that has been given at your Bar, which is the Foundation of this Day's Debate.

The Proofs that have been brought to support the Charge, and the Bishop's Defence, are to be thoroughly considered; and when your Lordships proceed according to the Rules of Justice, you will not fear, nor value, any Consequences which may attend the discharging of your Duty.

So far I will venture to affirm, That the best Way to shew our Zeal to his Majesty, and the present Government, is, To act in all Cases, both in our Judicial and Legislative Capacities, with that Honour and Impartiality, as ought to flourish in this great Council of the Nation.

I could have wished the Noble Lords who have given their Reasons for the passing this extraordinary Law, would have entred into the particular Circumstances of this Case, and considered it singly on its own Merits: But instead of speaking on that Head, I cannot but take Notice, That they have wandered from that (which ought to have been their only Consideration) into learned Discourses on Bills of this Nature in general.

I shall not trouble this House with any Arguments against Attainders. Many Lords, of greater Weight and Abilities than myself, have already spoke fully to this Point in the preceding Debates.

I shall only so far agree with the Reverend Prelate, who spoke before me, That it is proper, that such a Power of punishing by Bill, should be vested in the Legislature, to be exercised on extraordinary Emergencies: But then I must add, If ever that Power is abused: if ever it is employed to destroy innocent Persons, it is evident, That the lives, liberties, and Fortunes of every Subject in *Britain* are in the utmost Danger, and liable to be sacrificed to the Fury of a Party.

It has been admitted, That every Bill of Pains and Penalties is to stand upon its own bottom; and that the passing of one Act of this Nature, is not to be brought as a precedent for the supporting of another, unless there be convincing Evidence to enforce each Case. And therefore the proper Consideration now before us, is, Whether the Evidence offer'd against the Unfortunate Prelate, is sufficient to induce your Lordships to believe him Guilty of the heavy Crimes of which he stands accused?

My Lords, I shall take the liberty of considering the whole Proofs that have been brought on this Occasion, both by way of Charge, Defence, Reply, and Rejoinder; and tho' I own myself very unequal to this Task, yet, since no other Lord, who could do it much better, has undertaken it, I think it my Duty as a Peer, and as an *Englishman*, to lay it before your Lordships in the best Manner I am able.

The Method I shall observe for the more clear Stating of the Case, shall be to lay every particular Branch of Evidence before you, and to distinguish the several Parts of the Accusation, and consider them separately, to avoid Confusion, and to be the more exact in what I have to offer.

I hope, I shall have your Lordship's Indulgence for taking up so much of your Time as this will require: But I assure you, I shall endeavour to be as brief as the Nature of the Thing will admit, and will intrude on your Patience as little as possible.

I must also desire your Lordships will pardon me, if I repeat several Arguments that have been used by the Counsel at the Bar; and if I even mention some Things which fell from me in the Debate on Mr. *Kelly's* Bill, whose Case is very much interwoven with the present; so that it is almost impossible to avoid it.

Before I go any further, I cannot but say, That were these Crimes plainly proved against the Bishop of *Rocheſter*, his Sacred Function and Station in the Church would be Aggravations of his Guilt: But, as this is certain on the one hand, so on the other, your Lordships will require very clear Demonstration, before you can think it possible for a Bishop of the Protestant Church (who has sig-

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nalized himself in Defence of the Reformation, and the only one of that Bench where he had lately the Honour of sitting, that ever wrote in favour of *Martin Luther*) to ingage in a Conspiracy for introducing Popery and Arbitrary Power amongst us.

My Lords, the Counsel for the Bill opened the Charge with acquainting the House, That it was only to be supported by producing of decyphered letters, full of fictitious Names and Cant Words: They were so very fair as to confess, they had not one living Witness that could charge the Bishop with any thing, nor even so much as a letter under his own Hand; therefore, on the first View, this Manner of condemning, on such kind of Evidence, ought to require our utmost Caution, lest we should establish a Method, which our Enemies may hereafter take to destroy the greatest and most innocent Subject in the Kingdom.

Mr. *Wearg* cited two Cases, which he would willingly have us receive as Precedents, to justify the admitting of circumstantial Evidence: The one was, the Case of *Ashton*, who was condemned on Circumstances only. But, my Lords, this was before the Treason-Act was passed, which requires Two Positive Witnesses; and nothing could induce the Legislature to pass that Law, but a thorough Conviction of the Danger that might attend the admitting of any Proofs which were not positive or certain.

The second Case he cited, was that of *Harrison* for the Murder of Dr. *Clench*; and the learned Gentleman tells you, that it was the pulling out of a Handkerchief that led to the Discovery of that Murder. It is very certain, Circumstances may lead to the Discovery of Evidence; but must be well supported before they can be converted into convincing Proofs.

The first Piece of Evidence that was offered at the Bar, was the Extracts of Letters from abroad, which this House seems, in some measure, to have declared to be immaterial, when they did not so much as desire to see Copies of the whole letters, nor the Originals; and even admitted one to be read which was Anonymous. But it will not be improper to observe, that thro' this whole Correspondence the Bishop of *Rockester* is not named. And therefore I cannot see why they took up our Time with reading Papers quite foreign from this Case; especially since every Body allows there has been a Conspiracy, which is the only Fact to be gathered from this Correspondence.

The next Point which was attempted to be proved, was, That Captain *Halstead* went to fetch the late Duke of *Ormond*, and was at the Deanery with the Bishop before he embark'd. There are also two letters found in the Bishop's Close-Stool, from this Gentleman to his Lordship, which were read, and are only Appointments for Visits, but mention nothing of this Design; and, I think, there was a Coachman, that proved *Halstead* was an Hour with him some Days before he left *London*.

This, my Lords, was opened as a Matter of great Importance: But your Lordships must remember, that the supposed Design of *Halstead's* bringing the late Duke of *Ormond* into *England*, is only proved by Hearsay. One of the Crew belonging to the Ship in which he went, has deposed, That it was the Common Report at *Bilboa*, that *Halstead* came there on that Errand.

How far common Fame is to prevail, I submit: But if this Hearsay were true, is every Person

who was an Hour with this Gentleman before his Departure, supposed to be privy to this Project? And what a strain'd Construction is it to insinuate, the Bishop of *Rockester* knew of his Intention, because he received a Visit from *Halstead*, who was a Tenant under his Bishoprick? And this is the more extraordinary, since it has not been so much as pretended that any Correspondence has passed between the Reverend Prelate and the late Duke.

They then produced letters directed to one *Dumvill*, which were decyphered. And Mr. *Willes* was examined to prove, that they were rightly and justly explained.

My Lords, It very well deserves your Lordships Consideration, how far this kind of Evidence is to be admitted: It has appeared to your Lordships by the Oath of Mr. *Willes* himself, that it is an Art which depends upon Conjecture; for this Gentleman has confessed, that every Man is liable to a Mistake in this, as well as in other Sciences. He tells you, that he and his Brother Decypherer varied in One or Two Instances: He allows, that the *Chasms*, which they were forc'd to leave in those letters, might alter the Sense of them. And, therefore I cannot but think, that an Accusation grounded on such Proofs, is uncertain and precarious.

The Person who is the Decypherer is not to be confuted, and what he says must be taken for granted, because the Key cannot be produced with Safety to the Publick; and, consequently (if his Conjectures be admitted to be Evidence) our Lives and Fortunes must depend on the Skill and Honesty of Decyphers, who may with Safety impose on the Legislature, when there are not Means of contradicting them for want of seeing their Key.

My Lords, in the Case of *Coleman*, the Key was printed, as has been well observed by the Counsel at the Bar; and I am very much surprized, that Gentlemen of such Abilities and Integrity, as the Members of the Secret Committee (who, in another Place, were so exact as to print the *French* Originals with the translated letters, that the World might see how just and candid the Prosecutors of the Plot were) did not, for the Satisfaction of the Publick, permit us to see the Key in print, on the Truth of which depends such a Chain of Consequences.

I own myself intirely ignorant of this Art: But, as I should be very far from condemning a Man on my own Conjecture, I should much less do it on the Conjectures of others.

The greatest Certainty Humane Reason knows, is, a Mathematical Demonstration; and were I brought to your Lordships Bar, to be try'd upon a Proposition of Sir *Isaac Newton's*, which he upon Oath should swear to be true, I would appeal to your Lordships, whether I should not be unjustly condemned, unless he produced his Demonstration, that I might have the liberty of enquiring into the Truth of it, from Men of equal Skill?

I cannot think any Man will allow Evidence of this Nature to be good: But if in this Case relating to the decyphered letters to *Dumvill*, your Lordships should admit it, there is nothing mentioned in them that can affect the Bishop, neither is he at all nam'd in them, but they are only brought to prove the Conspiracy in general.

The Examinations of Mr. *Neynoe* are the next Points that are laid before your lordships: And indeed, I must do the Gentlemen at the Bar the Justice of saying, That they forbore mentioning any thing of them, when they open'd the Charge.

They were so sensible that such Proofs could not have the least weight to affect the bishop, that tho' in the Case of Mr. *Kelly* they were produced against him, as very material to support that Bill, yet they did not think proper to name them against the bishop; which, I am thorowly persuaded, is owing to what appeared at your Bar by the Examination of Mr. *Bingley*, and the universal Opinion which every Person seemed to have of the Villany of Mr. *Neynoe's* Transactions.

My lords, These Examinations were never signed by the Person, neither was he ever examin'd to them upon Oath: So that were they of Consequence, and he a Person of Credit, they could not be admitted to affect any Person whatsoever, in any Court of Justice or Equity. I don't mean, That they could not be read according to the strict Rules of *Westminster-Hall*; which is admitted on all Sides they could not: But I dare affirm, that no Credit can be given to 'em on any Account whatsoever.

The Person was closely confin'd, and consequently in the Hands of the Government; so that he was at that Time under the greatest Apprehensions, which might, in some measure, prevent him from speaking Truth, with that Sincerity and Candour of which every Person ought to be Master, when he is examin'd on Matters of such nice Nature.

Tho' these Papers were intirely given up by the Counsel for the Bill, yet the Extract of them was read, and they are the visible Foundation of this Charge; and if they are insignificant, the whole Accusation falls to the Ground: For the whole Proof of the bishop's dictating to Mr. *Kelly*, depends on Mr. *Neynoe's* bare Affirmation.

The whole of what *Neynoe* says, or is supposed to say, is, That Mr. *Kelly* told him he wrote the bishop's letters for him: Mr. *Kelly* denies it, and Mr. *Neynoe* was so conscious that he had been guilty of many Crimes, that he endeavoured to withdraw from Justice, and the Providence of God, it is said, intercepted him.

My lords, if you will consider the Improbabilities of this Evidence, altho' it were upon Oath, and signed by him, it cannot be supported. He tells you, That he was intrusted to draw up Memorials to the Regent: Yet none of those have been produced: And yet it is apparent the Copies of them might, with Ease, have been obtained, if he had been as thorowly pressed to deliver them, as he was to declare he wrote them.

These Memorials, he says, were wrote by the Order of Mr. *Henry Watson*, whom he takes to be the late Earl *Mariball*: And I am certain your lordships did not think that Fact material, when you came to a Resolution, That the bishop of *Rochester* should not be at liberty to ask, if Enquiry was made of the said *Neynoe*, or if he gave any Satisfaction to the lords of the Council, touching that important Fact of *Watson's*, whom he took to be Earl *Mariball*, lying with him several Nights.

It was very well observed by a learned Gentleman at the Bar, That no body can believe the late Earl *Mariball* would have reposed so great a

Confidence in a Person, who was intirely a Stranger to him, and of such little Note; and the *Jacobite* Party must be in a low Condition, when they make use of such a Creature to write Papers of that Importance.

There is so much Improbability in this and other Points, and so much Contradiction in several Parts of his Examinations, that they appear to me, and must to all reasonable Men, as the Dictates of Fear, and not agreeable to Truth.

He mentions, That the Reverend Prelate (for such I still may call him) had some Favours offer'd him by the Court; but that cannot be true, and must be added to the rest of these Absurdities.

But, my lords, what in my Opinion clears up all these Matters, and makes it impossible for me to give the least Credit to this, or any other Part of the Charge, are, The several Testimonies of *Bingley*, *Skeene*, and *Stewart*.

I must observe to your lordships, That the two first Persons, *Bingley*, and *Skeene*, are actually now in separate Custodies; and consequently could have no Communication one with another. The Third is at Liberty; but his Testimony is so thorowly supported by Mr. *Gordon* and Mr. *Kynaston*, that no doubt can arise as to the Veracity of it.

These Gentlemen, who are in the Hands of the Government, are under Hopes and Fears; and therefore, it is certain, when they speak a Language, which, perhaps, may be disagreeable to those on whom they at present chiefly depend, it must be the Spirit of Truth that prevails.

Mr. *Bingley* was before us in the Case of *Kelly*, and was also examin'd at the Bar of the House of Commons, tho' not upon Oath; and tho' he has been more severely treated, as he told your lordships, and more strictly confined since his first Examination, yet he has persisted in his Story: And tho' he was so long at your Bar, and so many Questions put to him, yet he never varied in any one Circumstance, but appeared consistent thro' the whole Course of his Behaviour.

I shall not detain your lordships with recapitulating his whole Evidence, for I did it very fully on a former Occasion. But your lordships will remember, he told you, *Neynoe* abounded in Money, which *Neynoe* said (after he was apprehended at *Deal*) an Honourable Person (and on this Occasion, I hope, I may name him) Mr. *Walpole* gave him: And more particularly, he mentions 50*l.* which *Neynoe* said he received the Night before he went to *France*.

Bingley told your lordships, That *Neynoe* had assured him, he used to meet this Honourable Person in the Stable-Yard at *Chelsea*: And, my lords, the Errand on which he was going to *France*, was, To discover some Secrets relating to Cyphers, which he would have engaged *Bingley* to have done for him; and particularly, to get them, if possible, out of Mr. *Kelly*, Which, he said, could be obtain, would be of great Advantage to him.

That *Neynoe* had declared to him, He would be even with Mr. *Kelly*, before he was aware of it, or Words to that Effect: And that Mr. *Kelly* always seem'd averse to any Acquaintance with Mr. *Neynoe*, of whom he entertained a mean Opinion,

That *Neynoe's* Father refused him Money; which makes it highly probable that his Poverty was the Occasion of his Villany: And that when he was taken at *Deal*, he had declared to him, Mr. *Walpole* expected to find the Plot about him;

and since Mr. Walpole could not, he must make one for him.

Neynoe told Bingley, That this Honourable Person had vowed Destruction to the Bishop of Rochester, by saying, He would pull down the Pride of this Haughty Prelate; which is sufficient to convince your lordships how little Regard ought to be had to the Hearsay Evidence of so false a Wretch.

Mr. Bingley says, That part of this Account he had given to the lords of the Council: And I could have wished, that his Examination (as well as some others to the same purpose, which were taken about the same time) had been laid before the Parliament.

Mr. Skeene, who is also in Custody, has deposed, That he lay in the same House with Neynoe, and had some Conversations with him.

That Neynoe had told him, *What he had said of the Bishop of Rochester was intirely false.* And,

That Mr. Walpole had offered him a considerable Annuity to turn Evidence; and had given him Instructions before he was called in to the Lords, what Questions would be asked him, and what Answers he should make, and threaten'd him with Newgate if he would not comply.

Skeene says further, That Neynoe swore (and I hope the Reverend Bench will, in such a Case, permit me to repeat the Words) by God, there were two Plots; One of Mr. Walpole's, against the protesting Lords, and one of his, to bite Mr. Walpole of Money: And this seems to be the only Time that ever Mr. Neynoe averr'd any thing upon Oath.

To convince the World, what a Creature this Neynoe was, he tells Skeene further, *That once at Lord Townshend's Office, he had a great Inclination to have stabb'd the Chancellor of the Exchequer.* He tells you, That Neynoe had wrote a Paper to declare. *That all he had said of Lord Orrery was false.*

My lords, The next witness was Mr. Stewart, who was unfortunately in Custody when Neynoe was brought to Town from Deal.

Stewart says, That he slept the second Night with Neynoe: That Neynoe had told him *what he had said of the Bishop, was false; and that Mr. Walpole had offered him a great Sum of Money, if he would swear to what he said, and turn Evidence, which he declared he could not do.*

That Mr. Walpole had taken him into another Room before he was examined, and told him what Questions he would probably be asked, and what Answers he should give.

He says, That Neynoe told him also, *That he had like to have kill'd Mr. Walpole, and so put an End to the Plot: And that Mr. Walpole had given him a Paper of Directions, which he was to answer, in order to be a Witness against the Protesting Lords.*

As a Confirmation of his Testimony, Stewart says, He told this to Mr. Gordon before Mr. Neynoe was drowned, and to Mr. Kynaston before the Meeting of the Parliament.

Mr. Gordon confirms this Part of his Evidence, and assures your lordships, that he had heard it from Stewart before the Death of Neynoe. And Mr. Kynaston, a Gentleman of an undoubted Character, lately a Member of Parliament for *Shrewsbury*, has assured your lordships, That he was acquainted with Stewart's Account of Neynoe before the Meeting of the Parliament: And adds this Circumstance, That when in the *Appendix* he saw those six Questions printed, he shewed them to

Stewart, who seem'd rejoiced, and said, *You see, Sir, what I told you is true.*

Such concurring Testimonies from Persons kept so separate, and who are speaking against their own private Interest, must have the greatest Weight, and must at least prevent any rational and impartial Person from giving the least Credit to the bare Hearsay of this *Philip Neynoe*.

If any doubt could remain, as to the Validity of this Testimony, it is sufficiently confirm'd by the Persons brought to disprove it.

The Chancellor of the Exchequer himself does not pretend to deny that Neynoe told these Things, but only adds other Circumstances to convince you of Neynoe's Villany, and assures you, That at the Time he was receiving Favours from him, he was thörowly convinc'd he intended to cheat him, which was the Occasion of his being apprehended.

He own'd the Transactions between them before Neynoe went to France, and particularly the Money mention'd by Bingley; which are Proofs that Neynoe must have disclosed these Secrets since they could not come from Mr. Walpole; and He and Neynoe only were privy to it.

Mr. Walpole has shewn your lordships the foul Draught of the Questions mention'd by Stewart; and when he denies that part of Neynoe's Declaration relating to the Instructions given him before the Examinations, he owns, he was twice alone with him; once the first Night of his being brought to Town, and the second time, when he gave him the Paper of Directions, which might be Foundation enough for Neynoe to frame so notorious a Falshood.

The Witnesses brought by the Counsel for the Bill, to the Character of Mr. Bingley, seem rather to confirm it than otherwise; and all agree, they never heard any thing against his Morality.— They indeed have said, he bore the Character of a *Jacobite*; and suffered for having dispersed a Libel: But Mr. Baron Gilbert, who was his Judge when that Punishment was inflicted on him, has told your lordships, That his private life was not vilified at his Trial, and that neither Perjury nor Forgery were ever laid to his Door.

Tho' the Punishment he suffered was the Pillory, yet it is the Crime, and not the Punishment, that makes the Ignominy; and for this I can appeal to the learned Judges.

In order to destroy the Evidence of Mr. Skeene, they produced one *Pancier*, who tells you, That Skeene had revealed many Secrets to him relating to the Plot; and particularly of a Military Chest, which was collected to carry on these supposed Designs, and support the *Jacobites*.—But I presume every body who heard the two Persons at the bar, could not but remark the Steadiness with which Mr. Skeene denied these Affeверations, and the Confusion with which the other affirmed them.

Mr. *Pancier* seem'd to drop something which intirely destroys any Credit that could be given to him, by saying, That he had owned to Mr. Skeene, that he was a Friend to this Administration; and yet has sworn, That after such a Declaration, Skeene had still persisted in his Story, and revealed some Part of this Intelligence to him. How far this is probable, your lordships are the best Judges.

Mr.

Mr. *Pancier* goes further, and tells you, That Part of this Conversation happened in St. James's Park, in the presence of one *Dufour*. This *Dufour* was in the Hands of the Government; and I can't conceive why we have never seen him or his Depositions, when it would have been so easy to have brought this corroborating Witness to Mr. *Pancier's* Testimony.

I can't but think, That the not producing this Man's Evidence, is a strong Circumstance to convince your Lordships he did not agree in the same Story with Mr. *Pancier*.

They also produced *Skeene's* Attainder for the *Preston Rebellion*: But there have been many Acts of Grace since, so that he is capable of being an Evidence: and there has nothing appeared to traduce his Character as a Man of Morals.

In order to shew your Lordship's, that *Neynoe* could not possibly make these Confessions to Mr. *Skeene* and Mr. *Stewart*, the Counsel for the Bill maintain, That they will prove *Neynoe* and the Prisoners were not together after the first Night.

This, my Lords, would be very material; but I think it appears, by the proofs brought to support this Assertion, that they frequently have conversed one with another.

The first Witness they call'd, was Mr. *Crawford* the Messenger, in whose House the Prisoners were in Custody; and my Lords, I can't but say, it seems very odd, they should bring a Man to swear he had done his Duty: He has told your Lordships, That Lord *Townshend* had given him Orders, that *Neynoe* should be close confined; and if, after that, it should appear, that he had neglected such Directions, there is no question, but that he instantly, and deservedly, would have been removed out of his Employment.

This Messenger, in this Situation, tells you, That after the first Night they never convers'd, to the best of his Knowledge: That Mr. *Skeene* call'd *Neynoe* a Rogue of an Informer; and spoke in very hard Terms of him; which I indeed think it appears the Fellow well deserv'd.

Crawford says, That Mr. *Neynoe* had some paper, two Sheets of which he found missing. He likewise swears, That Mr. *Stewart* lay upon the Stairs; and owns, he had at that time two Servant-maids.

Mrs. *Crawford*, his Mother, swears, That, to the best of her Knowledge, the prisoners were never together: That she kept the Keys of the Rooms herself, but used to send up the Maid, *Hannab Wright*, with the Dinner.—Your Lordships will observe, that both this Woman and her Son swear to the best of their Knowledge only, and are far from positive Witnesses.

Hannab Wright, when she was first call'd, spoke in the same Language with them, tho' she afterwards recollected herself better.

When the Bishop came to rejoin, *Francis Wood*, *Thomas Wood*, and Mr. *Russel* severally say, That this *Hannab Wright* had declared to them, That she used to let the prisoners converse together whenever she had an Opportunity, which was when Mr. *Crawford* and his Mother were out of the way; and that she used to stand upon the Stairs and give Notice when any person came, that they might retire into their several Rooms. And the other Maid, whose Name is *Christian*, has deposed, That *Hannab* gave the Key of *Neynoe's* Room to *Stewart*, and several times desired *Stewart* to go up

to him, and that they were together an Hour or more. And when *Hannab* was called a second Time, she own'd she was turn'd away for Suspicion of having help'd *Neynoe* in his Escape; That she has left *Skeene's* Door open, who lay near *Neynoe*; and that there was a large Hole in *Neynoe's* Door, thro' which they might converse.

She said, That *Neynoe* gave her a Paper, which she was to convey for him; but that it was taken out of her Bosom, and burnt by one of the Prisoners.

When Mr. *Stewart* said, That he sat upon *Neynoe's* Bed the second Night, and lay in the Garret where there was a Partition, but a Communication between 'em, *Hannab* said, She could not be positive to that, but believes it true.

Mr. *Crawford*, when he was call'd to that Point, according to his usual Custom denies it to the best of his Knowledge.

Your Lordships will now judge, whether the greatest Credit is to be given to the Belief of a Messenger and his Mother, who are swearing that they did their Duty; or to the positive Oaths of *Skeene*, *Stewart*, *Gordon*, *Kynaston*, *Francis Wood*, *Thomas Wood*, *Russel* and *Christian*, confirm'd by the Confession of *Hannab Wright*, when she came to be cross-examined and confronted.

This, my Lords, concludes what has appear'd at the Bar, relating to Mr. *Neynoe* and his Transactions; and I am pretty certain, every impartial Body must agree with me, That so far from giving the least Credit to what he says, there have appeared such Circumstances in the Transactions which are now come to Light, that must make the greatest Caution necessary, before we believe any other part of the Charge.

Your Lordships will take notice, That Mr. *Crawford* confesses Mr. *Neynoe* had the Use of Paper, and found two Sheets missing; and *Hannab Wright* owns she had a Paper from him, which was burnt by one of the Prisoners. This, my Lords, undoubtedly was the Paper relating to Lord *Orrery*, mentioned by *Skeene* in his Evidence.

My Lords, I am now coming to the great and only Foundation remaining to support this Bill, viz. *Neynoe's* Examination: for if his Hearsay is not to be believed, which is the Proof that was offered to shew that Mr. *Kelly* was the Bishop's Secretary, and used to write for him: and particularly, That the Bishop dictated Three Letters, which were wrote in *Kelly's* Hand, and transmitted to *France* under Cover to Monsieur *Gordon le Fils*;

Then, as every Body must agree, the Bishop ought to be acquitted; and when hereafter this great Affair comes to be canvass'd by Posterity, it will stand or fall as this Fact shall be strongly made appear,

They first read *Plunket's* Cypher, and Mr. *Vanradike* attests it to be his Hand-writing.

When this Piece of Evidence was offer'd, People were at a loss to know what they intended to make of it, and little thought that they should be drove to make use of *Jackson*, standing for the Pretender in that Cypher, to shew that the letter directed to *Jackson* (one of the three before-mention'd, affirm'd to be dictated by the Bishop of *Rochester* to Mr. *Kelly*) was to the Pretender. I shall take notice of this extraordinary Proceeding

ing when I come to consider those Letters: I shall only say now, That were Mr. *Plunket's* Correspondence to be regarded, the plot is of a very deep Nature; for he has had the Impudence to insinuate the most ridiculous Aspersions against the greatest Men amongst us.

Three of his letters were read out of Cypher, in Two of which Mr. *Johnson* is named, that is Mr. *Kelly*; but neither Mr. *Kelly*; nor the Bishop of *Rochester* are allowed places in his Cypher, and consequently were not in an Association with him. *Johnson* is only spoke of by *Plunket*, when he is mentioning Domestick News, and in no other than might be in every News-Letter that went by the General Post.

My Lords, in order to shew that the Three letters sent under Cover to Mr. *Gordon le Fils*, were Mr. *Kelly's* Hand-writing, which they very justly thought was necessary to be made appear before they proved that the Bishop was concerned in them; they produced a letter of the 20th of *August*, which a Clerk of the Post-Office swears was stopt at the General Post-Office.

To convince us this letter is Mr. *Kelly's* Writing, *Hutchins* the Messenger says, To the best of his Knowledge it is Mr. *Kelly's* Hand; and at the same time owns, he never saw him write till after his Commitment, and then he stood by him while he wrote two letters, one to Lord *Townshend*, the other to Mr. *Delafaye*: Those letters were produced at the Bar, and therefore every Lord in the House is as good a Judge of the Similitude as the Messenger, who has lately been restored into Favour, on what Account I cannot tell.

If Mr. *Kelly*, during his Confinement, counterfeited and disguised his Hand, then the Messenger's Evidence can't be of any Weight; and if he wrote as usual, then every person is equally capable of framing an Opinion of it, who sees the Three Letters.

The next Witness is *Malone*, who swears, he has seen him direct letters, but can't tell how long since he saw him write, nor how often.

The persons who contradict this Evidence are, so positive, so clear, and so concurring in their Testimony, that no Doubt can rise upon it.

Mr. *Bingley*, when he was shewn this letter, swears it is not like his Hand-writing.

Mr. *Brown*, a Peruke maker, well vers'd and acquainted with his Writing, when he was shewn the letter of the 20th of *August*, and the Date of it hid, by the Counsel for the bill (so that he could not know what paper it was before him) swears, it is not his Hand-writing. When the letter to *Delafaye* was produced, he declared, That was his Hand-writing: When another paper was shewn, (I think it was the Marriage Articles) he said, That was more like his Hand-writing than that of the 20th of *August*, but he did not believe it was wrote by him; and when they question'd him upon the letter to Lord *Townshend*, he swore it was Mr. *Kelly's* Hand-writing.

Mr. *Pickering*, who had Occasion to know Mr. *Kelly's* Hand, having lent him some Money, and received several notes and letters from him during that Transaction, does agree with Mr. *Brown* in every particular and most minute Circumstance; which is a clear and evident proof, that this letter of the 20th of *August* was not wrote by Mr. *Kelly*.

The Difference which they tell your Lordships they observe, between the Cut of the letters in that of the 20th of *August*, and the others, is, That one is longer and straiter, the other wider and shorter: which is obvious to any body that will look on both, and is a Confirmation of their Veracity.

The prosecutors of the plot might have prov'd this better, and not have been driven to the Testimony of a Messenger to support this great Foundation of their Charge. It is notorious what Search they have made for Evidence of all kinds; and as Mr. *Kelly* was educated in a College, they might easily have found credible Witnesses to that point, if those letters had been wrote by him.

In the Case of Similitude of Hands, when it has been the most clearly and positively proved, as on the Trial of Colonel *Sidney*, it has been esteemed to be cruel, that a Man should be convicted on such kind of Evidence; and the Attainder of that unfortunate Gentleman was reversed for that Reason.

In *Sidney's* Trial, his bankers swore, They used to pay bills drawn by him in the Hand-writing they were shewn, and no persons could contradict them; and yet the Sentence against him was a great blemish to that Reign. The Great Lord Chief Justice *Holt*, in the Case of *Crosby*, refus'd to admit it; and the Lord Chief Baron *Bury*, on *Francia's* Trial, follow'd that Example.

At present, give me leave to say, There is no Evidence that it is Mr. *Kelly's* Hand, and there is positive proof that it is not.—Therefore, we who live under so equitable, just, and happy a Government, can never convict a Man, in these Days of Liberty, on such insufficient Conjectures.

They next produced the Three letters, which, they would insinuate, were wrote by *Kelly*, and dictated by the Bishop, which were mentioned by me before, and which were sworn by the Clerks of the Post-Office to have been stopt going to *France*.

The Bishop desired to examine them relating to these letters being detain'd, and would fain have known who took them out of the Mail: this he thought was proper for him to demand, since he seem'd to insinuate, That he question'd their ever having been in the Post-Office. But your Lordships would not suffer any Enquiry to be made on this Head, and voted it inconsistent with the publick Safety, and unnecessary for the Defence of the prisoner, to permit any further Questions to be ask'd in relation to this important Affair.

These honest Gentlemen, the Clerks of the Post-Office, have deposed further, That the papers produced, are true Copies of the Originals detain'd by them; tho', at the same time, they confess, they never examin'd them after they had copied them.

They positively swore further, That the Originals were of the same Hand with the letter of the 20th of *August*, tho' they affirm this barely upon Memory, never having mark'd any letter in order to know it again: and one of them declared upon Oath, That he did not believe there could be such an Imitation of *Kelly's* Hand as could deceive him; tho' the whole House agrees That Hands may be counterfeited so as to deceive the Men that wrote them.

They

They own, they never compared two original letters between the 20th of *April*, and 24th of *August*, tho' they might have stop't a letter one Post, without Prejudice to the Government, in order to be more certain in their Evidence.

Thus, my Lords, should this Bill pass, [this great Man must fall by the Dependence this House must have on the Memory of these Clerks.

Mr. *Lewis*, who has long serv'd in the Secretary's Office, tells us, that frequently letters and Seals used to be counterfeited: and, in a more particular manner, by one *Brocket*, who excelled so much in this Art, that he has cheated many Persons, and has so far deceived them, that they have not known his Copy from their own Originals.

When these letters, thus attested, came to be read, they are in Cypher; so that it must again depend on the Honesty of a Decypherer, before they can possibly be made Treasonable.

Mr. *Willes* declares, They were truly decyphered according to the best of his Judgment and Skill; and more particularly, that the Number 1378, which is subscribed to the third letter directed to *Jackson*, stands for the letter *R*. But when some Lords ask'd him a Question, which perhaps had he answer'd, might have proved him to be under a Mistake; he refuses to give an Answer, either in the Affirmative or Negative, for fear of revealing his Art. Your Lordships thought proper to prevent any further Cross-Examination of this Gentleman, by a Resolution.

Mr. *Willes* says. He shew'd these letters decyphered to my Lord *Townshend*, before he communicated them to Mr. *Corbire*, who is a Clerk in the Secretary's Office, and then he says, That Mr. *Corbire* and he agreed.

Before these letters can yet prejudice the Bishop, the Cant Names in them must be explain'd, according to the Key which the Prosecutors of the Plot have made; and in order to it we must believe that *Jackson* stands for the Pretender, because Mr. *Plunket* gave him that Title in his Cypher. Can there be a greater Absurdity, than to imagine a Person of the Bishop of *Rocheſter's* Capacity, should borrow a Name of that Consequence, from so insignificant a Wretch as *Plunket*, who it does not appear ever saw him?

Indeed, the Counsel for the Bill did not read these letters against the Bishop, since they had no Proof of his dictating them, and they were only read on Account of the general Conspiracy.

I must observe, It was a great Artifice of these learned Gentlemen, whenever there was a Piece of Evidence to which the Bishop objected, they constantly pretended, they produc'd it to the Plot in General; for they knew it could not be admitted against the Reverend Prelate: But yet when they came to sum up, they applied them to this particular Case; which is not agreeable to that Candour that is necessary on such Occasions.

If your Lordships should be of Opinion, that *Kelly* wrote them; that they were stopp'd at the Post-Office; that they were duly copied; that they were truly decyphered, and the Cant Names explain'd; yet still this cannot affect the Bishop, unless it be fix'd upon him that he dictated them: Two of them were sign'd *Jones* and *Illington*, and to induce your Lordships to believe the Bishop was Guilty, as they affirm'd, they endeavour to prove those Names must denote him. And, in Order to it, they read some letters, affirm'd in the same manner, (as before mention'd) by the

Clerks of the Post-Office, to be his Hand-Writing: But first they read a Cypher taken upon Mr. *Dennis Kelly*, and sworn by the Messenger *Hutchins* to be wrote by *George Kelly*.

I can observe nothing upon this Cypher, but that the Bishop of *Rocheſter* is not mention'd in it; which seems very extraordinary, and is not a Proof of the Reverend Prelate's being in a Conspiracy.

The letters they read of Mr. *Kelly* are of no Moment, and are only calculated to fix the Names of *Jones* and *Illington* upon the Bishop.

They give an Account of his Lady's Death, the Bishop's own Illness, his going to and from *Bromley*; and in some of them, the Dog *Harlequin* is mentioned.

It seems repugnant to Reason, that in a Treasonable Correspondence of this Importance, a Gentleman should venture his life to give an Account of the State of one Person's private Affair, and entertain his Friends Abroad with no other Business in such a Tract of Time.

In the letters directed to Mr. *Andrews* at the *Dog and Duck*, which are proved to have been received by Mr. *Kelly*, *Jones* and *Illington* are not named; and those in which we find them, were such as pass'd thro' the Post-Office, and were attested like those under Cover to *Gordon le Fils*.

It is not likely, that in a Transaction of so secret a Nature, Mr. *Kelly* should take such Pains to give such a Description as might give the least room for a Suspicion that the Bishop was concerned; much less to have mentioned so many Particulars, as it may be suggested he has done, if there could be any Possibility of wresting the Meaning of *Jones* and *Illington*, and interpreting of them to mean the Bishop.

William Wood, the Bishop's Coachman, is brought to prove the particular Times of the Bishop's being in or out of Town, in order to shew, that they agree with the Times mentioned of *Jones* and *Illington* in the intercepted Correspondence; and he refreshes his Memory by a Book of *Memo-randums*, which might have been destroyed, if it had been apprehended by the Bishop's Friends, that such Evidence could affect him.

What they next attempt, was to shew, That the Dog brought over by Mr. *Kelly* from *France*, and which Mrs. *Barnes* swears, that he once told her was for the Bishop of *Rocheſter*, was a strong Circumstance to fix the Name of *Illington* on the Bishop.

My Lords, Mrs. *Barnes*, who is under the Custody of a Messenger, is the only Witness to this Point; and what she says, is only Hearsay from *Kelly*: She owns that *Kelly* never told her so but once, and that was when she thought to have kept it for herself: And indeed, it might be barely an Excuse to prevent his parting with it, for he had promised to bring her such a Present before he went to *France*.

She owns, that to her Knowledge, the Bishop never saw the Dog, nor sent any Message about it; which seems to be very extraordinary, that if this Present was of such great Consequence, he should not have had Curiosity enough, at least, to see it: An Affidavit was read from *Birmingham*, a Surgeon in *Paris*, which says, That he gave this Dog to Mr. *Kelly*, for Mrs. *Barnes*.

Before I leave this Circumstance of the Dog, it is proper to observe another great Improbability, which is, in a letter wrote a few Days after the Death of the Bishop's Lady, it is said, Mrs. *Illington* was in great Tribulation for the loss of poor

Harlequin; and can it be supposed, that at a Time when the Bishop was in Affliction for the Death of his Wife, he should indecently discover so much Grief for such a Trifle?

I think this is sufficient to convince any Person whatsoever, that this Correspondence is of a very extraordinary Nature.

Mrs. *Barnes* has told your Lordships, That Mr. *Kelly* came from *France* the 11th of *April*.

My Lords, I am now come to the only Piece of Evidence that seems particularly levelled at the Bishop; which is, The Proof that has been given of the dictating those letters: and unless this be clearly and plainly made appear, I cannot conceive that any thing can be laid to this Prelate's Charge.

Unless it is evident, that the Bishop did dictate as alledged, I cannot think any of your Lordships can vote him Guilty according to the Rules of Justice; for no Man is safe either in his Life, Liberty, or Fortune, if he may be deprived of either, on account of a Correspondence in which it does not appear he was concerned. Tho' your Lordships should so far credit the precarious Evidence at your Bar, as to believe that *Jones* and *Illington* stood for the Bishop of *Rochester*; yet unless it is plain that it was with his privity, it is certainly impossible this Bill should pass: And if it should, it will hereafter be in the power of any two Men, one at Home, and one Abroad, to ruin the most innocent Person, by entring, without his Knowledge, into a Correspondence of this Nature.

If the being named in Treasonable letters be a Crime, tho' it does not appear it was with the privity of such Persons, I will submit to your Lordships, how far Men of the greatest Zeal to the present Establishment, are to be affected by Mr. *Plunket's* Insinuations.

No Man ought to suffer for the Suggestions of another Person, unless it appears he has given great Foundation for them. And in this Case, would it not be most extraordinary and most unjust, to punish this Reverend Prelate, for a Crime which there is no Proof he ever committed? I mean, the dictating of these letters. And if, on the other hand, the unfortunate Circumstances of his Affairs have furnished him with Means of shewing, beyond Contradiction, that he could not be concern'd in the letters of the 20th of *April*; that for a considerable time he could not see Mr. *Kelly*; and that there never was an Intimacy between them: Then, my Lords, I hope, every Man who gives his Vote for the rejecting this Bill, has the strongest Evidence of his Side to support his Opinion; and need not be afraid or ashamed to own it here, or any where else.

This part of the Evidence being of great Consequence, I must beg your Lordships Attention, whilst I recapitulate the Heads of it, as clearly and distinctly as possibly I can.

The first Witness they call'd, was *Flower*, a Chairman, who swears, That he carried *Kelly* twice or thrice to the Deanery; but that the Bishop was never at Home, and consequently did not see him. His Partner swore, he had carried him, with *Flower*, one of those Times.

The next Person produced, was a Porter, one *Vanlear*, who deposed, That he went about *Christmas* was Twelve-Months, twice, with Messages from *Kelly* to the Bishop; the last of which Times, he carried some *Beaver* Stockings; that the Bishop sent for him up Stairs, gave his Service to Mr. *Johnson*, and thank'd him for his Present.

Mrs. *Kilburne*, at whose House Mr. *Kelly* lodged, says, That once a Servant came from the Bishop, to know how Mr. *Johnson* did, and was sorry he could not have his Company at Dinner.

William Wood, the Bishop's Coachman, says, he, once stopp'd in *Bury-Street*; but does not know for what; and that the Bishop sent a Servant some where, who presently returned. And,

Lloyd, who keeps the *Star and Garter* in *Palace-Yard*, has told us, That *Neynoe* once came to his House, and told him, he staid for an ingenious Gentleman, who was gone to the Bishop of *Rochester's* House.

This, my Lords, is all the Proof they offered of this Intimacy; from which they would infer, that the Bishop dictated these letters, and is consequently Guilty of the Crimes laid to his Charge.

If your Lordships consider what was produced on the other side, I am sure you must agree there is no Foundation for this Assertion.

Mrs. *Kilburne* denies, to the best of her Knowledge, that the Bishop ever came to her House, or that his Coach ever stopp'd there, or ever was sent for *Kelly*.

That *Kelly* did not go out of Town, from the time he came from *France*, till he was taken up, the 19th of *May*, and never lay out of her House one Night.

This, my Lords, was confirmed by her Maid *Anne Ellis*.

Mrs. *Barnes* says, She never heard of any Message from the Bishop to *Kelly*, nor ever had any Conversation with him about the Bishop.

William Wood the Coachman, who liv'd with the Bishop four Years, has declared, that the Bishop of *Rochester* never sent him with his Coach to *Bury-Street* to fetch any Person from thence, that there was no Stranger at *Bromley* for a Fortnight before his Lady died, which was the 26th of *April*; that no-body could come in a Coach or on Horseback, but he must know it; that he never saw such a Person as Mr. *Kelly*, till he was shewed him at the *Tower*; and, that the Bishop went ill of the Gout to *Bromley* the 12th of *April*, and did not return to *London* till the 7th of *May*.

Malone, Mrs. *Barnes's* Servant says, That she never saw the Bishop, or any of his Servants, with Mr. *Kelly*.

Thomas Grant, who has been the Bishop's Servant nine Years, has declared, That the Bishop went to *Bromley* the 12th of *April* very ill of the Gout, and that no Stranger could come to him, from the time he went to *Bromley*, till after his Wife's Death; that one or other of the Servants always sat up with him; and that no Person could visit him, but they must know it; for they were either in the same Room, or the next Room to him: and that no Stranger, except Dr. *Aldridge* and the Apothecary, came near him. *Grant* says, That he was forc'd to go to Town to attend at the *Westminster* Election of Scholars on the 21st of *April*, but left *Beauchamp* there, who came down for that purpose on the 18th.

Beauchamp and *Steen*, who were the two Servants that attended with *Grant*, swear the same thing.

Susannah Harvey, *Sarah Jones*, *Thomas Farnden*, *Elizabeth Higginson*, and all the Servants agree, that they never heard of any person by the Name of *Kelly* or *Johnson's* being with the Bishop. And,

Mrs. *English*, who took the Names of the Bishop's Visitors for many Years, does not remember, that she ever heard of such a Person as *Kelly*

or *Johnson*. And I doubt not, but that every Lord must allow, that it is not possible to have a more clear, a more strong, or legal Proof to a Negative, than this is.

I must observe to your Lordships, that most of these Servants have been in strict Custody, and severely used, particularly *Farnden*, and yet your Lordships see how unanimous they are in their Evidence: and their Testimony is so positive, that I cannot conceive any person can suggest there was the least Intimacy between this Reverend Prelate and Mr. *Kelly*; and much less, that he could be with him to write the letters that are dated the 20th of *April*.

Mr. *Reeves* did, indeed, so far agree, as to be of Opinion, that they might have been wrote the 11th of *April*, which was the Day *Kelly* came from *France*: But, my Lords, Mrs. *Barnes* has deposed, he went to Bed the Minute he came home, and lay there for a considerable time; besides, it is improbable that letters wrote the 11th, should not be sent till the 19th. But if any further Argument was necessary to confute this absurd Supposition, the Earl of *Sunderland's* death is mentioned in the letter to *Chivers*, and that Noble Lord died the 19th; at which Time it hath been proved, Mr. *Kelly* was not with the Bishop.

The Bishop of *St. Asaph* did at first peremptorily contradict one part of Mr. *Grant's* Evidence, by saying, he had received a letter from the Bishop of *Rochester*, at the Time which *Grant* has sworn he was so ill of the Gout that he could not write.

His Lordship positively affirmed, That he received this letter on *Saturday* the 21st of *April* in the Morning, and saw *Grant* in *London* between Twelve and Two: But when it was proved that *Grant* did not leave *Bromley* till the Evening of that Day, and that another person officiated for him as Butler in the Deanery, by Reason of his Absence, then the Bishop seemed to think himself under a Mistake, and allowed it might have been some time before.

His Lordship owned, He never received a letter from the Bishop of *Rochester* before nor since, and therefore was a Stranger to his Hand.

I could have wished this Reverend Prelate had recollected himself more fully, before he had given his Testimony in a Matter of this great Importance to one of his Brethren.

There was another Witness examined, which was *Crofton* the Shoemaker, to prove, that *Talbot* (who was said to have received the three letters directed to *Gordon le Fils*) was at that Time in *London*, when he was supposed to have been in *Boulogne*. *Crofton* swears he saw him in Town the 29th of *April*, and proved it by his Book.

There was another person called, whose Name was *Donner*, that deposed, *Gordon* owned to him the receiving of this packet; but an Affidavit was produced from *Gordon*, in which he denies it. *Donner's* Evidence is only hearsay, the other is positive.

My Lords the Counsel for the Bill produced some papers which were taken in the Bishop's Custody when he was apprehended, and endeavour to draw very ill-natured and forced Constructions from them.

The First was a letter from the Dutches of *Ormond*, in which she acquaints him, That she had something to send him, which she could not trust to a better Hand; or Words to that effect. And this they would pretend to insinuate, were some treasonable papers.

I appeal to all Mankind, whether it is not very extraordinary to suppose, that the Bishop should be presumed to convey a Traitorous Correspondence thro' that Channel. Every Body knows the Friendship which was between the Reverend Prelate and that Family; and it is not surprizing that this unfortunate Lady should think him a proper person to consult, and intrust with her own Affairs. Therefore I can't think, that these general Expressions can at all affect him.

The next they read, is a paper found, or pretended to be found, at the Deanery, subscribed to *Dubois*, but without Date: In this the Person who writes it, says, He received a letter by Mr. *Johnson*, to which he returned an Answer in his Hand.

The Secret Committee, at first, apprehended that this was received by the Bishop; and thus it passed, till upon seizing a letter wrote in the *Tower* by his Lordship, they found a Similitude in the Seals, which immediately enlightned them, and then it was presently said to have been wrote by the Bishop.

They then wanted to fix this to be the Bishop's own Hand-writing, and they could find no other Way of doing it, but pretending there was a Similitude between the E's in this letter, and those which the Bishop generally used. I believe it is the first time that ever such an Argument was brought to prove that the whole letter has been wrote by a Person: much less was it ever pretended to be offered to a Court of Justice against any prisoner whatsoever: But, I believe, there is no Man acquainted with the Bishop's Hand, but sees it is not wrote by him.

They would also affirm, that when in this letter the Bishop is supposed to say, That he returned an Answer in Mr. *Johnson's* Hand, it must be understood to be his Hand-writing: which, I must confess does not at all appear to be a necessary Conclusion; for he might deliver his Answer into Mr. *Johnson's* Hand, which, I think, is more natural to suppose than the other.

Your Lordships must judge, how improbable it is, that the Bishop should keep such a letter by him, which he wrote himself; or that when such Care is taken, as the prosecutors of the plot themselves say, for preventing any person's discovering the Intimacy between Mr. *Kelly* and him, such a Secret should be trusted in Writing, and even without a Cypher. — The Two Seals which gave this Turn, are *Cicero's* Heads, which are very common. And are to be found every where. They are one broke, the other whole, which must make it very difficult to judge of them: and it is allow'd, that, at best, it is but precarious Evidence.

If Mr. *Neynoe* speaks Truth, when he said, The Bishop had Notice of the Storm that threatned him, I am certain, that this paper, if it could have been apprehended of Consequence, would have been destroyed: But, I believe, it was impossible for him, or any body else, to think it should meet with such an Explanation.

The next letter they produced, which they seemed to think material, was that which was seized on his Servant going to Mr. *Morrice*: In this he says, That the Evidence of *Plunket*, and those people, could not affect him; but as he does not mention Mr. *Kelly*, they would have it presumed, that this a proof, that *Kelly* could have said something of him. But, I think, this must appear to be a very ill-natured Assertion.

Your lordships will consider, he was then writing

ing to his Son-in-law; and therefore no great Accuracy was necessary.

In another place, he says, That if they impeach'd him, he should remain in prison for some time; and this they would decypher to be an Implication of his Guilt.—But, in my poor Opinion, it is the Reverse: He seems to say, That if the Commons should be induced to send up an Impeachment against him, he was so satisfied of his own Innocence, and your Lordships Justice, that he thought the Confinement till his Trial, would be the only Misfortune that could attend him. The Example of the Earl of *Oxford* was recent in his Memory, and might justly create in him a Fear of undergoing a long Imprisonment.

It is objected, That he, in this Letter, makes no protestations of his Innocence: But if you will consider he writes to Mr. *Morrice*, I believe every body will agree, that such Declarations were not necessary.

Mr. *Layer's* Attainder was read; but it does not appear, That the Bishop had any Correspondence with him; therefore I can't conceive why we were troubled with it.

My Lords, I have now gone thro' the whole Evidence that is brought to justify this extraordinary proceeding, and must observe the Steps that have been taken to procure all the possible Means to work the Destruction of this Great Man.

You have seen his very Servants confined, who, it does not appear, were guilty of the least Glimpse of Treason.

Lawson, a Baker of *Bromley*, who appeared at your Bar, has been employed to examine the persons in the Bishop's Neighbourhood, in order to find the least particular that could amount to the Shadow of a proof; and went so far, as to offer *Wood* the Coachman the Wages that were due to him, if he would have gone the lengths that were required.

Mr. *Bingly* told us in the Case of *Kelly* (and as it has not been disproved, it is to be taken for granted) that a Warrant was shewn by the Messenger, signed by a Secretary of State, to carry him to *Newgate*, which he was told was unavoidable, unless he would own the letter of the 20th of *August* to be Mr. *Kelly's* Hand-writing: But it appeared the next Day, to be nothing but in order to terrify him.

Mr. *Kelly* himself has told your Lordships, That Mr. *Delafaye* offered him his own Terms, if he would have turned Evidence: And this was done to destroy the Bishop of *Rocheſter*; or, to speak in the language mentioned at your Bar, *To pull down the Pride of this haughty Prelate*.

Your Lordships may remember, That Mr. *Wearg* objects to the Bishop's Servants, because two of them had Employments, as appears by his Lordship's own letter: but, my Lords, when they were examined, they acquainted the House, that it was upon reading of the *Report*, that they recollected the Bishop's Circumstances before the Death of his Wife. And if every Man who has a Place under the Bishop, is not to be esteemed a free Agent, when he is upon Oath, I hope it will be allowed, on the other hand, that those who have Employments under the Government, ought not to be admitted; then all the Witnesses that have been brought to support the bill, from the Decypherer to the Messenger, will be discredited, and the whole Prosecution must fall to the Ground.

My Lords, it has been a Hardship that has attended the Bishop, that he has been forced to prove a Negative; and the Difficulty has been the stronger upon him, that your Lordships have not permitted Mr. *Kelly* to be examined, as was moved by a Learned Lord, in my Eye; and if the Gentleman had sworn what he so solemnly affirmed at your bar, relating to this Affair, I can't conceive we could have had the least Debate.

The Noble Lords who appeared the most zealous in this prosecution, were those who opposed the Examination of Mr. *Kelly*; which in my poor Opinion, is a strong Argument, That, if he had been brought before us, he would have persisted in his Declarations of the Bishop's Innocence.

The Reverend Prelate has desired of any Lord in the Administration, and even the Honourable Person who appeared at your bar, to declare, whether any one single Person had charged him (on their own Knowledge) of being guilty of any treasonable Practice. And it has appeared to the contrary: Therefore this whole Charge is founded upon the slight Circumstances and improbable *Innuendoes* before-mentioned.

Another Objection, which has been raised, is, that Mr. *Kelly* made Resistance, when he was seized, till he had burnt some of his Papers: But, my Lords, I don't see any Reason to lay this to the Charge of the Bishop.

Kelly is to answer for his own Actions, and is unfortunately like to suffer for 'em: A Person of his Age might have many letters in his Custody, which he did not Care should be seen, and yet of a different Nature from a Traiterous Correspondence.

After this Evidence is considered, I cannot think your Lordships will establish such a Precedent, which hereafter may be employed to ruin the greatest amongst you. And if ever hereafter, pains and penalties are unjustly inflicted on any person, posterity will derive the Original of such Bills from the proceedings of this Parliament; and what Opinion will be framed of us, should this be passed into a Law, I submit to every impartial Person.

It must be left to your Lordships Consideration, which will be of most fatal Consequence to the Publick, The leaving this Precedent (of Condemning on such kind of Evidence) like a Sword which your Enemies may take up when they please, or the banishing the Bishop of *Rocheſter*, in the Evening of his Days, who alone could do, in his single Person, no Prejudice to the Constitution. If he were inclined to overturn it, as his Enemies suggest, he is in a better Situation Abroad than at Home, to execute that Design, and direct the Counsels of the Disaffected. The Ruin of one Man will not heal the Wound, that the passing of this bill seems to make in the Government of this Kingdom.

It has been said in the Debate, That the bishop ought to have made Protestations of his Zeal for his Majesty and his Family: But, I think he took the most ready Way of performing his Duty, when he shew'd himself Innocent of the Crimes laid to his Charge.

If he had made use of any Expressions, which those lords blame him for omitting, the same *Good nature* would have call'd it *Hyprocrisy*; and those who are displeas'd with his *Silence*, would have accused him of *Insincerity*.

My

My lords, this bill seems as irregular in the Punishments it inflicts, as it is in its Foundation, and carries with it an unnatural Degree of hardship.

It is Felony for his Children to correspond with him: And in this Circumstance, it is different from the only bill that carries with it the least Resemblance of this; I mean, That for the banishment of the Earl of *Clarendon*.

The Earl had flown from the Prosecution, and retired beyond Sea. The Charges against him were, principally, *for advising a Standard Army*; and another Article exhibited was, *That he had advised and procured divers of his Majesty's Subjects to be imprison'd against Law, in remote Islands, Garisons, and other Places, thereby to prevent them of the Benefit of the Law, and to produce Precedents for the Imprisoning any other of his Majesty's Subjects in like Manner.*

The 7th Article against him was, *That he had, in a short Time, gain'd to himself a greater Estate than can be imagin'd to be gain'd lawfully in so short a Time: And contrary to his Oath, he had procured several Grants under the Great Seal from his Majesty, for himself, and his Relations, of several of his Majesty's Lands, Hereditaments and Leases, to the Disprofit of his Majesty.*

There need not have been any Witnesses of these Crimes, for they were apparent; and every body knew that he was *Prime Minister*: Yet Sir *Francis Goodier*, upon that Debate in the House of Commons; declared the Sentiments which I express'd at the Beginning, *That he was not against Proceeding, but unsatisfied to do it without Witness, it being like swearing in verba Magistrum.*

Another great Man, upon the same Question, and an Ancestor to a Noble Lord near me, said; *That if the Parliament set aside Law in this Case, we should be happy to see Law declaring the Power of Parliaments.*

The Punishment for Corresponding with the Earl was High-Treason, and then Two positive Witnesses were necessary to convict: But in this Case, one corrupt, terrified, and perjurd Person may take away the Life of the most innocent Man.

There is another great Misfortune which this Bill brings upon the bishop, which is, That he is incapable of receiving his Majesty's Pardon. This, my lords, is an Entrenchment upon the Prerogative. And what must make it the more severe in this Case, is, That his Majesty's Inclinations to Mercy (which are the distinguishing Characters of his Life) are stop'd by this Law, which the unfortunate Prelate might have Hopes of receiving when he had merited it, by a dutiful behaviour to the Country that had sent him to wander abroad in Exile, and by his future Conduct have confirm'd, if possible, the Evidence he has given of his Innocence.

My lords, in the Case of the Earl of *Danby*, your lordships have declared, That his banishment should be no Precedent, nor drawn into Example for the Time to come, and have so enter'd it in your Journals.

It has been prov'd, That this Reverend Prelate was at the time that he was suspected to be acting in Treason, engaged in Studies of the most high Nature, which is a Circumstance that ought to have some Weight.

If this Bill pass into a Law, such Evidence is establish'd, and such a Method of Proceeding introduc'd, as must effectually render all that is dear to us precarious; and if ever, hereafter, we

should see a wicked Administration, supported by a corrupt Majority in Parliament, this Step taken in these Times of Liberty, will be a sufficient Precedent to give a Colour of Justice to the Actions of those who should be wanton in Tyranny.

The Reverend Prelate, who spoke before me, mentions some Cases relating to Bills of Attainder, which in my poor Opinion, differ very much from our present Question.

The Attainder of Sir *John Fenwick* was only to supply the want of a Witness who had deposed against him upon Oath before the Grand-Jury, and who was spirited away by the Prisoner's Friends: But at present, your lordships are to supply the Defect of Evidence, by condemning on improbable Conjecture. There was a Noble Lord in this House the other Day, I don't see him now, who made the greatest Figure in Opposition to that Bill, I wish we could have his Assistance on this Occasion.

My lords, since that Reverend Prelate has quoted some Cases, he will permit me to remind him what has been formerly said upon Acts of Attainder; That such Bills, like *Sisyphus's* Stone, have frequently roll'd back upon those that were the chief Promoters of them.

This prudential Argument should restrain us from being too forward with them at this Time of Day.

The Act for the Attainder of the Earl of *March* pass'd, because he had been instrumental in procuring the Attainder of another lord, under pretence of a letter, which the Record says, was no Evidence.

The lord *Cromwell* is another known Instance of this Observation: He was the first who advised this violent Proceeding in *Henry* the 8th's Time: And it is remarkable, that the Advice he gave to the Ruin of others, prov'd, not long after, fatal to himself.

I have now given your lordships the Reasons why I am against the Bill. I fear I have tired your Patience, and shall therefore conclude with the Words of the Great Man I before mentioned; I mean, Sir *Heneage Finch*, in the Case of the Earl of *Clarendon* — 'We have an Accusation upon Hear-say, and if it is not made good, the blackest Scandal Hell can invent, lies at our Doors.'

The Result of this Debate was, that the Bill, pass'd the House; it afterwards obtain'd the Royal Assent, and was as follows:

An Act to inflict Pains and Penalties on Francis Lord Bishop of Rochester.

WHEREAS in the Years One thousand seven hundred and twenty one, and One thousand seven hundred and twenty two, a detestable and horrid Conspiracy was formed and carried on by divers Traitors for invading your Majesty's Kingdoms with foreign Forces, for raising an Insurrection and Rebellion against your Majesty, for seizing the *Tower* and City of *London*, and for laying violent Hands upon your Majesty's most sacred Person, and upon his Royal Highness the Prince of *Wales*, in order to subvert our present happy Establishment in Church and State, by placing a Popish Pretender on your Throne: And whereas for the better concealing and effecting the said Conspiracy, divers treasonable Correspondences were, within the time aforesaid, carried on by Letters

written in Cyphers, cant Words, and fictitious Names; which Conspiracy, had it not been disappointed by the Goodness of Almighty God, would have deprived your Majesty's Kingdoms of the Enjoyment of their Religion, Laws and Liberties, involved them in Blood and Ruin, and subjected your people to the Bondage and Oppression of *Romish* Superstition and Arbitrary Power: For which execrable Treason *Christopher Layer* hath been indicted, tried, convicted, and attainted. And whereas *Francis* Lord Bishop of *Rochester*, notwithstanding the many solemn Assurances by him given of his Faith and Allegiance to your Majesty, by taking the Oaths by Law appointed to be taken, instead of the Oaths of Allegiance and Supremacy; which Oaths he had likewise taken at sundry Times, during the respective Reigns of their late Majesties King *William* and Queen *Mary*, and of her late Majesty Queen *Anne*; and notwithstanding he had frequently abjured the Pretender, hath, in direct Violation of his said repeated Oaths and Obligations, and to the great scandal of Religion, and his Holy Function, been deeply concerned in forming, directing, and carrying on the said wicked and detestable Conspiracy, and hath been a principal Actor therein, by traitorously consulting and corresponding with divers Persons to raise an Insurrection and Rebellion against your Majesty within this Kingdom, and to procure a foreign Force to invade the same, in order to depose your Majesty, and place the Pretender on your Throne; and by traitorously corresponding with the said Pretender, and Persons employed by him, knowing them to be so employed: Therefore to manifest our just Abhorrence of so wicked and abominable a Conspiracy, and our Zeal and tender Regard for the Preservation of your Majesty's Person and Government, and of the Protestant Succession in your Majesty's Royal Family, the solid Foundations of our present Happiness and future Hopes; and to the end that no Conspirator may, by any subtil Contrivance or Practice whatsoever, escape Punishment, and that all others may by the Justice of Parliament be for ever hereafter deterred from engaging in any traitorous Conspiracies or Attempts, We your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal, and Commons in Parliament assembled, do humbly beseech your Majesty, that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in Parliament assembled, and by the Authority of the same, That the said *Francis* Lord Bishop of *Rochester*, from and after the first Day of *June*, in the Year of our Lord One thousand seven hundred and twenty three, shall be, and is hereby, to all Intents and Purposes, deprived of all and singular his Offices, Dignities, Promotions, and Benefices Ecclesiastical whatsoever, and that the same, and every of them, shall from thenceforth be actually void, as if he were naturally dead; and that the said *Francis* Lord Bishop of *Rochester* shall from thenceforth for ever be disabled, and rendered incapable of and from taking, holding, or enjoying any Of-

fice, Dignity, Promotion, Benefice, or Employment within this Realm, or any other his Majesty's Dominions, and also of and from using or exercising any Office, Function, Authority, or Power Ecclesiastical or Spiritual whatsoever; and shall and do suffer perpetual Exile, and be for ever banished this Realm, and all other his Majesty's Dominions, and shall depart out of the same on or before the Five and twentieth Day of *June*, in the Year of our Lord, One thousand seven hundred and twenty three: And that if the said *Francis* Lord Bishop of *Rochester* shall return into, or be found within this Realm, or any other his Majesty's Dominions at any time after the said Five and twentieth Day of *June*, in the Year of our Lord, One thousand seven hundred and twenty three, he the said *Francis* Lord Bishop of *Rochester*, being thereof lawfully convicted, shall be adjudged Guilty of Felony, and shall suffer and forfeit as in Cases of Felony, without Benefit of Clergy, and shall be utterly incapable of any Pardon from his Majesty, his Heirs or Successors.

And be it further enacted by the Authority aforesaid, That all and every Person and Persons, who shall, from and after the said Five and twentieth Day of *June*, in the Year of our Lord One thousand seven hundred twenty three, be aiding or assisting to the Return of the said *Francis* Lord Bishop of *Rochester* into this Realm, or any other his Majesty's Dominions, or shall harbour or conceal him within the same, or any of them, being thereof lawfully convicted, shall be adjudged Guilty of Felony, and shall suffer and forfeit as in Cases of Felony, without benefit of Clergy.


And be it further enacted by the Authority aforesaid, That if any of the Subjects of his Majesty, his Heirs or Successors, except such Persons as shall be licensed for that Purpose by his Majesty, his Heirs or Successors, under his or their Sign Manual, shall, from and after the said Five and twentieth Day of *June*, in the Year of our Lord One thousand seven hundred and twenty three, within this Realm or without, hold, entertain, or keep any Intelligence or Correspondence in Person, or by Letters, Messages, or otherwise, with the said *Francis* Lord Bishop of *Rochester*, or with any Person or Persons employed by him, knowing such Person or Persons to be so employed, such Person so offending, being thereof lawfully convicted, shall be adjudged Guilty of Felony, and shall suffer and forfeit as in Cases of Felony, without benefit of Clergy.

And be it further enacted, That if any Offence against this Act shall be committed out of this Realm, the same shall or may be alledged, laid, enquired of, and tried in any County within *Great Britain*.

In pursuance of this, on *Tuesday* the 18th of *June*, the deprived bishop of *Rochester*, accompanied by his Son-in-Law Mr. *Morrice* and his Wife, embark'd on board the *Aldbrough*, one of his Majesty's Ships of War, and on *Friday* the 21st, landed at *Calais*.

CXCV. *The Trial of Thomas, Earl of Macclesfield, Lord High Chancellor of Great Britain, before the House of Lords, for High Crimes and Misdemeanors in the Execution of his Office, May 6, 1725.*
10 Geo. I.

The FIRST Day.

BOUT Eleven of the Clock, the Lords being seated in their House, the Managers for the House of Commons being in the Conveniencies made for them at their Lordships Bar, Thomas Earl of Macclesfield, having a Stool plac'd for him within the Bar, and his Counsel, viz. Mr. Serjeant Probyn, Doctor Sayer, Mr. Lingard, Common-Serjeant of the City of London, Mr. Robins, and Mr. Strange, standing near him at the Bar, the Serjeant at Arms made Proclamation as follows :

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

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

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

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

A R T I C L E S

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

WHereas the Office of Lord Chancellor of *Great Britain* is an Office of the highest Dignity and Trust, upon the impartial and uncorrupt Execution whereof the Honour of the Crown, and the Welfare of the Subjects of this Kingdom greatly depend: And whereas *Thomas Earl of Macclesfield*, in or about the Month of *May*, in the Year of our Lord, One thousand seven hundred and eighteen, by the great Grace and Favour of his most Excellent Majesty, was constituted and appointed Lord Chancellor of *Great Britain*, and did thereupon take the usual Oath for the due Execution of that High Office, whereby he did swear well and truly to serve our Sovereign Lord the

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

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tinued in the said Office of Lord Chancellor, did Illegally, Corruptly, and Extorsively take and receive to his own private Use the following or some other great Sums of Money.

ARTICLE I.

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

ART. II.

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

ART. III.

That *John Borret*, Esq; having contracted with

John Meller, Esq; One of the Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of Nine thousand Pound, or some other great Sum of Money; the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *John Borret* into the Office of one of the Masters of the Court of Chancery, did, by colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively insist upon, take and receive of and from the said *John Borret* the Sum of fifteen hundred and seventy-five Pounds, or some other Sum of Money, for the admitting him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *John Borret* should have, exercise and enjoy the same, which said Office touches and concerns the Administration and Execution of Justice in the said Court; and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same infamous and corrupt Nature, did admit and swear the said *John Borret* into the Office of one of the Masters of the said Court of Chancery, upon the Surrender of the said *John Meller*, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholesome Laws and Statutes of this Realm.

ART. IV.

That *Edward Conway*, Esq; having contracted with *John Orlebar*, Esq; one of the late Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of Six thousand Pounds, or some other great Sum of Money, the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *Edward Conway* into the Office of one of the Masters of the Court of Chancery, did, by colour of his Office of Lord Chancellor, illegally, corruptly, and extorsively insist upon, take, and receive of and from the said *Edward Conway*, the Sum of fifteen hundred Pounds, or some other Sum of Money, for the admitting of him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *Edward Conway* should have, exercise, and enjoy the same, which said Office touches and concerns the Administration and Execution of Justice in the said Court; and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same infamous and corrupt Nature, did admit and swear the said *Edward Conway* into the Office of one of the Masters of the said Court of Chancery, upon the Surrender of the said *John Orlebar*, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholesome Laws and Statutes of this Realm.

ART. V.

That *William Kynaston*, Esq; having contracted with *William Rogers*, Esq; one of the Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of six thousand Pounds, or some other great Sum of Money,

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the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *William Kynaston* into the Office of one of the Masters of the Court of Chancery, did, by colour of his Office of Lord Chancellor, illegally, corruptly, and extorsively insist upon, take, and receive of and from the said *William Kynaston*, the Sum of fifteen hundred and seventy-five Pounds, or some other Sum of Money, for the admitting him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *William Kynaston* should have, exercise, and enjoy the same, which said Office touches and concerns the Administration and Execution of Justice in the said Court; and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same infamous and corrupt Nature, did admit and swear the said *William Kynaston* into the Office of one of the Masters of the said Court of Chancery, upon the Surrender of the said *William Rogers*, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholesome Laws and Statutes of this Realm.

ART. VI.

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

ART. VII.

That the Office of one of the Masters of the said Court of Chancery, becoming vacant by the Death of *William Fellows*, Esq; one of the late Masters of the said Court, the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of *Francis Elde*, Esq; into the said Office of One of

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

ART. VIII.

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

ART. IX.

That whereas *Thomas Bennet*, Esq; in or about the Month of *August*, in the Tenth Year of his Majesty's Reign, was possess'd of an Office in the Court of Chancery, called the Office of Clerk of the Custodies, for the Term of his Life, by Virtue of his Majesty's Letters Patents under the Great Seal of *Great Britain*, which Office is an Office of Trust in the said Court, in the Gift and Disposal of the Crown by Grant under the Great Seal, and concerns the writing and making Commissions

miffions to inquire of Ideots and Lunaticks, and the Procefs thereupon, and Letters Patents for the Custody of the Bodies of Ideots and Lunaticks, and the keeping, entring, and tranfcribing Orders, Reports, and Accounts made and declared touching Ideots and Lunaticks, and their Eftates in the faid Court of Chancery; and the faid *Thomas Bennet* having agreed with *Hugh Hamersley*, Efq; to refign the faid Office, in order to obtain his Majesty's Royal Grant of the faid Office to the faid *Hugh Hamersley*, the faid *Thomas*, Earl of *Macclesfield*, being then Lord Chancellor of *Great Britain*, did refufe to permit or accept of fuch Refignation, until the faid *Thomas Bennet* had agreed to pay unto the faid *Thomas*, Earl of *Macclesfield*, or unto his Ufe, One hundred and five Pounds, or fome other Sum of Money, as a Confideration for the fame, and, by colour of his Office of Lord Chancellor, did Illegally, Corruptly, and Extorfively Infift upon, Take, and Receive, of and from the faid *Thomas Bennet*, the faid One hundred and five Pounds, or fome other Sum for and in Confideration of the permitting and accepting fuch Surrender of the faid Office, in order to and for the obtaining and procuring a New Grant of the faid Office to the faid *Hugh Hamersley*; and in purfuaunce thereof, the faid *Thomas*, Earl of *Macclesfield*, then being Lord Chancellor, and One of the Lords Juftices of this Kingdom, during his Majesty's Abfence, did accept, or caufe to be duly accepted, the Refignation of the faid *Thomas Bennet* of the faid Office, and by his Intereft and Recommendation did obtain and procure his Majesty's Royal Warrant for preparing and paffing his Majesty's Grant of the faid Office, under the Great Seal, to the faid *Hugh Hamersley* for the Term of his Life; which Grant afterwards, in or about the Month of *September*, in the Tenth Year of his Majesty's Reign, did accordingly pafs the Great Seal, then in the Custody of the faid Earl, for which all the ufual and accuftomed Fees were paid, over and befides the faid One hundred and five Pounds, in great Deceit of the Crown, in Breach and Violation of his Oath, as Lord Chancellor, and of the feveral great Trusts then in him reposed, contrary to the Duty of his Office, and againft the good and wholfome Laws and Statutes of this Realm.

A R T. X.

That the faid *Thomas*, Earl of *Macclesfield*, whilft he continued Lord Chancellor of *Great Britain*, did Illegally and Corruptly Ordain, Name, and Make divers other Officers and Minifters of his Majesty, for Gift and Brocage, and did likewise illegally and corruptly fell divers other Offices, touching and concerning the Administration and Execution of Juftice in the Court of Chancery, to feveral Perfons, for divers great Sums of Money, which the faid Earl did receive from the faid Perfons for their refpective Admiffions into fuch Offices, and before they were admitted thereinto, and in order that the faid Perfons fhould have, exercife, and enjoy the fame, in great Breach of the Trust in him reposed, and of his Oath as Lord Chancellor, contrary to the Duty of his Office, and againft the Laws and Statutes of this Realm.

A R T. XI.

That the faid *Thomas*, Earl of *Macclesfield*, whilft he continued in the Office of Lord Chancellor of *Great Britain*, in order to advance and in-

crease the illegal and corrupt Gain, arifing to himfelf from the Sale and Difpofal of the Offices of Masters of the Court of Chancery, in Violation of the great Trust reposed in him for the Care and Protection of the Suitors of the faid Court, whose Money and Effects were, by Orders of the faid Court, lodged in the Hands of the Masters of the faid Court of Chancery, did admit feveral Perfons to the faid Offices of Masters of the faid Court of Chancery, who, at the Time of fuch their Admiffions, were of fmall Subftance and Ability, very unfit to be trusted with the great Sums of Money and other Effects of the Suitors of the faid Court, lodged in their Hands by the Orders of the faid Court; and did publickly in open Court, when he fat there as Lord Chancellor, falfly represent the faid Perfons, fo by him admitted to the Offices of Masters of the faid Court of Chancery, as Perfons of great Fortunes, and in every refpect qualified for the Trust reposed in them, to the manifft Deceit and Injury of the Suitors of the faid Court.

A R T. XII.

That whilft the faid *Thomas*, Earl of *Macclesfield* executed the faid Office of Lord Chancellor, an unjust and fraudulent Method was practifed in the Court of Chancery upon the Sale of the Offices of Masters of the faid Court, and upon the Admiffions of new Masters, that the Prices or Sums of Money agreed to be paid for the Purchase of the faid Offices, and for the Admiffions thereinto, were fatisfied and paid out of the Monies and Effects of the Suitors of the Court deposited in the Hands of the refpective Masters, furrendring their Offices, or dying, either by way of Retainer of the Purchase Money in the Hands of the Master refigning, or of replacing the Money difburfed for fuch Purchase or Admiffion by the fucceeding Master, out of the Money and Effects of the Suitors coming into his Hands; by which Practice the Price and Value given upon the Sale of the faid Offices, and Admiffions thereinto, during the time aforefaid, were greatly advanced, and feveral Perfons of fmall Ability and Subftance were encouraged to contract for the faid Offices, upon a Profpert of the eafy method of paying for the Purchase of the fame, by means whereof great Deficiencies have incurred in the Offices of feveral Masters of the faid Court, admitted by the faid *Thomas*, Earl of *Macclesfield*, which they have not been able to anfwer and make good; and although the faid Practice was notorious and publick, and the faid Earl was well informed thereof, and fully acquainted therewith, yet the faid *Thomas*, Earl of *Macclesfield*, in order to increafe his own unjust and corrupt Profit in the felling the faid Offices, and the Admiffions thereto (which in confequence of this evil Practice was raifed and received by him out of the Effects of the Suitors, for whom he was intrusted) did not at any Time, whilft he continued in his Office of Lord Chancellor, ufe or take any meafures to reform the faid Abuse, or to prevent the fame, either by caufing proper Schedules to be taken of the money and Effects of the Suitors delivered over and transferred, or by appointing any Person, in his Behalf, to infpect or fupervife the Transfers or Deliveries thereof, or in any other manner; but on the contrary, the faid *Thomas*, Earl of *Macclesfield*, unjustly, corruptly, and contrary to the Duty of his faid Office of Lord Chancellor (to whom the Superintendency of the faid Masters, and

and of their Accounts did appertain) did suffer the said fraudulent Practice to proceed and be exercised without any Controul or Check, whereby great Embezzlements have been made of the Suitors Money and Effects, to their great Loss, in the Offices of several of the Masters of the said Court, who have not been able to answer and pay their respective Ballances owing upon their Accounts, in breach of the Trust reposed in him for the Preservation of the Estates and Effects of the Suitors, to the Dishonour and Discredit of the said Court, and to the great Injury and Defrauding of the said Suitors, in a Court of Equity, established for their Relief and Protection.

A R T. XIII.

That *Fleetwood Dormer* Esq; one of the Masters of the Court of Chancery, having embezzled great part of the Money and Effects belonging to the Suitors of the said Court, with which he was intrusted by the said Court, and disposed of the same for his own private Advantage, by Means whereof there became, and still continues a great Deficiency in that Office, to the Amount of twenty five thousand Pounds, or some other great Sum; and the said *Fleetwood Dormer*, having absconded, and for some time absented himself, Application was made to the said Earl of *Macclesfield*, then Lord Chancellor of *Great Britain*, to secure the Person of the said *Fleetwood Dormer*, and to take proper Methods for compelling the said *Fleetwood Dormer* to make Satisfaction to the Suitors for the Money and Effects, which he had so embezzled, yet the said Earl, from an Apprehension that a publick Discovery of the said Deficiency might lessen the unjust Gain he proposed to make to himself, by selling and disposing of the said Offices of Masters of the said Court, neglected and declined either to secure the Person of the said *Fleetwood Dormer*, and his Estate and Effects, or to make a proper Enquiry into the said Deficiency: But on the contrary, the said Earl, whilst he continued Lord Chancellor of *Great Britain*, did endeavour, by many indirect Practices, to conceal from the Suitors of the Court, the true State and Condition of the said Office, as well with respect to the Effects of the said *Fleetwood Dormer*, as to the Debt due from him to the Suitors of the Court; and upon Motion made in the said Court of Chancery (after the said Earl knew that the said *Fleetwood Dormer* had so absconded) on behalf of some of the Suitors of the Court, to have their Effects transferred from the said *Fleetwood Dormer* to some other Master, for the better securing thereof, the said Earl of *Macclesfield*, (in order to delude the Suitors of the said Court into a Belief that their Effects were safe, and thereby to prevent a publick Enquiry) then sitting as Lord Chancellor in open Court, did say, That the said Parties need not be in haste, and did at the same time falsely and deceitfully declare, that the said *Fleetwood Dormer* was only gone to take the Air in the Country, and that he would return in a little time, and all would be well, or to that Effect.

A R T. XIV.

That the said *Fleetwood Dormer*, having towards Satisfaction of the Suitors of the said Court, assigned to *Henry Edwards* Esq; (who succeeded him in his Office of Master of the said Court of Chancery) a Debt of Twenty four thousand and

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

A R T. XV.

That the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, to carry on his corrupt and unjust Purposes, and to conceal the Deficiency that was in the Office of the said *Fleetwood Dormer*, did, in or about the Month of *February*, in the Year of our Lord, One thousand seven hundred and twenty, order the several Masters of the said Court of Chancery to bring in their Accounts of the Cash, Effects, and Securities in their Hands belonging to the Suitors of the Court, not with a Design of examining their Accounts, or securing the Estate and Effects of the Suitors, but with an intent to terrify the said Masters, and thereby oblige them to contribute great Sums of Money towards answering the Demands that should, from time to time, be made upon the said Office; for which purpose, he the said Earl did at several Times represent, or cause to be represented to the said Masters, that if they refused so to do, the Money and Effects of the Suitors would be taken out of their Hands, and the said Masters deprived of making any Profit of the same; by which Practices the said Earl, being then Lord Chancellor of *Great Britain*, by colour of his Authority, did persuade and induce nine of the Masters of the said Court of Chancery, to pay Five hundred Pounds each for the purposes aforesaid, several of whom paid the same out of the Money or Effects of the Suitors in their Hands; but after such Payments, the said *Thomas*, Earl of *Macclesfield*, did not oblige the said Masters to deliver in their Accounts in pursuance of such his said Order.

A R T. XVI.

That *Elizabeth Chitty*, Widow, having obtained an Order of the Court of Chancery, on or about

about the seventeenth Day of *March*, in the tenth Year of His present Majesty's Reign, made by the said *Thomas*, Earl of *Macclesfield*, then Lord Chancellor, whereby *Henry Edwards* Esq; one of the Masters of the said Court of Chancery, who succeeded *Fleetwood Dormer* Esq; in the said Office, was ordered to pay her the Sum of one thousand Pounds, part of the Sum of ten thousand Pounds, or other great Sum of Money, formerly paid into the Hands of the said *Fleetwood Dormer*, as a Master of the said Court, and by the said Order mentioned to be then in the Hands of the said *Henry Edwards*; and the said *Henry Edwards* complaining to the said Earl, that the making Orders upon him to pay Money which had been received by the said *Fleetwood Dormer*, was a very great Hardship upon him the said *Henry Edwards*, in regard he had not any Money or Effects in his Hands to answer such Demands, the said Earl of *Macclesfield*, being then Lord Chancellor, in further prosecution of his unjust and corrupt Purposes, did, by colour of his Authority, endeavour to prevail with the Masters of the said Court of Chancery, to raise the said Sum of one thousand Pounds out of their Effects, by representing to them, that a Discovery of the Deficiency in the said Office might occasion a Parliamentary or Publick Enquiry into the Nature and Condition of their Offices, and hazard the Forfeiture of the same, by reason of their having bought the said Offices contrary to Law, which the said Earl then declared would affect him, but themselves much more, or to that effect; but the said Masters refusing to raise the said Sum of one thousand Pounds, the said Earl of *Macclesfield* did order his Secretary *Peter Cottingham* Esq; to pay the said one thousand Pounds; who, in pursuance of the said Earl's Directions, in or about the Month of *July*, one thousand seven hundred and twenty four, did pay the same to *Ascan Christopher Lockman*, for the Use of the said *Elizabeth Chitty*; and the said Earl of *Macclesfield*, upon Application made to him by the said *Ascan Christopher Lockman*, for Payment of the said Money, did acquaint him, that he, the said Earl, had given Directions to his Secretary for payment of that Sum, but at the same time declared to the said *Ascan Christopher Lockman*, that he, the said Earl, believed this would be the last payment she was like to receive out of the said Money paid into the Hands of the said *Fleetwood Dormer*, for the Residue thereof was in great Danger of being lost, by reason of the Deficiency in the Effects of the said *Fleetwood Dormer*, or to that effect. Notwithstanding all which proceedings, in this and several other Articles mentioned, upon a Motion made in the Court of Chancery before the said *Thomas*, Earl of *Macclesfield*, then Lord Chancellor, on or about the fifth Day of *December* last, in a Cause there depending between *Jane Harper*, Plaintiff, and *Thomas Case*, and others, Defendants, relating to the Sum of two hundred and sixty Pounds, or some other Sum, deposited in the Hands of the said *Fleetwood Dormer*, before his absconding, and which was then apprehended in great Danger of being lost, the said *Thomas*, Earl of *Macclesfield*, then sitting in Court as Lord Chancellor, did publickly, falsely, and deceitfully declare, that he had heard there was a Deficiency in the Office of the said *Fleetwood Dormer*, but that he, the said Earl, knew nothing of it, only as publick News, or to that Effect; and there-

upon did order, that the said *Henry Edwards* should examine in what Manner the said two hundred and sixty Pounds was deposited with the said *Fleetwood Dormer*, and whether there was likely to be a Loss of any Money deposited with the said *Fleetwood Dormer*.

A R T. XVII.

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

A R T. XVIII.

That the said *Thomas*, Earl of *Macclesfield*, notwithstanding that he very well knew, and was informed that the Masters of the said Court did, or that it was in their Power, from Time to Time, and at their Pleasure to dispose of and employ the Money and Effects belonging to the Suitors of the said Court, which were intrusted with them respectively, and more particularly, that the Deficiency appearing in the Office of *Fleetwood Dormer*, Esq; one of the Masters of the Court of Chancery, was chiefly occasioned by his, the said *Fleetwood Dormer*'s, having taken upon himself unduly to dispose of and employ the Money and Effects belonging to the Suitors of the said Court, which were intrusted in his Hands; and notwithstanding that, soon after the said *Fleetwood Dormer* became insolvent, it was represented and proposed to the said *Thomas*, Earl of *Macclesfield*, then Lord Chancellor of *Great Britain*, in order to prevent for the future any Losses that might happen to the Suitors of the said Court, that the several Effects and Securities belonging to the Suitors should be placed out in such Manner, as that the Power of disposing, imploying, or in any manner trading with the same, might be totally taken away from the said Masters, for the effecting of which just Design, a particular Method was laid before the said Earl; and it was also further proposed, that the said Masters should give some reasonable Security to answer the Ballance of such Cash, as should, from Time to Time be in their Hands; and notwithstanding the said Earl was credibly informed, that the Sufficiency of some other of the said Masters was very much suspected, yet the said *Thomas*, Earl of *Macclesfield*, whilst he was Lord Chancellor of *Great Britain*, contrary to the Duty of his Office, and thereby proposing to make unlawful Gain

himself by the Disposal and Sale of the Offices of Masters of the said Court of Chancery; and in order to induce Persons to give him, the said Earl, a greater Price or Reward for their being admitted to the same, did not require or demand any Security whatsoever, to be given by any of the said Masters, upon their being admitted to their Offices, or at any other Time; and the said Earl with the same corrupt View and Intention, and to keep up the Price of the said Offices, totally neglected to enquire into the Accounts of the said Masters, and did fraudulently, unjustly, and in Breach of the Trust reposed in him, permit and encourage the Masters of the said Court, to employ and traffick with large Sums of Money belonging to the Suitors of the said Court, and to make Interest thereof for their own unjust Gain and Profit; and the said Earl, after such Proposal made to him, as aforesaid, or at any other Time, during his Continuance in the said Office did not take any Care that the Effects of the said Suitors should be placed out in such Manner, as to prevent the Masters from trafficking therewith, or that the said Masters should give such Security, as was proposed; by Means whereof great Deficiencies, to the amount of many thousand Pounds, have been, through such Default of the said Earl, occasioned in the Offices of several other of the Masters, to the great Loss and Injury of the Suitors of the said Court.

A R T. XIX.

That whereas his most Sacred Majesty, out of his fatherly Goodness to his People, did, in or about the month of *November* last, direct an Enquiry to be made into the Accounts of the matters of the said Court of Chancery, to the Intent that proper methods might be taken for the Security of the Suitors of the said Court; the said *Thomas*, Earl of *Macclesfield*, being then Lord Chancellor of *Great Britain*, and one of his Majesty's most Honourable Privy Council, in order to obstruct the same, and to prevent a parliamentary Enquiry into the State and Condition of the Offices of the said Masters, in Breach of the several great Trusts reposed in him, did give Advice and Encouragement to the said Masters to assist and supply each other with money and Effects, and did represent to the said Masters, that it would be for their Honour and Service, to appear able and sufficient, and that, if they made a bold Stand now, it might prevent a parliamentary Enquiry, or to that Effect, and did persuade several of them to make false Representations of their Circumstances to his Majesty, by adding a Subscription to their respective Accounts delivered to the said Earl, to be laid before his Majesty, to the Effect following (*viz.*) That they were able to answer the money and Securities in their Hands, and were willing to pay the same to such Persons as were entitled thereunto, although the said Earl knew, or had good reason to believe, that several of the Masters were not then able to answer the Ballance of their Accounts, nor are they yet able to satisfy or make good the same; and when the said Masters were afterwards required to produce the Cash and Effects of their Suitors in their Hands, some of the said Masters, according to such Advice and Encouragement given by the said Earl, did supply others of them with Cash and Effects, to make a false shew and appearance of their Ability and Readiness to answer the Ballance of their Accounts.

A R T. XX.

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

A R T. XXI.

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

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

And the said Knights, Citizens, and Burgeses, by Protestation, saving to themselves the Liberty of exhibiting, at any Time hereafter. any further

Articles, or other Accusation or Impeachment against the said *Thomas*, Earl of *Macclesfield*, and also of replying to his Answers which he shall make unto the said Articles, or any of them, and of offering Proof to all and every the aforesaid Articles, and to all and every other Articles, Impeachment, or Accusation, which shall be exhibited by them, as the Case shall, according to the Course of Parliament, require, do pray, that the said *Thomas*, Earl of *Macclesfield*, may be put to answer the said Crimes and Misdemeanors, and that such Proceedings, Examinations, Trials, and Judgments, may be thereupon had and given, as are agreeable to Law and Justice.

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

THE said Earl, saving to himself all Advantage of Exception to the said Articles, and of not being prejudiced by any Words or want of Form in this his Answer, and also saving to himself all Benefit and Advantage of the Act for the King's most gracious, general, and free Pardon herein after mentioned, and all Rights and Priviledges belonging to him as one of the Peers of this Realm, for Answer to the said Articles saith, That he, having for several Years executed the Office of Chief Justice in the Court of King's-Bench, his Majesty of his royal Grace and Favour was pleased, the tenth Day of *March*, One thousand seven hundred and fifteen, to advance the said Earl to the Dignity of a Peer of this Realm, and created him Baron of *Macclesfield*; and, in regard to his Circumstances at that Time, was further pleased, for the better Support of that Honour, to grant to the said Earl the pension of Twelve hundred pounds *per Annum*, in the Articles mentioned, payable at the Receipt of the Exchequer; and his Majesty was then likewise pleased to declare his Royal Intentions of giving to the said Earl's only Son, *George Parker*, for his Life, an Office of considerable Profit, when a proper Opportunity should offer; that in the Beginning of *May*, in the Year One thousand seven hundred and eighteen, he the said Earl, was, by his Majesty's great Grace and Favour, appointed Lord Chancellor of *Great Britain*, and was sworn before his Majesty in Council the fourteenth Day of that Month, when the following Oath, being the usual Oath of Lord Chancellor, was administered to him, (*viz.*)

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

As God shall help you.

And

And the said Earl at the same Time took the Oaths of Allegiance and Supremacy, but no Oath of Office besides that above set forth; and the said Earl doth admit, that, during his Continuance in the said Office of Lord Chancellor, he did enjoy the usual Salary, Fees, and Profits belonging to such Office, which, he says, are of much less annual Value than they are generally (as he believes) esteemed to be; and that his Majesty was pleased to grant him the Salary or Allowance of Four thousand pounds *per Annum*, in the Articles mentioned, during such Time as he should continue to be Lord Chancellor; but the same is so far from being particular in the Case of the said Earl (as the said Articles would insinuate) that it is no other than what hath been for many Years past constantly granted to, and enjoyed by his predecessors in the said Office; and the said Earl doth likewise admit, that his Majesty did, of his royal Grace and Bounty, sign a Warrant for payment of the Sum of Fourteen thousand pounds mentioned in the said Articles, to the said Earl, out of the Receipt of the Exchequer, whereof Two thousand pounds was the constant usual Allowance from the Crown to the Lord Chancellor or Lord Keeper, for and towards the Expences in entering upon the said Office; and the Residue of the said Fourteen thousand pounds, over and above the usual Fees and Deductions upon payment thereof, was his Majesty's royal Munificence to the said Earl, and the same was received by him accordingly; and the said Earl doth likewise, with the greatest Gratitude, own, that about the same Time, his said Son being then of a proper Age, and desirous to go abroad to travel, his Majesty was pleased to grant to the said *George Parker* the yearly pension of Twelve hundred pounds, payable out of the Receipt of the Exchequer, during the joint Lives of his Majesty, and the said *George Parker*, determinable upon his Majesty's granting to him, the said *George Parker*, in Possession or Reversion, the Office of one of the Tellers of the Exchequer, for Life, and his coming into the actual Possession thereof, and which the said Earl likewise admits has been since granted to his said Son, and that he came into the actual possession thereof in or about *July*, One thousand seven hundred and nineteen, whereby the said yearly pension is determined; and the said Earl saith, that, during his continuance in the said Office of Lord Chancellor, or at any other Time, he never once had a Design, or View, or Wish to raise to himself any exorbitant Gain or Profit, much less used or ever thought of using any Unjust or Oppressive Methods to Extort or Obtain any Sum whatsoever, as in the said Articles is suggested, but such Views and Practices are inconsistent with the whole Tenor of his Life and Actions; and in case it shall be thought proper for the said Earl to lay before your Lordships an Account of his Estate and Fortune, and of the considerable Sums of Money he has distributed for the Relief and Support of others, it will appear that he is not such a designing, avaritious, and oppressive Man, as in the said Articles he is represented; and the said Earl humbly hopes, that he shall be allowed, in this his Answer, to distinguish between Acts themselves, and the Inferences drawn from them by the said Articles, and that, whenever he admits any Fact, he may not be understood to admit that such Fact was by him done or committed upon such Mo-

tives, and with such Designs, or in such Manner, as is suggested in the said Articles, and with this Reservation he answereth, as followeth: By way of general Answer to such of the said Articles, as relate to the making any present by persons admitted to the Office of Masters in Chancery; the said Earl doth say, that the same has been long used and practised in the Time of his Predecessors, in the said Office, and that such presents have been reckoned amongst the ancient and known perquisites of the Great Seal, and the making and accepting thereof has been notorious to all the World, and never before looked upon to be criminal or complained of as such; and the said Earl humbly hopes, that the giving or receiving of a Present on such Occasion is not criminal in itself, or by the Common Law of this Realm, and that there is not any Act of Parliament whatsoever, by which the same is made criminal, or subject to any Punishment or Judgment, which can be prayed in this Prosecution; and the said Earl thinks himself obliged humbly to lay this before your Lordships, not only in his own Defence, but in Vindication of the Honour of so many Great and excellent Men, who have been his Predecessors in the said Office, and have all along done the same, for which the said Earl is now complained of, and of others having been Lords Chief Justices of the King's Bench and Common Pleas, Masters of the Rolls and other Judges, who have likewise received Presents in Money, upon the Admission of the several and respective Officers under them, in several Courts of Justice, and who, the said Earl is assured, never apprehended themselves to be Guilty of any Crime against any the good and wholesome Laws or Statutes of this Realm.

I. &c. To the first, second, third, fourth, fifth, sixth, and seventh Articles, the said Earl further saith, that long before the 24th of *July*, One thousand seven hundred and twenty one, he did admit and swear *Richard Godfrey*, *James Lightboun*, *John Borret*, and *Edward Conway* Esquires, into the Offices of Masters of the Court of Chancery, and every one of them did freely and voluntarily, and of their own accord, as former Masters had done to the Predecessors of the said Earl, send to the said Earl a Present upon Occasion of their respective Admittances, which the said Earl accepted, and that after the said 24th of *July*, One thousand seven hundred and twenty one, he did admit and swear *William Kynaston*, *Thomas Bennet*, and *Francis Elde* into the Offices of Masters of the Court of Chancery, and saith, that every of the said Persons last named, did freely and voluntarily, and of their own Accord, in like Manner, send a Present to the said Earl upon Occasion of their respective Admittances, but saith, that, it being pretended by the said *Kynaston* and *Bennet*, that they were by such Presents disabled from answering so much of the Money due from them to the Suitors of the Court, he the said Earl did afterwards, and before the Impeachment, deliver the Present so sent him by the said *William Kynaston*, being fifteen hundred seventy five Pounds; and also the Present so sent him by the said *Thomas Bennet*, being the like Sum of Fifteen hundred seventy five Pounds, into the Court of Chancery, in open Court, to be applied for the Benefit of the Suitors, as the Court should Direct, and that the said Earl retained of the Present so sent him

by

by the said *Francis Elde*, no more than the Sum of One thousand eight hundred and fifty Pounds.

VIII. To the eighth Article the said Earl further saith, That in *July* last the Office of one of the Masters of the said Court became vacant by the Death of *John Borret* Esq; who died intestate, but whether solvent or not, he cannot say; but upon notice of his Death, the said Earl did at first desire *Richard Godfrey* Esq; one of the Masters of the said Court, who had been very well acquainted with the said Mr. *Borrett*, and his Affairs, and afterwards the said Mr. *Godfrey* and *John Bennet* Esquire, another of the Masters of the said Court, to inquire into his Effects, and to take what Care they could about the same, who, after some Inquiry, informed the said Earl, that they believed there would be no Deficiency, and secured a considerable Part of the Effects of the said Mr. *Borrett*, and entred a proper Caveat in the Prerogative Court, to prevent Administration being granted to any Persons who might embezzle the said *Borret's* Estate; and afterwards, at the Request of the said Earl, proceeded so far, as to obtain a Sentence in the said Prerogative Court, for Administration to be granted, for the Benefit of the Suitors of the Court, to them, the said Mr. *Bennet* and Mr. *Godfrey*, which was afterwards, upon their waving thereof, granted to Mr. *Paxton*, as the said Earl believes, but the said Earl thought it proper and necessary to admit another Master in his Place, to carry on the Business of the Court, and to be intituled to demand the Effects of the Suitors, from the Representative of the said Mr. *Borrett*, when one should be appointed; and therefore, about the fifth Day of *August* last, did admit and swear *Mark Thurston* Esq; into the said Office, vacant by the Death of the said *Borrett*, and the said Earl admits the said *Mark Thurston* did upon that Occasion freely and voluntarily, and of his own Accord, send a Present, whereof two thousand Pounds, and no more, were retained.

IX. In Answer to the ninth Article the said Earl saith, That he believes *Thomas Bennet* Esq; in this Article named, was possessed of the Office of Clerk of the Custodies, in the Article described, and that such Office is in the Gift and Disposal of the Crown, by Grant under the Great Seal, but denies that he did at any time insist upon the Sum of one hundred and five Pounds, or any other Sum of Money, to permit or accept of the Resignation of the said *Thomas Bennet*, or did refuse to permit or accept thereof, until the said *Thomas Bennet* had agreed to pay the same, or any other Sum on that Account; but saith, That although the said Office be usually granted by the Crown, yet it has always been looked upon to be the Right of the Lord Chancellors, or Lord Keepers, to recommend to that, and other Offices under the Great Seal, and to approve and allow of the Deputies to execute the same; and, upon such Recommendations and approving of Deputies, have accepted Presents, and looked upon the same as their Right; and further saith, That there have been two of such Offices granted in his Time, one of which appearing to him to be a Case wherein the Party had suffered great Hardship, the said Earl passed the same without any Present whatsoever, though the Office be of considerable Value; the other was the Case of Mr. *Hamerley*, in the Articles

mentioned, in which the said Earl owns he did accept a Present.

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

XI. In Answer to the eleventh Article the said Earl saith, That the same not containing any particular Charge, he apprehends himself not obliged to give any particular Answer thereto; but however, in general, does say, That he never did admit any Person into the Office of a Master of the Court of Chancery, but who was either known to be of Substance and Ability, and fit to be trusted in such Office, or, upon a proper Enquiry, very well recommended to him as such; and, whenever there have been several Candidates, the said Earl has constantly given the Preference to him that he thought would best discharge the Office, and most for the Honour of the Court, and the Advantage of the Suitors; and believes that he may, upon some Occasions, have declared, that he thought the then Body of Masters as good, with respect both to their Estates, and Ability for Discharge of the Office, and their Integrity, as had been at any time before, or to that Effect, and what he did say to that Purpose, he thought to be really true.

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

XIII. In Answer to the thirteenth Article the said Earl saith, That after *Christmas*, in the Year one thousand seven hundred and twenty, he was informed, That the said *Fleetwood Dormer* had withdrawn himself to *Holland*, where he then was, and thereupon the said Earl used all the properest Methods he could for securing his Effects, and particularly directed Mr. *Hiccocks* and Mr. *Rogers*, the then two Senior Masters of the Court, to make an Enquiry into his Affairs and Accounts, and to consider what would be most proper to be done; and the said Earl believes, that the said two Masters, in pursuance of the Directions from the said Earl, did search the Chambers of the said *Fleetwood Dormer*, in *Lin-*
coln's-

coln's-Inn, to see what Books, Accounts, or Effects could there be met with, but found no Account whatsoever, nor any Effects of Value, and did put a stop to the transferring of the Stock, then in the Name of the said *Fleetwood Dormer*, in any of the Publick Companies; and the said *Fleetwood Dormer's* Person being thus out of Reach, and his Accounts and Effects wholly unknown, except the Stock, which could not be disposed of without his Concurrence, a Proposal was some time after made to the said Earl, That the said *Fleetwood Dormer* might have a Promise of his Liberty from the said Earl, and upon that Condition he would come over, and assign all his Effects, and assist in getting them in, and settling and adjusting his Accounts; and the said Earl, seeing no other Way open to get any thing for the Suitors, and being made to believe, that if any Deficiency should happen, the same would be made up by the other Masters, did agree, That in case the said *Fleetwood Dormer* would come over, and make a full Discovery of all his Effects, and assign the same for the Benefit of the Suitors, he the said Earl would allow him his Liberty on that Condition, and not otherwise; and the said Earl was soon after informed, That the said *Fleetwood Dormer* submitted to those Terms, and would very soon come over, and discover and deliver up his Effects; and the said Earl did not doubt, but the whole Debt upon the said *Fleetwood Dormer* would be paid. And the said Earl saith, That he does not remember that any Application was ever made to him, by the said Masters of the said Court, for any Assistance of the Court, touching the Person or Effects of the said *Fleetwood Dormer*, but what he granted, so far as he thought it tended to the Benefit of the Suitors, and believes that no Application was ever made to him by the Suitors, or any of them, or any other, to secure the Person of the said *Fleetwood Dormer*, or for compelling him to make Satisfaction to the Suitors; and the said Earl saith, That he never endeavoured to conceal the true State and Condition of the said Office from the Suitors of the Court, nor did any of them apply, till very lately, to the said Earl to look into the same; and further saith, That he remembers nothing of his ever using any such Expression, as is charged in the said Article, at any time before or after he knew that the said *Fleetwood Dormer* absconded.

XIV. To the Fourteenth Article the Earl saith, That *Henry Edwards*, Esq; in this Article mentioned, succeeded to the Office of Mr. *Dormer*, about the the eighteenth Day of *May*, one thousand seven hundred and twenty-one; but, by reason of the Disorder the said Office was then under, and the great Danger of a Loss therein, the Earl had given up and quitted all the Advantage which might accrue to him upon the Disposal thereof, and left it entirely to the other Masters to raise what money they could thereby, which was agreed to be all applied towards making good any Deficiency or Loss, which might happen to the Suitors of the Court concerned in that Office; and thereupon the Sum of five thousand Pounds was raised, by the Disposal of the said Office to Mr. *Edwards*, and was applied accordingly; and the said Earl believes the Debt from *William Wilson*, in this Article mentioned, was assigned by the said Mr. *Dormer* to the said Mr. *Edwards* in Trust, and to the Intent, that he

should pay, apply, and dispose of the said Debt, or such Part thereof, as should be, from time to time, by him got in, and received of and from the said *William Wilson*, in such manner as the Court should order and direct, or to that Effect; after which said Assignment so made, the Earl believes that the said Mr. *Edwards* used great Endeavours to obtain Payment and Satisfaction of the said Debt from Mr. *Wilson*; but finding all his Endeavours fruitless, and that the said *Wilson* had long before stopt Payment, and was in no Condition of paying his Creditors the whole of their Debts, but that he was willing, and had offered to come to a Composition, and to pay them in Proportion the utmost he was able; the said Mr. *Edwards* thereupon, about the thirtieth Day of *June*, in the Year of our Lord, One thousand seven hundred and twenty two, preferred his Petition to the said Earl, as Lord Chancellor, setting forth in Substance the State of the Case, as before-mentioned, and praying that it might be referred to one of the Masters of the Court, to see if such Composition, so proposed by the said *William Wilson*, were for the Benefit of the Persons intituled to receive the same; and the same was accordingly, by Order of the said Earl, referred to Mr. *Hiccocks*, the then senior Master of the Court, to enquire into, and make his Report therein; and about the six and twentieth Day of *July*, then next following, the said Mr. *Hiccocks* made his Report, that the said *William Wilson* had, under his Hand in Writing, proposed to assign over to the said Mr. *Edwards*, as a Composition for, and in full Discharge of, the Sum of twenty four thousand forty six Pounds and four Shillings, therein mentioned to be due and owing from him to the said Mr. *Edwards*, as Assignee of the said Mr. *Dormer*, the Sum of ten thousand Pounds, Part of a large Sum due to the said *William Wilson*, from *Edward Poulter* of *Hackney*, Gentleman, in this Article mentioned, and to pay the said Mr. *Edwards* in Specie, the Sum of one thousand four hundred sixty three Pounds, two Shillings and one Penny, over and above the Sum of five hundred and sixty Pounds, then already paid to the said Mr. *Dormer*, in part of the said Composition; and that upon Consideration had of the Circumstances of the said *William Wilson*, and the said several Matters, he was of Opinion, that the accepting the said Composition would be for the Benefit of the Person or Persons intituled to receive the same; upon which said Report the said Mr. *Edwards*, about the third of *August* then next, preferred another Petition to the said Earl, with the said Report annexed, and thereby expressly prayed the said Earl to order him, the said Mr. *Edwards*, to accept of the said Composition, whereupon the said Earl, in a proper and usual manner, ordered the same as prayed; and the said Earl saith, that he was informed, and believes, that the said Composition was made and agreed to, upon a Consultation of all or most of the Masters of the said Court, who the said Earl did believe would use their best Endeavours to get as much as they could; and the said Earl saith, he hath heard, and believes it to be true, that besides the one thousand four hundred sixty three Pounds, two Shillings and one Penny, then paid down, there hath been since got in by Mr. *Edwards*, on account of the said Debt from *Edward Poulter*, the Sum of one thousand Pounds, or there-

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

XV. To the fifteenth Article the Earl saith, That about the Month of *February*, in the Year of our Lord one thousand seven hundred and twenty, he gave Orders to his Secretary to write to the several Masters of the Court of Chancery, to bring in their Accounts of the Cash, Effects, and Securities in their Hands, belonging to the Suitors of the Court, and believes he did so, but denies that the same was done with any unjust Purpose, or with any Thought to terrify the said Masters to make any Contribution, towards satisfying the Demands upon the said Office of *Fleetwood Dormer*, but believes, what they did contribute, they paid freely and voluntarily, and out of their own Money, and therein, as the said Earl believes, did no more than follow a Precedent of the like Nature, on the Failure of *Dr. Eddisbury*, formerly a Master of the said Court; and the said Earl saith, That his real and whole Intention in calling for the said Accounts, was to inform himself, in the best manner he was able, of the State and Condition of the several Offices, and thereby to be the better able to make proper Regulations concerning the same; and therefore, though the said Article seems to insinuate, as if the calling for the said Accounts was dropped, as soon as the Masters were prevailed on to contribute, the said Earl saith, That afterwards, and without any Regard thereto, he still continued to call for the said Master's Accounts, and not finding them brought

in, as he expected, he did, about the beginning of *November* following, cause another letter to be sent to them, requiring them to bring in their Accounts; and, by both the letters sent to them on that Occasion, he directed the particular Method in which he would have their Accounts made up; but the said Earl, being afterwards convinced how difficult and tedious a Work it would be, and what Obstruction it would give to the Business of the Court, and that at last it could not be depended upon with any Certainty, was forced to lay aside that Design, and to content himself with going on in the same Road which his Predecessors had done; and humbly begs leave to observe, That what has been lately done, with respect to the Accounts of the said Masters, plainly shews the insuperable Difficulties of such an Undertaking.

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

And as to the last Branch of the said Article the said Earl saith, that the Fact was, that one *Jackman*, having, in the Cause in the Article mentioned been confirmed the best Purchaser of part of the Estate of *T. Harper* at the Price of two hundred and sixty Pounds, so long ago as the nineteenth of *December*, one thousand seven hundred and seventeen, and it being at the same time ordered, That the Writings belonging to such Estate, should be delivered to his Counsel, and that the Tenants should attorn to him, on his

his bringing his Purchase Money before Mr. *Dormer*, then one of the Masters, and the said Money having been brought before the said Master the twenty fourth Day of *December*, one thousand seven hundred and seventeen, and the Tenants, having attorned to *Jackman*, but the Conveyances not being then executed, though long before approved, a Motion was made in the Court of Chancery before the said Earl on the fifth Day of *December* last, that all Parties might execute the Conveyances, and the two hundred and sixty Pounds be paid to the Plaintiff, towards Satisfaction of a Demand she had out of the Estate of the said *Harper*; and those that were to have the *Residuum* of the said *T. Harper's* Estate, insisted, that they were always ready to join in the Conveyances, if the Purchase Money were applied to discharge the rest of the Estate, that they were apprehensive of a Deficiency of Mr. *Dormer's* Estate, and therefore neither they nor the Plaintiff ought to be Sufferers by such Deficiency, the Delay having been occasioned by the Purchaser, and not by the Plaintiff, and therefore scrupled executing the Deeds, unless upon Payment of the Money to the Plaintiff, and discharging the rest of the Estate therefrom; and this being the first Time that any Question relating to Mr. *Dormer's* Deficiency had been laid before the Court, by any of the Suitors, the said Earl took notice of its being so, and believes he might express himself to this Effect, That he had indeed heard of the said *Dormer's* Deficiency, but that it had never yet come judicially before him, upon Complaint of any of the Suitors of the Court; and further declared, That if there should be any Deficiency in his Office, several Circumstances had concurred thereto, as *Wilson* the Banker's stopping Payment, greatly indebted to him, *Poulter's* going away in *Wilson's* Debt eighteen thousand Pounds, and upwards, after a Verdict and Judgment at Law, and *Poulter* in actual Execution for it; and that, as he had heard, *Wilson* had then lately brought an Action of Escape against the Marshal, and recovered a Verdict against him for the like Sum; and how all these Matters would at last come out, the said Earl said he did not know, or he expressed himself to that Effect, and no other; and thereupon ordered, that it should be referred to Mr. *Edwards*, to examine whether the said two hundred and sixty Pounds was deposited with Mr. *Dormer* for the Benefit of any particular Person, and whom, and what was the Occasion of the Delay, that the said Conveyances were not executed, and the said two hundred and sixty Pounds, Purchase Money, paid out before the Year one thousand seven hundred and twenty; and whether there was likely to be a Loss of any Money deposited with the said Mr. *Dormer*, and that upon the Master's Report such further Order should be made, as should be just; and the said Earl hopes the said Order was very proper and necessary, and takes the Liberty of representing to your Lordships, That this was after the Accounts of the Masters had been laid by the said Earl before the Lords of the Council, and had been for some Time under the Consideration of the Judges and others, appointed by His Majesty to inspect the same.

XVII. To the seventeenth Article the Earl saith, That he never endeavoured to conceal the Deficiency occasioned by Mr. *Dormer's* Failure, but as the said Earl was under a full Persuasion,

that the same would all in due time be made good, and as Mr. *Dormer's* Effects were coming in by degrees, and no Application was made to him by any of the Persons concerned, to put a stop to, or any Restraint upon, the Payments, he did not think it incumbent upon him, *ex Officio*, to make a Declaration of an Average. And the said Earl saith, That he does not know that any Order was made by him for Mr. *Edwards* to pay any Money that had been lodged with Mr. *Dormer*, except the Order aforementioned, in the Case of *Chitty*, but believes several Orders have been made by the Court for that Purpose, and that the said Mr. *Edwards*, under a firm Persuasion that the whole Deficiency would be made good, paid out the whole Sums so ordered, so far as the Money then in his Hands would extend.

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

That several Proposals were made to him by the Persons he consulted upon that Occasion, but none that he believes, it will be held criminal not to have then established; some things were proposed that he thought impracticable, some insufficient, some inconsistent with that compleat Regulation he hoped to make, the Objects he proposed to himself, were to provide for whatever Deficiency might happen in the Office late Mr. *Dormer's*, to secure the Suitors from any future Loss, and to make several Regulations relating to the Offices of the Masters, and he thought these would be best done together, nor had he perfected the Scheme of any one of them to his own Satisfaction; he remembers no Proposal, that he thought would take it totally out of the Power of the Masters, to dispose of the Securities or Effects, or effectually secure the Cash. The said Earl admits, that he did not demand any Security to be given by any of the said Masters at the time of their Admittance, because it had not been done by his Predecessors, who were much wiser Men than himself, nor was he so much as asked by any of the Parties interested so to do; as to what the said Earl did with relation to the Accounts of the said Masters, he hath already set forth, and saith, That he gave no Permission nor Encouragement to the Masters of the Court, to employ or traffick with the Suitors money for their own Gain or Profit; he owns, that with respect to the Securities in the Hands of the Masters, he made no general Order, and thinks it the less material, because, notwithstanding what is alledged in the Close of this Article, he believes all the present Masters did, in *December* last, produce all the Securities in their Hands, and the Court of Chancery hath since secured the same for the Benefit of the Suitors.

XIX. To the nineteenth Article the said Earl saith, That upon great Consideration of Mr. *Dormer's* Deficiency, and of the Danger there might be of further Inconveniences, with relation to the Money and Effects in the Hands of the Masters,

Masters, and of several Disputes and Differences that had arisen in the Court of Chancery, and of some Applications of the said Masters, for establishing them in their just Rights, and of some Practices of the Masters, which the said Earl thought ought to be reformed; he was convinced, that the same was a work of too great Consequence for him singly to attempt, and being highly sensible of his most sacred Majesty's paternal Goodness to his people, did presume humbly to beseech his Majesty, as the Fountain of Justice, to depute some of His most Honourable Privy Council, to take the matters aforesaid into Consideration, in order to the establishing such Regulations, as might tend to the Honour of that High Court, and to the Advantage of his Majesty's Subjects being Suitors there; which Request, His Majesty, out of His wonted Goodness, was pleased to receive very graciously, and named several Lords, and other Honourable Persons of His Privy Council, to be a Committee, to take the same into Consideration; and pursuant to His Majesty's Command, the said Committee met, and began with the Accounts of the said Masters, wherein the said Earl begs leave to appeal to such of your Lordships, who attended in that Committee, whether he did not contribute to the utmost of his Power, to have every thing done which the said Committee thought expedient: And the said Earl saith, that he made all such Orders as were by them judged requisite, and so pressed the Execution thereof, that not only the Accounts of all the Masters then in being were brought in, but all the Securities in all their Hands, and the Cash of most of them were actually lodged in the Bank of *England*, and therefore the said Earl is greatly surprized, to find himself charged with obstructing the taking those Accounts, which he had thus desired might be taken, and contributed to the taking of them with all his Power. And the said Earl saith, That he never thought of preventing a parliamentary Enquiry, any otherwise, than by making it unnecessary, and procuring to the Suitors a full Redress of all their Grievances, and rectifying whatever he found amiss, and that he looked upon to be his Duty, and begs leave to say it here once for all, in answer to all the several Insinuations of that kind contained in the Articles.

And the said Earl further saith, that while the said Accounts were taking, every one of the said Masters declared over and over, that they had Effects sufficient to answer their whole Accounts, and the said Earl firmly believed the same to be true, and as all of them, that he saw (which he believes were all, or at least all but Mr. *Kynaston*) had told the said Earl, that they were able to answer their Accounts; and when they brought their Accounts to the said Earl, for him to lay before the said Committee, Mr. *Holford* had wrote under his Account some Declaration to that Effect, and some others of them, as he remembers, had made use of some other Expressions, which he thought not so proper; and some, as he believes, had wrote nothing (but he cannot distinguish the Persons) and the said Earl thinking that when the said Accounts came to be laid before the Committee of Counsel by him, it would be proper that the same Thing should be declared to the Committee, which had been said to him singly, he advised them all to write the same Words under their Accounts, and did tell them, in great Sincerity and Friendship, that at a Time when

so many Men's Mouths were open against them as Insolvent, it would be for their Honour and Interest to make it appear, that they were able and Sufficient, as he then believed them to be, but never thought of a Contrivance to have them Deceitfully appear or seem what they really were not; and he says they did then withdraw to make the Subscription, or at least so many of them whose Accounts were then ready; and soon after delivered them to the said Earl, who carried them with him to the Committee of Council, whither he was then going, without looking upon them; but upon reading them at the Council, it was observed that they had not all used the same Words, having varied considerably, but what any of the Subscriptions were, he cannot take upon him to set forth.

And the said Earl further saith, that a subsequent Order being made by the said Earl, for the said Masters to produce their Securities, and their Cash, before the Persons appointed to inspect their Accounts, they made great Complaint, that so many hundred thousand Pounds should be required at so short a Warning, and some of them saying, that though they had Effects sufficient, and could raise the Whole, if they had a little Time, desired the said Earl to allow them further Time for that Purpose; but the said Earl saith, that he required them to bestir themselves, and raise it immediately, telling them that since they had Effects to give Security, they might find Friends to furnish the Money; and believes he did say, that some of their own Brethren might perhaps be able to let them have Money till they could raise it another Way.

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

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

XXI. To the One and twentieth Article the said Earl saith, that upon the strictest Review of his own Behaviour, during the Time he had the Honour of serving his most Sacred Majesty in the Office of Lord Chancellor, he is not conscious to himself that he ever did, in any illegal or arbitrary manner, extend his Power, or the Power of the Court, beyond their lawful and just Bounds, or that he did arbitrarily or illegally assume to himself, as Lord Chancellor, or by Colour of his Office, any unjust and unlimited Power of dispensing with, suspending, or controuling the Laws or Statutes of this Realm, or that he any ways oppressed the Suitors of the Court, or was guilty of any Breach or Violation of the Rights or Liberties of the Subject, or of his own Oath, as Lord Chancellor: And with regard to the particular Complaint against him in this Article, the said Earl saith, that *Rachel Tyson*, in the Article named, as the Earl is informed, caused a Bill to be exhibited in the Court of Chancery, in the Name of her Son and Daughter, in the said Article likewise mentioned, by their *Prochien Amy*, against herself, and the said *John Tyson* and others, to have the Trusts in the Will of her late Husband duly performed; and the same was brought to Hearing at the Rolls the seventh Day of *July*, One thousand seven hundred and eighteen, and by the Decree then made, it was amongst other Things ordered, upon the Prayer (as the said Earl hath heard and believes) of the Counsel employ'd by the said *Rachel Tyson*, that a Receiver should be appointed of the Rents and Profits of the Real Estate, who was to have a Salary allowed him, and Power to let and set the said Estate, as there should be Occasion, with the Approbation of the Master, to whom the Cause was referred: and the said Earl saith, that an Execution of that Part of the Decree, which directed a Receiver to be appointed, the Master having certified that he had appointed *John Nicholas*, Esq; to be the Receiver of the Rents and Profits of the said Estate, the said *John Tyson*, thinking himself aggrieved thereby, did, in the usual Course of Proceedings in the said Court, cause Exceptions to be filed against the same, and upon the arguing thereof before the said Earl, by Counsel of both Sides, Affidavits were read, to shew that the said *John Nicholas* was an improper Person; that the said Testator had declared in his Life-Time, that the said *John Nicholas* by Name should not have any Thing to do with the management of his Estate; and that a considerable Part thereof consisted in old Houses and Water-Works: and the said Earl, upon a full Hearing of both Parties, was of Opinion that the said *John Nicholas* ought not to be appointed the Receiver; and upon the Proposal of the said *John Tyson*, then in Court, order'd *Robert Doyley*, Esq; to be Receiver, he giving Security to be approved of by the said Master; which Order was made, as he believes, on the fifteenth of *January*, in the Year One thousand seven hundred and eighteen; and affirmed upon the Re-arguing the said Exceptions on the sixth of *March*, in the Year One thousand seven hundred and eighteen; since which Time the Parties interested have never thought fit to complain thereof to your Lordships by Appeal, in order to have it reversed, as mistaken or unjust, though now the making thereof is complained of as a crime; and the said Earl is not ashamed to own, that he was very well acquainted with the said *Robert Doyley* for some Years before the said Order, and believed him to be a Person of great Honour and Integrity, Application and Exactness, and believes there are several Persons of Distinction to whom he had the Honour to be known, who had the same Opinion of him; but the said Earl did not appoint

him Receiver because of his own Respect for him, but because he was named by the said *John Tyson*, who was Uncle of the said Infant, and Executor of his Father's Will in Trust for him, and by the same Will appointed his Guardian in case of his Mother's Death or Marriage, and to whom the said Testator had devised the said Estate, in case of the Death of the said Infant without Issue Male, and whose Interest it therefore was to take Care of the Infant's Interest in that particular; and the said *John Tyson* and Sir *Cesar Child* (whose Daughter the said *John Tyson* had married) had such Confidence in him the said *Robert Doyley*, that upon the eighteenth Day of *March*, One thousand seven hundred and eighteen, they entred into a Recognizance, together with him, in the Penalty of seven thousand Pounds, for the said *Robert Doyley's* duly accounting for and paying the money he should receive out of the said Infant's Estate; and the said Earl saith, that no Complaint was ever made to the said Earl against the said *Robert Doyley* to the Time of his Death, but he owns that he hath heard, that upon the Master's Stating the Accounts since *Christmas* last, there does appear due from the said *Robert Doyley* about Two thousand and five or six hundred Pounds, but believes there is not any Fear or Doubt but that the same is very well secured by the said Recognizance.

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

Thus the said Earl has laid his Case before your Lordships, and doth further, for answer to all the said Articles, say, that he is not guilty of all or any of the matters contained in the said Articles, or any of them, in manner and Form as they are therein charged against him; and the said Earl doth further insist upon the Benefit of his Majesty's most gracious and general Free Pardon, granted to all his Subjects (not therein excepted) in and by an Act of Parliament for that Purpose made in the seventh Year of his Majesty's Reign, in Bar of, and in his Defence against the said Impeachment, and the said Articles exhibited in maintenance thereof, and all and every the Proceedings thereupon, so far as the same extend to any Neglect, Offence, or Misdemeanor, or supposed Neglect, Offence, or Misdemeanor, or any other Act, Matter, or Thing, suffered, done, or committed, or omitted, by him the said Earl, before the four and twentieth Day of *July*, in the Year One thousand seven hundred and twenty one, and doth humbly insist, that no Evidence ought to be given against him for or concerning any of the Matters or Things aforesaid, in and by the said Act pardoned, or any of them; and doth aver, that he is not within any of the Exceptions in the said Act contained.

The Commons REPLICATION to the Answer of Thomas Earl of Macclesfield.

THE Commons have considered the Answer of *Thomas, Earl of Macclesfield*, to the Articles exhibited against him by the Knights, Citizens, and Burgeſſes in Parliament aſſembled, and obſerve, that the ſaid Earl hath induſtriouſly avoided giving a direct and particular Answer to ſeveral matters poſitively and certainly alledged againſt him in the ſaid Articles, which, from the Nature of the Facts themſelves, muſt neceſſarily lie in his own Knowledge, and hath attempted to diſguiſe and cover the real Crimes laid to his Charge, by immaterial and evaſive Inſinuations of Facts of a different Nature; and that many Parts of the ſaid Answer are contradictory to, and inconfiſtent with each other, upon which they might demand your Lordſhips immediate Judgment: Yet the Commons being able to maintain the Truth and Juſtice of their Accuſation, are willing to enter into the due Examination thereof: and do aver their Charge of High Crimes and Miſdemeanors againſt the ſaid *Thomas, Earl of Macclesfield* to be true, and that the ſaid Earl is Guilty, in ſuch Manner as he ſtands impeached; and that the Commons will be ready to prove their Charge againſt him, at ſuch convenient time as ſhall be appointed for that Purpoſe.

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

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

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

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

In order to ſet this in the cleareſt light, I muſt go on and obſerve, That the Commons charge in the next place, That inſufficient Perſons were found out and pitched upon, to be admitted Maſters of the Court;

Men of ſmall Subſtance and Ability; no ways fit to be entrusted with the great Sums of Money and Effects lodged in their reſpective Hands.

My Lords, the natural Qualities and Endowments requiſite to recommend Men to ſo great a truſt ought to have been Honesty and Probity; the acquir'd ones, thoſe of Knowledge and Experience; without a due Mixture of theſe it was very hazardous to admit any into truſt: But no doubt Credit and Competency of Fortune were Ingredients perfectly neceſſary; becauſe whatever Loſs, or Miſfortune, might attend the Management of a Maſter ſo accompliſhed, in the ordering the Suitors Money, here might be ſome Proviſion coming out of his Eſtate to make Reparation. Your Lordſhips will, no queſtion, at the firſt View, think it carries an odd Appearance, when this unfortunate Earl had reſolved within himſelf, at all Hazards, to raiſe exorbitant and immense Treasures out of the Sale and Diſpoſal of the Maſters Places, how it ſhould answer his corrupt Deſigns to admit into them Perſons of ſmall Subſtance, and ſome of almoſt deſperate Fortunes, utterly unable to lay down the vaſt Prices thoſe Offices were ſold for at publick Auction: But, my Lords, the Vaſtneſs of the Price was no Objection, or Diſcouragement, to a Perſon already undone, provided he might be made eaſy in the manner of Payment, and run no Hazards. Men of Subſtance might very well be afraid to *Preſent*, as his Lordſhip's Phraſe is, a whole Eſtate at once for an uncertain and precarious Proſpect, either of Succeſs in the Office, or of Life, or Health, to enjoy it; ſo that the fitteſt Engines and Instruments to effect the noble Lord's Purpoſes, were Men of ſmall and ſhattered Circumſtances. And therefore the Commons go on and charge, That there was a fraudulent and unwarrantable Method made uſe of in paying for the Maſters Offices out of the very Money belonging to the innocent Suitors of the Court.—That this Practice was notorious and publick, and the Perſon at the Bar well acquainted therewith. Your Lordſhips now obſerve, That the greateſt Difficulty of all to an indigent Perſon, *viz.* the Payment of the Money, was, by this dangerous and unjuſtifiable Contrivance, totally removed, and when a Man was neither to be out of Pocket himſelf, nor thrown into any Fears and Apprehenſions of being queſtioned for miſapplying the Suitors Money, is it at all to be wondered at, that the price of theſe Offices ſhould ſwell to that Bigneſs, as long to be the topick of Converſation in the World about us, and at laſt become the Subject of a national Enquiry? This ſcandalous Method of Payment is of the moſt malignant Kind, and a Suitor is, contrary to the Law of Nature, made the Instrument of his own Deſtruction; his Subſtance which ought to be his Support and Relief, is turned to his Oppreſſion, or if Part only be taken from him, it is in order to arm another to diſpoſſeſs him of the Reſt. The great Perſon, whoſe Duty it is to protect his Property, is the Promoter of his loſs, and is the more unpardonable in it, as he turns that loſs to his own Advantage. If it be a thing univerſally condemn'd, for a Perſon in the Earl's late high Station, to borrow a Suitor's Money without his Knowledge, notwithstanding he offers a moderate Intereſt for it, becauſe it is encouraging the Maſters, by his own Example, to lend out Sums with as much Juſtice to other People, How infinitely greater is this Offence? If it be a Crime to put Mens properties to hazard, how much blacker is it to take them to one's ſelf, and incorporate the Widow's Mite with one's own Heap! But, my Lords, when ſuch

such prodigious Sums were extorted from the Masters, could it be any Mystery how they were to re-imburse themselves? For although they paid no Money of their own, yet they made themselves accountable for what they used of the Suitors; was it not an obvious Consideration, That if they dared pay for their Employments with part of the Trust-Money, they meant to traffick and game with the remainder too? They came in Masters upon such Terms, for no other Purpose but to pillage and fleece those under their Care. What must be the natural and unavoidable Consequence of lodging in their Hands such uncontrollable and licentious Power over their Cash, but that the first ill Run would crush them at once, and pave the Way to great Deficiencies! But lest the prospect of so calamitous a Case should deter the most greedy from contracting for a Master's place on Terms the most inviting, you will see, in the Series of this Affair, what Shifts, what Artifices were employed, to hide such a miserable Scene from the Eyes of the World. For the Commons in the next place charge, That *Fleetwood Dormer*, Esq; having embezzled great part of the Effects belonging to the Suitors of the Court, died, indebted to them in divers Sums of Money, amounting in the whole to 25000*l.* and upwards; that the noble Lord at the Bar has not made any proper Inquiry into *Dormer's* Deficiency, taken no Care about his Effects, but has endeavoured to hide and conceal, from the Suitors, the State and Condition of the Office, and that this Concealment was, lest a publick Discovery of the Deficiency might lessen the unjust Gains he proposed to himself from the sale of the Masters places. Your Lordships observe here, That one Accusation is, a great and manifest Neglect in the Execution and Discharge of his Duty; a wilful and deliberate Neglect; not arising from the Infirmary of human Nature, but growing out of the Corruption of it; mitigated by no one Shadow of Excuse, but aggravated by the Attendance of many foreseen ill Consequences. If an Office abused in the most fatal Manner, on the Brink and precipice of utter Destruction, was not a proper Object of his immediate Inspection, no wonder the most prosperous Offices did not deserve his Care; what Master, who was an Eye-Witness of this, would be under that decent and necessary Awe of the presiding Person, and keep himself within the just Bounds and Limits of his Office? This, my Lords, is indeed a wilful Neglect: But if you look on it in another Light, in order to conceal the Deficiency, that the Value of the Masters Places might not be run down, it will appear, in its worst Colours, an Artifice to support and carry on a Fraud, a Contempt of Duty for the sake of Corruption. The Series of the Accusation will evidently shew, that the Earl's Heart was set upon this Concealment; for we shall now find him beginning to display his utmost Ingenuity; here was an Accident, which, unless great Care were taken, would entirely frustrate and blow up his Designs; were *Dormer's* Deficiency divulged abroad, and the whole Body of the Suitors (who had sure a Right, even from Compassion, to be taken care of) made acquainted with the ruinous Condition of his Office, who would answer that the Government itself might not have been alarmed, and a publick Inspection made four Years ago into the other Masters Accounts too? The dread of a publick Examination now overballanced all other Considerations; and as some of the Suitors (whose Intelligence and Sagacity were better than the rest) were daily pressing and soliciting for their Due, the Office-money embezzled, no care taken to secure *Dormer's* Effects, all Supplies and Demands on *Wilson* cut off by the wretched and unwarrantable Composition made for the Suitors without their Consent or Knowledge: These Distresses and Difficulties pressing and surrounding this unfortunate Earl, it

was necessary some measures should be immediately concerted to prop and support this tottering Office; and therefore, my Lords, you will now find him arming himself with the Weapons of Authority and uncontrollable power, and playing the Tyrant under the specious pretence and colour of Duty. For the Commons go on and charge, that the Person at the Bar, during the time he was Lord Chancellor, made an Order for the Masters to bring in their respective Accounts of the Cash and Securities in their Hands; (a very proper Inspection, no doubt, had it been well designed) but your Lordships will observe the Charge is, That this was done to terrify and induce the Masters to contribute money towards *Dormer's* Deficiency; to conceal the true State of the Deficiency from the Knowledge of the World: and they further alledge, That in pursuance of this intimidating Order, money was contributed for that purpose, part of which we shall prove to be paid since the act of Grace, on the 11th of *August*, 1721, and that those Accounts were not insisted upon after that. My Lords, This proposal met with its deserved Opposition from the Masters; however, the apprehension of losing the Cash and Effects prevailed at last, the point was carried, and a Sum accordingly contributed. When your Lordships have but just now seen that there was a very visible, and designed Neglect in forbearing to inquire into *Dormer's* Effects, and to go to the Bottom of his Deficiency; is it to be imagined, that this calling for the State of their Accounts cou'd be done out of Vigilance and Duty? No man can think so; were they ever insisted upon after the Contribution? His Lordship knows they never were; if the real Design was to search and examine them, it was as proper a time to do it after the 11th of *August* as before, no body believes they were in a better Condition, the Masters had the same free power of their Cash, and the Person at the Bar had as deep a Sense of his Duty after that day sure, as before. If the misbehaviour of *Dormer* gave occasion to this designed Inspection into the general Condition of the other Offices, how came it about the Design was never carried into practice, till his Majesty, out of Compassion and paternal Goodness to his oppressed People gave directions for that End? The Deficiency of *Dormer* continues still, and yet the Earl impeached has made no Regulations in the Offices, examined no Accounts during the Time he remained in that high Post; nor set up any Lights, or Land-marks, whereby the present deficient Masters might have cleared the Rocks on which they have split. No, my Lords, this was only a pretence of regulating; a Dissimulation of Duty, for the better Concealment of *Dormer's* Frauds. Besides, the Proposal that the Masters should contribute to the patching up a Deficiency in another's Office, is unjust in itself, and fatal in its Consequence. Can any thing be more repugnant to Justice than to oblige one Person to repair the Losses of another, incurred without his Knowledge or Fault? Or where is the Advantage to the Offices in general, allowing it to be just? If *Dormer's* Deficiency be supplied out of other Offices, will not those Offices miss those Supplies, and be as much impoverished in the general, as *Dormer's* is mended in particular? Surely, my Lords, there needs no reasoning about this, the Thing speaks itself. The Commons take notice of an alternative in this Article offered to the Masters, either to consent to a Contribution, or to be immediately stripp'd of the Cash and Effects; so that upon paying down the Sum demanded, a Master was confirmed afresh in the ill Conduct of his Affairs, he pays his Fine, and renews his Lease of Knavery and Impunity; his Books may be kept as close from Inspection as the Books of the Sybils, they contain alike the Destiny of Mankind, and he may go on with Authority

ty to prey upon the properties of the Fatherless and Widow; and no doubt the Master argues upon as good Grounds as the noble Earl; and concludes, that if for the Advantage of his unjust Schemes, the impeached Lord thinks it highly reasonable to extort money from him belonging to the Suitors, which is never to be restored, it may, with parity of Justice, be as decent for him to take the same liberty with their Cash too, for the Service of his own. But the Commons detest the corrupt Practices of both, and expect exemplary Justice on the great Offender at the Bar.

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

Your Lordships will observe in the ensuing Charge, That Mrs. *Elizabeth Chitty*, an unfortunate Widow, having obtain'd an Order from the Earl at the Bar, by virtue of which Mr. *Edwards*, *Dormer's* Successor, was to pay her 1000*l.* part of a much larger Sum deposited in the Hands of Mr. *Dormer*, and *Edwards* refusing to pay the same, not having sufficient in his hands, out of *Dormer's* Effects, to answer the said Demand. The impeach'd Lord did again make use of the same Artifices and Stratagems to compel the several Masters to contribute this further Sum of 1000*l.* to stop the Complaints, and stifle the murmurings of Mrs. *Chitty*; and did also intimidate them, by representing, That if the Deficiency were known, a parliamentary Enquiry would probably ensue, and the Masters be deprived of their Offices, having bought them contrary to Law: This not taking Effect, the Commons charge, That in order to accomplish his wicked and corrupt Purposes, he did himself pay the 1000*l.* into *Lockman's* Hands, for the Use of Mrs. *Chitty*, saying, this was the last money she was ever likely to receive, by reason of a Deficiency in *Dormer's* Office. My Lords, you see here is a second Attempt, a fresh Endeavour to conceal the deficiency by the aid and assistance of the same measures made use of before, but backed by the Terrors of a national Inspection. The Continuation of these Arts is no small presumption, that the End designed was unjust in the Earl's own Judgment. His Condemnation, in this Instance, arises and springs out of his own Arguments and Conduct. If a publick Discovery of this Deficiency would lay the Foundation of a publick and national Examination; what safer, what more expedient measures could be concerted and taken, than immediately to satisfy Mrs. *Chitty's* Demands; by the Refusal of which, this publick Discovery, so much, and so justly apprehended, might come out? And what stronger Inducement could he lay before the Masters, why the Burden of this Payment should fall upon them, than by shewing in how fatal a manner that national Examination would affect themselves? He represents to them their having purchased their Offices (and many of them of himself too) in direct defiance of the Law, and that it was their near Concern to avoid the Pit, in which they were likely to be swallowed up. My Lords, I take this to be a plain Confession of his Crime: Our Accusation is, That the sale of these Offices is repugnant to Law and Justice; here is his own manifest Acknowledgment that it is so, but aggravated and heightened by this flagitious Circumstance, That whilst he is reminding the Masters of that Guilt which he himself shared, he draws an Argument from that very Guilt, why they should assist him in a fresh Offence; and since they

had already offended against the Laws of the Land, if they would avoid Punishment, the best way of doing it, was by a new Transgression. You have his own Word for it, that he knowingly exceeded the statutable Limits prescribed by the Wisdom of our Ancestors, for the Safeguard and Protection of the Rights and Properties of the *British* Nation. If the Buyer is Criminal, how can the Seller be Innocent? And yet his Lordship, it seems, knows of no Statute now in being, on which Judgment can be prayed in this Prosecution. 'Tis this wilful and deliberate Transgression of the Laws that has opened that Fountain of Iniquity which has drowned and laid waste the Fortunes of our Fellow Subjects.

In stating the Charge thus far, it is evident, That neither a wilful Neglect of Duty has been wanting, nor a thorough Contempt of Justice; no Pains spared, no Artifices unemploy'd to plunge the Deficiency in *Dormer's* Office in the deepest Obscurity. You have found him forcing and wresting a Contribution from the Masters; not such a one, my Lords, as would equally answer all Demands on the Office, but as a bare Sufficiency to satisfy the Importunities of Persons for the present, and thereby lull others into a destructive and fatal Security; to make a false shew and appearance of Ability in this Office, which the Masters were afterwards directed to do in theirs. Your Lordships shall soon find him acting another Part, and disheartning *Lockman* from engaging any further in the Marriage with Mrs. *Chitty* (for the Sollicitations of a weak Woman to have her just Due might be easier dealt with) assuring him, that the Deficiency was such as must infallibly root out all future Hopes and Expectations on her Account; and yet the close of this Article sets forth, That so lately as the fifth of *December* last, this Earl sitting then in open Court, did, in a Cause depending before him, protest and affirm, That, for his part, he knew nothing of *Dormer's* Deficiency, but as publick News. My Lords, if Truth and Sincerity are not to be found in the Seat of Judgment, where must we look for them? Where shall we place our Confidence, if there is no Dependence on the Affirmation of a Judge? Where shall we seek Examples worthy our Imitation, if the uprightest Places afford them not? But to pass over this displeasing Scene, your Lordships will be pleased to take notice, That the unfortunate Person at your Bar, in hopes still to cover the Deficiency, made divers Orders on Mr. *Edwards* for the discharging and paying the intire and full Dues to some of the Suitors, whilst others were put off with an inconsiderable Share. Is there any thing more noble in the Mind of Man, than a desire of distributing equal Justice? Without equality Justice is destroy'd and sacrificed to the Passions and Infirmities of Men; and yet your Lordships will find there is no Virtue so lovely, no Principle so amiable, but must be abandoned and prostituted to the carrying on this wretched Scheme. Such is ever the miserable Fate of those who dip their Hands in Corruption; they engage originally in one Vice only, but are forced to adopt and cherish a number of others to keep that one a Secret from the World. For it becomes, at last, *necessary* to do injustice for the sake of Security; Peoples Necessities, tho' they may be alike, yet are their Passions quite different, and a necessitous and starving Suitor of a broken and worn-out Spirit might be turned away from his Lordships Presence with a tenth Part of his Right, whilst one of a more obstinate Make, and a bolder Constitution, would insist upon, and wrangle for the whole. This difference of Tempers might facilitate, possibly, such unjust Dealings for a Time; but could this partial Preference of one Person to another, in manifest Contempt and Violation of the Rules of Equality, be

be any otherwise of Service to this Noble Lord, or make any amends for diminishing Reputation, but by stopping the mouths and Cries of the solliciting Suitors with such Proportions as would go down with them, prevent the Contagion from breaking out, and disappoint the Application of a publick Remedy! You see plainly the miserable Consequences the Sale of the Masters Places has been attended with; the fraudulent method of Payment; the unjust and uncontroled Abuses of the Masters; the great Neglect of *Dormer's* Deficiency; the unjustifiable Concealment of it; the stretches of Art and Injustice in the manner of doing it; 'tis one continued Series and Succession of male-administration, calculated for the advancing the Profit and Gain of the Person at your Bar. Your Lordships would, no doubt, wonder else, why so great a Trust as upwards of a million of money, should be reposed in the Masters, without some reasonable Security on their Part, or some proper Restraint laid upon them for their due and fair Discharge of it, especially, since *Dormer* had broke, and brought upon the Sufferers so fatal a misfortune: And this it is, my Lords, that raises the resentment and amazement of the Commons, who farther charge, That, notwithstanding the Earl well knew that *Dormer's* Deficiency was chiefly occasion'd by the liberty he assumed to himself of Trafficking and Gaming with the Suitors Effects, and that the other Masters did, or had it in their Power so to dispose of, or otherwise misemploy the money and Securities in their Hands; and, notwithstanding a reasonable and proper Scheme was laid before him, whereby the like misfortune might be prevented for the future, yet the Earl never required any Security, or laid any Restraints on the Masters, but left them to the wide and boundless Liberty of abusing their Trust as Avarice and Ambition suggested Occasions. I will not enter into the Consideration how far it may have been the Practice not to require Security, I take it for granted, if none has been formerly demanded, it was because the Presiding Persons were vigilantly executing the Duty of their Offices, and by frequent Inspections into the Masters Accounts, restraining them from the Exercise of unwarrantable Power. But were that otherwise, bad Precedents, my Lords, will not justify Omissions; no, nor extenuate them, tho' I believe not any Instance can be produced, not so much as the Appearance of any, where it was so indispensibly and absolutely Necessary as in this Case; there was no need or use of any Example to remind him of it, common Prudence teaches us the Necessity of providing against Disorders or Losses for the time to come, which our past Negligence has once brought upon ourselves or others; 'tis the only Attonement a man can make for his former Faults; and if the Person at the Bar had had at heart the least Intention of repairing the Breaches made in the Justice of that Court where he governed, here was the most fortunate Opportunity of doing it; for your Lordships shall find the very Masters themselves, in a manner, importuning and solliciting him to tie up their Hands by such proper and equitable Restrictions, as would put the fluctuating Fortunes of their Fellow-Subjects on the firmest Establishment. Had the Noble Lord listened to this Proposal (which will come more properly within the Province of another Gentleman to open to your Lordships) the unhappy Deficiencies in the present Masters Offices had been fortunately prevented, the Clamours of the World about us had been stopt, and the Nation easy. Did not Necessity demand it? The deplorable Havock committed since shews it did. Did not the national Voice call aloud for it? The Prosecution of this Day is sufficient Testimony. Was it not his Duty? Sure I am, it would have been his Happiness. And shall not the

Ruin of Widows and Orphans plead for Punishment and Reparation? The Commons rely upon your Lordships Justice that they shall.

But, my Lords, there is a Charge behind, which contains matter worthy your Observation; it sets forth; That his most sacred Majesty, out of his fatherly Goodness to his People, having directed an Enquiry to be made into the accounts of the Masters in Chancery; in the month of *November* last, the Earl impeached did; by his advice and authority, persuade and induce them to make false Representations of their Accounts and Circumstances to his Majesty in Council, and to assist one another with cash and effects to make a false shew and appearance of their ability, that a parliamentary Enquiry might be prevented; and did oblige them to declare in Writing, at the Foot of their Accounts, That they were able and willing to pay the Ballance, although the Earl well knew many of them were not. Your Lordships, sure, cannot but be astonish'd at the Boldness of this Attempt, to defeat and frustrate the gracious Intentions of his most sacred Majesty, to take from his unfortunate Subjects that redress and satisfaction, which their Duty and Loyalty, their Wrongs and Sufferings had claimed in his Royal mind; to deceive his Majesty at the very Council-Table, where he had the Honour himself to sit; and to deprive the Commons in Parliament of that Inquisition for Justice, which the Nation expected at their Hands. The Dread and Apprehension of parliamentary Justice is a strong Presumption of his Guilt. Why, my Lords, should publick Enquiries terrify and dismay an innocent Person? National Acquittals are eternal Monuments of Renown; they are more glorious and lasting than Pillars of Marble, or triumphal Arches; they remain upon Record to all Posterity, never to be defaced by the malice or Teeth of Time. But, my Lords, as there are monuments of Praise, so there are Columns of Infamy; there are National Condemnations as well as National Acquittals; and the noble Lord must now take his Fate in the Judgment of your Lordships, which he so much dreaded. It is an Evidence of a Man's Crime, if he flies for it; it betrays a Self-Conviction in the Party accused, in that he dares not abide a legal Trial; it is another Circumstance against a Man, to be found tampering with a Witness, and carries with it some Presumption of his Guilt; because no innocent Person wants the aid and assistance of a false Evidence. Your Lordships have seen him as it were flying from his Trial, and you will now find him tampering and intriguing with the Masters in the most dangerous and artful manner; and that the Masters are Evidence, and close ones too, will fully appear at your Bar. You shall find him colouring and glossing over the Masters Accounts, with Touches and Strokes of his own, hoping to shelter his own male-administration, by putting the Vizard of Integrity on theirs; *this* is the glorious Exit he makes; *thus* he finishes his *Impartial and Just Administration*.

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

The Ground-work and Basis of this noble Person's Crimes is Corruption, a thing in private life the most detested, and in publick Persons, of the most malignant Influence to the State. It deprives the Crown of that solid Strength and Grandeur, that shining Lustre and Beauty, which a just Execution of the Laws reflects upon it; it disarms the People of that Security and Safety which naturally flows upon them from an impartial and uninterrupted Administration of Justice. The Consequence

quence of which will ever be, the Crown will lose that proper reverence and veneration from the People which are its due; and the Subjects, restless and uneasy for want of Justice, will lay hold on the first Opportunity of throwing off Allegiance itself. It brings a national Reproach upon us; and, by sowing the Seeds of discontent at home, exposes us to the Incurfions and Depredations of our Enemies: But, my Lords, when it protects itself under the Shadow of Justice, and puts on the Smiles of Innocence, 'tis high time to rise up in Defence of our violated Laws, and set a publick mark of infamy upon it. To what purpose are Judges and Ministers restrained, by the Provision of Acts of Parliament, from selling Offices under their Protection and Care, if Men shall hide themselves under example in bar of the Laws! Will Example plead for him? Surely, my Lords, there are none such: Or, if there were, what would that be but to defend Crimes by their own Blackness and Malignity? As if a Distemper were not to admit of any Remedy, because it is general and contagious. But supposing, for Argument's sake, there have been Great Persons, his Predecessors, who have ventured upon small Presents and Gifts on such Occasions, does it follow, with any colour or pretence of Reasoning, because those have been confined within the bounds of moderation, therefore the Extortion of exorbitant Sums, to connive at outrageous Measures and Oppressions, exceeding almost the Fears of the Oppressed themselves, should take Shelter under the poor Pretence of Precedent and Example? Alas! my Lords, I am afraid Example only operates according to Mens Appetites and Passions; else whence comes it about, that Example should have all the Beauty of an Angel in this Instance, and all the Deformity and Horror of a Fiend in another? His great * Predecessor made no Attempts to conceal a deficient Office in his Time. No, my Lords, he had no corrupt Purposes to feed. The same noble Person never ordered some Suitors their entire Demands, and left others groaning and starving under the Pressure of an unequal Distribution; he did the direct contrary. Happy had it been for this unfortunate Person, happy for the Widows and Fatherless, had he copied after the Example of his renowned Predecessors, in their wise and upright Distribution of Justice, as well as shewn to their eminent Names for Protection, in the illegal Practices wherewith he is charg'd! To what a low Ebb is the Virtue and Reputation of this Nation reduced, if Impunity shall justify Offences; if Bribery shall receive a Patronage from great Examples, and the basest Actions be adorned with the same Lustre and Honour, that are only due to the most virtuous. But, my Lords, the Commons have found him bargaining and bartering an † Office, in the Gift of the Crown, for the poor and sordid Advantage of an hundred Guineas. This is an Instance wherein the very Person of the King is insulted in the most flagrant manner; 'tis a Prostitution of the Regal Honour and Dignity, by one who had the Trust reposed in him, as one of the joint Guardians of the Realm during his Master's Absence: As if too there was no Access to the Throne for Grace and Favour, no tasting the refreshing Streams of that Fountain of Goodness, which rises in his Majesty's Breast, for the universal Comfort of a dutiful and happy People, but by the Assistance of the most abandoned Measures. Can your Lordships any longer wonder the People's Properties were employed to ill Purposes, when his Majesty's Prerogative is traffick'd with and sold? Could it be expected a poor Suitor's Rights should remain secure under his Protection, as Chancellor, when the King's were precarious in the Hands of his own Trustee? And yet, my Lords, how often and how gloriously has

this Nation vindicated and asserted its own Honour, in the Ruin it has poured on the Heads of corrupt Judges and Ministers! It was the Loss and Forfeiture of all the Lands and Estate of Sir *William Thorpe*, Justice of the King's Bench, who was sentenced for Bribery in the Reign of *Edw. III.* Nay, the Sentence extended even to Loss of Life itself, though that part has been thought not sufficiently warranted, and should have ended in Imprisonment only. Every one knows the Vengeance hurled on the Earl of *Middlesex*, which is to be found in the Rolls of Parliament. This unfortunate Earl, having delayed Justice to the Farmers of the Customs, in a Matter referred to him by King *James I.* and having polluted his Hands with exorbitant Bribes, was sentenced in Parliament to lose all his Offices, which he held in the Kingdom; to be forever incapable of any Office, Place, or Employment in the State; to be imprisoned in the Tower of *London* during the King's pleasure; to be fined 50,000 *l.* never to sit in Parliament any more, nor to come within the Verge of the King's Court. The Case of my Lord *Bacon* is another Instance of the Virtue and Integrity of your Ancestors, in the Abhorrence they shewed, and the Punishment they inflicted on that Great Man's Crimes.

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

When the Commons consider the high Station in which this noble Lord was placed, the many signal marks of his Majesty's Favour and munificence bestowed upon him; the notorious Breach and Violation of his Oath, and of the several great Trusts reposed

* Lord Cowper.

† Clerk of the Custodies.

in him; when they have found him prostituting and abusing the Authority and Dignity of the Crown, trampling upon the Laws and Statutes of the Realm, destroying and confounding the Properties and Rights of divers of his Majesty's Subjects; the Commons could not sit still, and see this great Offender triumph in the Luxury of unpunished Crimes, without using their best and most effectual endeavours to bring him to Punishment, and to make him an Example of the Justice of the present Age, a Warning and a Terror to Times to come.

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

The Nature of the Charge consists,

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

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

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

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

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

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

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

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

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

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

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

But it must be owned, the Expressions made use of by his Lordship, are conceived in such doubtful Terms,

that it is difficult to know whether he intends to represent the lawfulness of selling those Places for a Price; or only of taking a Present which the Party gives freely, voluntarily, and of his own accord, and which his Lordship says his Predecessors used to take.

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

But, my Lords, even this may be said to be nothing more than an Offence against the Statute of *Edw. VI.* which as it creates the Offence, so it prescribes the Punishment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

But

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

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

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

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

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

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

But there was then a Master's place vacant.

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

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

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

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

How that is consistent with his quitting 1500 *Guineas* from the Danger of a great Loss in that Office, I shall submit to your Lordships; but surely the manner in which *Dormer* withdrew was a strong symptom of a Deficiency, when the Masters intrusted to secure his Effects found little more than the Debt from *Wilson* to answer a Ballance of near 40,000*l.*

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

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

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

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

The Suitors might have had some Warning to have used their Diligence in discovering his Estate, and preventing any Concealment of it.

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

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

Orders were made for the payment of money out of

that Office, as if it had been clear from all Suspicions of Loss, contrary to that Rule of Equality, which is a fundamental principle of a Court of Equity, That where several persons have Demands out of a Fund like to prove deficient, they must bate in proportion.

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

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

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

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

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

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

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

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

My Lords, We shall shew you, that notwithstanding the many great and beneficial Favours bestowed upon this *Earl* by the bountiful Hand of his Majesty; and all those Honours confer'd upon Himself and his Family; the Dignity of his high Office, and the great Trust reposed in him, have been prostituted, in order to satiate a boundless Appetite for unlawful Gain.

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

The first beneficial Grant the *Earl*, in his Answer, owns to have receiv'd from his Majesty, before the Honour of Peerage was conferr'd upon him, was 1200*l.* a Year granted to him and his Assigns, during the life of his Majesty, in, or about June 1716; in the next place, that in the Year 1718 he was created *Lord High Chancellor of Great Britain*; and, that at the same time, his Majesty, out of his Royal Bounty, did bestow upon him 14000*l.* and likewise granted to his eldest Son, now *Lord Parker*, an annual pension of 1200*l.* payable during the joint Lives of his Majesty and the said

said Lord *Parker*, but determinable whenever he should be put into possession of one of the Offices of a *Teller* in the *Exchequer for Life*, and which Office he has since obtained; and over and above all these great and beneficial *Grants*, the usual *Salary* of 1500 *l.* a Year out of the *Hanaper Office*; the other great *Profits* and legal *Perquisites* of his high Office, the Earl owns to have had an allowance of 4000 *l.* a Year. As these were all marks of the greatest *Honour*, *Esteem* and *Confidence* from his great and munificent Benefactor, so surely they ought to have produced in him all suitable Returns of *Gratitude*, by a just and impartial Execution of the *Trust* reposed in him, to the Honour of his Majesty, and the Good and Welfare of his Subjects.

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

I must take notice that his Lordship, in his Answer, does not deny to have taken all the several Sums laid to his Charge by the Commons, on the Admission of the Masters, mentioned in the Articles of Impeachment, to their respective Offices; but alledges that he took them as Presents only, freely and voluntarily given, and such as had been usual on such Occasions. But, my Lords, we shall shew you that the Sums of money taken by him were taken in the Manner alledged in the Articles; and by the Evidence I shall now open, your Lordships will see how very different this matter will appear from that which the Earl would insinuate in his Answer; I shall begin by opening the Evidence to the 5th Article, which relates to the illegal and corrupt admission of Mr. *William Kynaston* to the Office of a Master in Chancery, in August 1721. We will shew you that before Mr. *Kynaston* was admitted to be a Master, he was advised by Mr. *Rogers* (with whom he had then contracted for the Sale of his Office for 6000 *l.*) that the Lord Chancellor would expect 6 or 700 *l.* for his admission; upon this he applied to my Lord's Secretary, Mr. *Cottingham*, (who appears to have been the Broker on all these Occasions) and desired to be recommended to the Chancellor for that Office, and told Mr. *Cottingham*, that if it was necessary, he could obtain my Lord *Bradford's* Recommendation; the Secretary only answer'd, that another Master had given 1500 *Guineas* on the same Occasion; Mr. *Kynaston* then offered 1000 *l.*; *Cottingham* reply'd, he could mention nothing less to the Lord Chancellor than 1500 *l.*; but being afterwards asked by the person who was to pay the Money, what Sum would be insisted on; answered, It must be 1500 *Guineas*; nothing it seems was to be abated, for this (Mr. *Cottingham* told Mr. *Kynaston*) was one of the best Offices, being the fullest of Money and Securities. Money and Securities, my Lords, the property of the Suitors of the Court; and how fatal the Masters making Use of such Money for their own Profits has been, in order to reimburse themselves for the very great Sums paid for their Offices, is now too severely felt by Numbers of helpless Orphans and injured Suitors. Mr. *Kynaston*, however, seeing no Possibility of admission without paying the whole sum of 1500 *Guineas*, comply'd at last, sent the *Guineas* to Mr. *Cottingham*, who afterwards paid them to the Chancellor; and the next Day Mr. *Kynaston* was admitted and sworn a Master.

I come now to open to your Lordships, the Evidence

which we shall produce to make good the 6th article, which relates to the illegal and corrupt admission of Mr. *Thomas Bennet* to the Office of a Master in Chancery.

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

However, Mr. *Bennet* again desired he would go to the Chancellor, and said that if the Sum he had offered would not do, he would give 1500 *l.*; *Cottingham* desired to be excused from going on that message, and said my Lord did not love Haggling; and that if Mr. *Bennet* would give no more, he might lose the Office, for that if the Chancellor should refuse that Sum, he would not go with any other Offer. Upon this, my Lords, Mr. *Bennet* at last, consented to give the 1500 *Guineas*; and this will appear to have been what the Lord *Macclesfield* calls Mr. *Thomas Bennet's* free Gift. The *Guineas* were paid to Mr. *Cottingham*, who paid them to the Chancellor, for which Mr. *Bennet* was admitted into his Office, which appears to have cost him 9075 *l.* and that very Sum, upon the making up of his Accounts, appeared to have been wanting in his Office, for the making up of his Ballance due to the Suitors of the Court. I must take Notice to your Lordships, that the Lord *Macclesfield*, in his Answer, alledges, that the said *Kynaston* and *Bennet* pretending they were disabled from answering to the Suitors of the Court, so much Money as he had taken from them at their respective Admissions, the said Earl did, before the Impeachment, pay into the Court of Chancery, for the Use of the Suitors of that Court, the two several Sums received by him from Mr. *Kynaston* and Mr. *Bennet*; but, my Lords, that we shall shew to be a gross Mistake in the Answer, for we shall prove the said Sums were not repaid by him till after the Impeachment, and after they had by Affidavit charged the Payment of these Sums as one Cause of the Deficiency in their Offices.

I come next to shew the Manner in which Mr. *Francis Elde* was admitted to his Office of a Master in Chancery, which happened in February, 1723, upon the Death of Mr. *Fellows*; we shall shew your Lordships, that Mr. *Elde* applied personally to the Chancellor, who told him he would treat with him in a different manner from any man living; in two or three Days after this he applied again to the Earl for the Office, and then did mention a Sum of 4 or 5000 *l.* my Lord told him, Mr. *Elde* and I must not make Bargains. So, my Lords, Mr. *Elde* after this went to Mr. *Cottingham*,

ham, and told him of his intention to give the Chancellor 5000 l. Mr. Cottingham advised him to make it Guineas. And, in pursuance of this Advice, Mr. Elde did, on or about the 1st of Febr. 1723, carry to the said Lord Macclesfield's house 3000 Guineas and 2100 l. in Bank-Notes, muffled up in a Dutch-Basket, which he sent up to my Lord by Mr. Cottingham, who left it with his Lordship, brought down word all was well, and within a day or two after Mr. Elde was sworn into his Office.

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

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

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

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

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

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

That, of the money he received from Mr. Elde, he

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

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

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

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

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

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

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

Putting up Offices of Justice to Auction, my Lords, is repugnant to the Dictates of plain Reason, and consequently

frequently to the whole Sense and Spirit of the Common Law of this Realm, which is founded upon Reason; and in this Repugnance to the Intent and meaning of the Law of the Land, lies this Offence, (in my poor Judgment) as to the Illegality of it.

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

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

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

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

Bennet did take it out, and when it came to the Great Seal, no Consideration was had of what he had given before, but it cost him about 64*l.* for the Seal.

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Lutwyche*. My Lords, we are not willing to

trouble your Lordships with more than is necessary, or to go about to prove those Things that are admitted by the Earl's Answer, but where they are not fully admitted in such a Manner as they are charged, and with all that Advantage that we think we can make of them, we must beg leave to trouble your Lordships with the Proof of them. My Lords, it is admitted by the Answer, that there was an Oath of Office taken; and it is likewise set forth in the Answer, what that Oath was, but the Answer goes no farther, and doth not admit any Thing as to another Oath founded on the Statute of the 12th *Rich. 2.* which hath frequently been taken by the noble Lord; we think it therefore necessary to have the Statute of *Rich. 2.* first read, and the Oath that is there prescribed, and to shew you that the Noble Lord within the Bar, did take that Oath several times.

Then the Clerk read the Statute of 12 *Rich. 2. chap. 2. viz.*

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

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

Mr. *Thomas Eyre* sworn.

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

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

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

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

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

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

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

Mr. *Eyre*. Yes, several Times.

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

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

Earl

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

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

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

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

Mr. Serj. Pengelly. My Lords, we desire he may read it.

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

[*Mr. Eyre reads the Statute.*]

Anno xii Richardi Secundi.

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

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

Mr. Eyre. Yes.

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

Mr. Eyre. Yes.

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

Mr. Eyre. No.

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

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

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

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

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

Mr. Eyre. No.

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

Mr. Eyre. No, nothing at all.

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

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

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

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

Mr. Lutwyche. I desire he may be asked, whe-

ther this hath not been taken to be Swearing them to do what is commanded by this Statute?

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

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

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

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

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

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

Mr. Eyre. No, they do not.

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

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

Mr. Eyre. No, there is not.

Mr. West. We submit this matter to your Lordships: This Statute prescribes, that an Oath shall be particularly taken; the Fact has been stated by the Witness: And whether it does not amount to the Proof of an Oath, that they will comply with that Act of Parliament, we leave to your Lordships Judgment.

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

The particular Oath very little varies from the Oath administered to the Lord Chancellor, which, in his Lordship's Answer, is set out at large. However, we shall now beg leave to produce the Oath, ; and to that purpose, we desire Mr. *Pynsent*, the Deputy-Clerk of the Crown in Chancery, may be examined, and he will produce the Oath before your Lordships.

Mr. *Pynsent* sworn.

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

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

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

Reads the Oath.

Sacrm Magistorum Cancellarie } YE shall swear that well and trulie Ye shall serve the Kinge Our Sovereign Lord, and his People, in the Office of one of the Maisters of his Chauncerye, to the whiche Ye be called: Ye shall not assent, ne Procure the Disberytaunce, ne perpetual Damage of the Kinge, to Your Power, ne fraude; Ye shall doe or cause to be made wrongfullye to anye of his People, ne in any thinge that touchethe the Seale: And lawfullye Ye shall Counsaile the thinges that touchethe the Kinge, when ye shall be thereunto required. And the Counsayll that Ye shall geve touching him, Ye shall not disclose. And yf Ye know anye thinge of the Disberytaunce or Damage of the Kinge, or fraude to be made upon anye thinge that touchethe the keeping of the Seale: Ye shall put Your lawfull Power it to redresse and amende; And yf that Ye cannot do, Ye shall advyse the Chauncellor, or Lorde Keper of the Seale, or other whiche may that amende, to Your Power. As God you helpe, and by the Content of this Boke.

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

The next Evidence we shall produce, are Commissions beginning in the Time of *Edw. VI.* to this time, granted to Masters, appointing them to hear Causes, &c. The first Commission we shall produce, is dated the 9th of *October*, the 4th of *Edw. VI.* My Lords, we desire that Mr. *Paxton* may be sworn, who has Copies of these Commissions, and has examined them with the Records.

Mr. *Ralph Paxton* sworn.

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

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

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

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

Mr. *R. Paxton*. I did.

Mr. *Serj. Pengelly*. Are they true Copies?

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

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

Mr. *Strange*. Are they upon Stamps?

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

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

Clerk reads.

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

Rex &c. Dilcis & fidelibus Consiliariis Suis Rbto Southwell Militi Custodi ac Magro Rotulorum Cancellar' nre Willo Portman Militi uni Justic' nrorum ad Plita coram Nob' tenend' assign' Jacobo Hales Militi uni Justic' nrorum de Banco Rico Reade Militi et Jobi Tregonwell Aro Magris Cancellar' nre predce Ac Dilcis Sibi Jobi Olyver Clico Willo Cooke Aro Jobi Croke Aro et Antonio Bellassis Clico Magris ejusdem Cancellar' nre Saltm. Quia Predicus et fidelis Consiliarius nr' Ricus Riche Miles Dus Riche Cancellar' nr' Angl' adeo Corporis invalitudine ad presens laborat qd ad ea que in Cur' Cancellar' nre in causis et materiis int' diversos ligeos & Subditos nros ibidem pendent' tractand' audiend' discuciend' et terminand' Sint & fieri debeant ad presens pro tempore non Sufficiat Considerantes igitur ipm ad Saltm cicius posse restitui Si ab arduis negociis nris et detminacoē causarum in Cur' Cancellar' nre penden' ad tempus abstineat Et Volentes nichilominus interim in ejusdem Cancellarii nri absencia omibus & Singulis ligeis & Subditis nris quibuscumq; matias suas in Cur' Cancellar' nre predce prosequentibus plenam & celerem Justiciam exhiberi Ac de fidelitatibus & providis circumspccoibus vris plenius Confidentes Assignavimus Vos octo Septem Sex quinq; quatuor & tres vrm quorum Vos presat' Robte Wille Porteman Jacobe Hales Jobes Olyver & Jobes Croke unu' esse Volumus Ac tenore presenciu' Damus Vob' octo Septem sex quinq; quatuor & tribus vrm quorum aliquem vrm Vos presat' Robte Wille Porteman Jacobe Hales Jobes Olyver & Jobes Croke unu' esse Volumus plenam potestatem & auctoritatem audiend' et examinand' quascumq; materias causas & peticoes coram Nob' in Cancellar' nra int' quoscumq; ligeos & Subditos nros tunc pendent' et imposterum ibidem exhibend' & penden' & easdem matias causas & peticoes juxta Sanas discrecoes vras finalit' tminand' & debit' execuoi demandand' partesq; in matijs Sive causis vel peticoibus illis noitas & Specificatas ac testes & alios quoscumq; quos Vob' fore videbitur evocand' quociens expedire videritis coram Vob' octo Septem Sex quinq; quatuor vel tribus vrm quorum aliquem vrum vos presate Robte Wille Portman Jacobe Hales Jobes Olyver & Jobes Croke unu' esse Volumus evocand' ac ipos & eorum quemlt debite examinari compellend' diesq; productorios imponend' & assignand' processusq; quoscumq; in ea parte necessarios concedend' et fieri faciend' contemptus etiam quoscumq; ibidem comis' Sive perpetratos debite castigand' & puniend' cetaq; omia & Singula faciend' et exequend' que circa premissa necessaria fuerint Seu quomodolit oportuna Et ideo Vob' Mandamus qd circa premissa diligent' intendatis ac ea fac' & exequamini cum effcu Mandamus etiam tenore presenciu' omibus & Singulis Officiariis & Ministris nris Cur' nre predce qd Vob' octo Septem Sex quinq; quatuor et tribus vrm quorum aliquem vrm Vos presate Robte Wille Porteman Jacobe Jobes Oliver & Jobes Croke Semper unu' esse Volumus in execucoe premissorum diligent' intendant prout decet Volumus etiam & per presentes Concedimus quod omia & Singula judicia Sive finalia decreta per Vos octo Septem Sex quinq; quatuor vel tres vrm quorum aliquem vrm Vos presate Robte Wille Porteman Jacobe Jobes Olyver et Jobes Croke unu' esse Volumus Semper hmoi causis Sive materijs reddend' Sive fiend' Sint & esse debeant tanti & consimilis valoris

loris effcus efficacie roboris et virtutis ac si per Cancellariu' nrm Angl' et Cur' Cancellar' predce reddit' Sive reddend' forent Proviso Semper qd omia & Singula bujusmodi judicia Sive finalia Decreta per Vos octo Septem Sex quinq; quatuor vel tres vrm quorum aliquem vrm Vos prefate Robte Wille Porteman Jacobe Jobes Olyver et Jobes Croke unu' esse Volumus virtute presentiu' reddend' Sive fiend' manibus vris octo Septem Sex quinq; quatuor vel tres vrm quorum aliquem vrm Vos prefate Robte Wille Porteman Jacobe Jobes Olyver & Jobes Croke unu' esse Volumus Subscribantur & consignentur & Superinde eadem judicia Sive decreta prefat' Cancellar' nro presententur & libentur ut idem Cancellar' nr' antequam irrotulentur eadem Similit' manu sua consignet In cujus rei testimoniu' has Lras nras fieri fecimus Patentes usq; ultimū diem Novembr' proper' futur' duratur' Si non intrin per alias Lras nras Patentes huic Commissioni Superfederi decreverimus T. R. apud Westm' nono die Octobr'

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

WM. ROOKE.

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

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

Clerk reads.

GEORGIUS Dei Gra' Magnæ Britanniæ Franciæ & Hiberniæ Rex fidei defensor &c. Prædilecto & fideli Consiliario nro Josepho Jekyll Mil' Magro Rotlorum Cur' Canc' nre ac Dilcis' & fidelibus nris Littleton Powys Mil' un' Justiciar' nrorum ad plita coram nobis tenend' assign' Johi Blencow Mil' un' Justiciar' nrorum de Banco Robto Tracy Ar' al' Justiciar' nrorum de Banco Robto Price Ar' un' Baron' Sccij nri Johi Smith Ar' al' Baron' Sccij nri Robto Dormer Ar' un' Justiciar' nrorum de Banco Robto Eyre Mil' un' Justiciar' nrorum ad plita coram nobis tenend' assign' Johi Pratt Mil' al' Justiciar' nrorum ad plita coram nobis tenend' assign' Jacobo Mountagu Mil' un' Baron' Sccij nri Johi Fortescue Aland Mil' un' Baron' Sccij nri Thome Gery Mil' Willo Rogers Johi Hiccocks Willo Fellows Jacobo Meller Johi Orlebar Fleetwood Dormer Samueli Browning Robto Holford Henrico Lovibond & Johi Bennet Aris saltm Quia predilect' & fidel' Consiliar' nostr' Thomas Doms Parker Cancellar' nostr' magne Britannie nris arduis negotiis ex Mandato nro continue attendens in eisdem adeo versatur quod continue attendere non potest ea que in Causis & materiis inter diversos ligeos & subditos nros ac alios in Cur' nra Cancellar' penden' agen' tractand' audiend' expediend' discutiend' & terminand' sint & fieri debent Nos premissa Considerantes volentesq; eibus & singulis ligeis nris ac aliis quascunq; materias suas in eadm' Cur' Cancellar' prosequen' sive prosecutur' plenam & celerem Justiciam exhiberi tam in absentia quam in presentia predict' Cancellar' nostr' Magn' Britanniæ ac de fidelitate & providis circumspectiobus vris in hac parte plumu' confidente assignavimus vos ac tenore prentium Damus vob' & aliquibus tribus vel plur' vrum Quorum prefat'

Josephum Jekyll Littleton Powys Johem Blencowe Robtum Tracy Robtum Price Johem Smith Robtum Dormer Robtum Eyre Johem Prat Jacobum Mountagu & Johem Fortescue Aland unum esse volumus in absentia dict' Cancellar' nostr' Magnæ Britanniæ plen' prefat' & auctat' audiend' & examinand' quascunq; materias Causas & petitiones coram nobis in dca Cancellar' nra inter quoscunq; ligeos & subditos aut alios quoscunq; nunc penden' aut Imposter' ibm exhibend' & penden' materias Causas & peticones juxta sanas discretiones vras vel trium vrm Quorum prefat' Josephum Jekyll Littleton Powys Johem Blencowe Robtum Tracy Robtum Price Johem Smith Robtum Dormer Robtum Eyre Johem Pratt Jacobum Mountagu & Johem Fortescue Aland unum esse volumus finaliter terminand' & debit' execution' demandand' Partesq; in materiis causis seu petitionibus illis nominat' & significat' ac Testes & alios quoscunq; quos vobis vel tribus vrm (ut pred' est) fore videbitur evocand' quoties expedire videritis coram vobis vel tribus vrm (ut pred' est) evocand' Ac ipsos & eorum quemlibet debite examinari diesq; productiores imponend' & assignand' processusq; quoscunq; in ea parte necessar' concedend' ac fieri faciend' Contemptus etiam quoscunq; comis' sive perpetrat' debite castigand' & puniend' ceteraq; oia & singla faciend' & exequend' que circa premissa necessar' fuerint seu quomodolibet oportuna Et ideo vobis mandamus qd circa premissa diligent' intendatis & ea fat' exequamini cum efftu Mandamus etiam tenore prentium Officiar' & Ministr' Cur' nre Canc' pred' qd vobis vel tribus vrm (ut pred' est) in execut' premissorum diligenter intendant prout decet Volumus etiam ac per prentes concedimus quod oia & singula Judicia sive finalia decreta ac Ordines per vos aut tres vrum ut præd' est super hum' causis sive materijs ac peticioibus ut prefertur reddend' sive fiend' sint & esse debeant tanti & consilis valor' effect' efficacie roboris & virtute Ac si per præd' Cancellar' nostr' Magnæ Britanniæ & Cur' Cancellar' nre præd' reddit' sive reddend' forent Proviso tamen quod oia & singula Judicia sive finalia decreta per vos vel tres vrm ut præd' est virtute prentium modo & forma ut prædicitur reddend' sive fiend' Manibus vris vel trium vrm Quorum prefat' Josephum Jekyll Littleton Powys Johem Blencowe Robtum Tracy Robtum Price Johem Smith Robtum Dormer Robtum Eyre Johem Pratt Jacobum Mountagu & Johem Fortescue Aland unum esse volumus subscribentur & consignentur & superinde eadem Judicia sive finalia decreta prefat' Cancellar' nostr' Magn' Britanniæ presententur & libentur Quodq; null' eorundem Judicior' sive final' decretor' irrotulentur aut quovismodo execut' sint antequam idem Cancellar' nostr' Magn' Britanniæ ea manu sua propria filiter consignet Et quod he lre nre Patentes durabunt & permanebunt in pleno robore & effect' donec aliter per alias lras nrs Patentes huic Commissioni superfederi mandat' foret aut prædict' Cancellar' nostr' Magn' Britanniæ in plena Cur' determinari decret' & irrotulat' erit In cujus rei Testimoniu' has lras nras fieri fecimus Patentes Teste meipso apud Westm' duodecimo die Maij Anno Regni nostri quarto

per ipsum Regem

WRIGHTE.

Mr.

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

Clerk reads.

GEORGIUS Dei Gratia Magnæ Britanniaë, Franciaë, & Hiberniaë Rex, fidei Defensor, &c. Prædilecto & fidel' Consiliar' nro Josepho Jekyll Mil' Magro Rotulor' Cur' Cancellar' nre ac Dilcis & Fidelibus nris Littleton Powys Mil' un' Justic' nroru' ad plita coram nobis tenend' assign' Johi Blencow Mil' un' Justic' nrorum de Banco Robto Tracey Ar' al' Justic' nrorum de Banco Robto Price Ar' un' Baron' Sccij nri Robto Dormer Ar' un' Justic' nrorum de Banco Robto Eyre Mil' un' Justic' nrorum ad plita coram nob' tenend' assign' Jacobo Montagu Mil' un' Baron' Sccij nri Johi Fortescue Aland Mil' un' Justic' nrorum ad plita coram nob' tenend' assign' Franco Page Mil' un' Baron' Sccij nri Johi Hiccocks, Willo Fellowes, Robto Holford, Henco Lovibond, Johi Bennett, Rico Godfrey, Jacobo Lightboun, Johi Borrett, Edro Conway, Henco Edwards, & Willo Kynaston, Ar' salutem. Quia Charissimus Consanguineus & Consiliar' noster Thomas Comes de Macclesfield Cancellar' noster Magnæ Britanniaë nostris arduis negotiis ex Mandato nostro continue attendens in eisdem adeo versatur quod continue attendere non potest ea que in Causis & Materiis inter diversos ligeos & subditos nostros ac alios in Cur' nostra Cancellar' penden' agen' tractand' audiend' expediend' discutiend' & terminand' sint & fieri debent nos premissa considerantes volentesq; omnibus & singulis ligeis nostris ac aliis quascunq; materias suas in eadem Cur' Cancellar' prosequend' sive prosecutur' plenam & celerem Justiciam exhiberi tam in absentia quam in præsentia præd' Cancellar' nostri Magnæ Britanniaë ac de fidelitate providis Circumspectionibus vris in hac parte plurimum Confidentes Assignavimus vos ac tenore present' Damus vob' & aliquibus tribus vel plur' vrm' Quorum prefat' Josephum Jekyll Littleton Powys Johem Blencowe Robtum Tracey Robtum Price Robtum Dormer Robtum Eyre Jacobum Montagu Johem Fortescue Aland & Francum Page unum esse Volumus in absentia dicti Cancellar' nostri Magnæ Britanniaë plen' potestat' & Autoritat' audiend' & examinand' quascunq; materias causas & petitiones coram nob' in dicta Cancellar' nostra inter quoscunq; ligeos & subditos aut alios quoscunq; nunc penden' aut impost' ibidem exhibend' & penden' & easdem materias causas & petitiones juxta sanas discretionis vras vel triu' vrm' Quorum prefat' Josephum Jekyll Littleton Powys Johem Blencowe Robtum Tracey Robtum Price Robtum Dormer Robtum Eyre Jacobum Montagu Johem Fortescue Aland & Francum Page unum esse Volumus finalit' terminand' & debit' execution' demandand' parteq; in materiis causis seu petitionibus illis noiat' & specificat' ac testes & alios quoscunq; quos vob' vel tribus vrm' (ut præd' est) fore videbitur evocand' quoties expedire videritis coram vob' vel tribus vrm' ut præd' est) evocand' ac ipsos & eorum quemlibet debite examinari compellend' diesq; productiores imponend' & assignand' processusq; quoscunq; in ea parte necessar' concedend' ac fieri faciend' contemptus etiam quoscunq; comiss' sive perpet' debit' castigand' & puniend' ceteraq;

oia & singula faciend' & exequend' que circa præmissa necessar' fuerint seu quomodo libet opportuna. Et Ideo vob' mandamus quod circa præmissa diligent' intendatis & ea fac' & exequamini cum effectu. Mandamus etiam tenore presentiu' officiar' & ministr' Cur' nostre Cancellar' præd' quod vob' vel tribus vrm' (ut præd' est) in executione præmissorum diligent' intendant prout decet Volumus etiam & per presentes concedimus quod oia & singula judicia sive final' decreta ac ordines per vos & tres vrm' (ut præd' est) super hum' causis sive materiis, & petitionibus ut presert' reddend' sive fiend' sint & esse debeant tanti & consilis valor' effectus efficacie roboris & virtutis ac si per præd' Cancellar' nostr' Magnæ Britanniaë & Cur' Cancellar' nostre præd' reddit' sive reddend' forent. Proviso tamen quod oia & singula judicia sive finalia decreta per vos vel tres vrm' (ut præd' est) virtute present' modo & formatur predicatur reddend' sive fiend' manibus vris vel triu' vrm' Quorum prefat' Josephum Jekyll Littleton Powys Johem Blencowe Robtum Tracey Robtum Price Robtum Dormer Robtum Eyre Jacobum Montagu Johem Fortescue Aland & Francum Page unum esse Volumus subscribantur & consignentur & superinde eadem judicia sive final' decreta prefat' Cancellar' nostro Magnæ Britanniaë presententur & libentur Quodq; nulla eorundem judiciorum sive final' decretorum irrotulentur aut quovis modo execut' sint antequam idem Cancellar' noster Magnæ Britanniaë ea manu sua propria silit' consignet Et quod he literæ nostre paten' durabunt & permanebunt in pleno robore & effectu donec alit' per al' literas nostras patentes huic Commission' superfederi mandat' foret aut per dictum Cancellar' nostrum Magnæ Britanniaë in plena Cur' determinari decret' & irrotulat' erit. In cujus rei testimonium has literas nostras fieri fecimus patentes Teste meipso apud Westm' Vicefimo die Januarij Anno nri' nri' Octavo.

Per ipsum Regem

W R I G H T E.

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

Mr. *John Meller* sworn.

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

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

Mr. *Meller*. My Lords, according to the best of my Remembrance, I was admitted a Master the latter End of the Year 1708, and continued so till July 1720. The general Nature of the Office is, to digest and sum up those matters which are ordered upon Hearing to be referred to us, by way of Report: That is the general Business. There is a further Business, when Bills

of Coſts are to be taxed, they are taxed and adjuſted by us what is to be paid. I don't recollect any more particular Buſineſs.

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

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

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

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

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

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

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

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

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

Mr. *Meller*. The Chief matters are the ſtating of Accounts.

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

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

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

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

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

Mr. *Meller*. The Method is this, when a Report is drawn up, a Copy is given to both Sides, and each Side puts in ſuch Objections to it as they think proper; the Maſter goes through thoſe Objections, and having gone through them, he

forms an Opinion upon the whole. Then it goes to the Court, and the Parties have Liberty to go upon thoſe Objections before the Court, who finally determine.

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

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

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

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

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

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

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

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

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

Mr. *Lutwyche*. As to the taxing of Coſts, whether when the Coſts are taxed to a particular Sum, that is not final and concluſive, unleſs the Party makes Application to the Court?

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

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

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

Mr. *Lutwyche*. Another Queſtion I would beg leave to aſk. Tho' it is well known, yet it is fit it ſhould appear from the Witneſs, and that is,

whether the Masters don't fit upon the Bench with my Lord Chancellor in open Court in *Westminster-Hall* every Term?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Serj. Pengelly*. My Lords, I can't tell whe-

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

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

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

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

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

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

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

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

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

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

Mr. *Serj. Probyn*. My Lords, we must insist upon our Objection. The Witness says he is uncertain how much he has paid: He says he has Vouchers which will shew the particular Sums he has paid; and

and since it is in their Power to produce those Vouchers, we must submit it that they shall produce the best Evidence they have in their Power to give, and that the Receipts and Vouchers shall be produced.

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

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

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

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

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

Mr. *Sol. Gen.* My Lords, I did not expect this Objection: But we must submit it whether there is any Foundation for it. If the matter of Record be insisted on, only with respect to the Receipt given, there is no Need of it: better Evidence cannot be given to prove Payment, than the man who paid it. The common Evidence to prove Payment of Money, is to produce a man to swear that he paid that money. No better Evidence can be given; and tho' a Receipt is given, yet when a Person proves he paid the money, he need not produce the Receipt: it is better Evidence than the Receipt: A Receipt may be given without Payment. Therefore we apprehend that the Witness's Proof of the Payment, is sufficient to prove this matter of Fact.

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

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

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

E. of *Macclesfield.* My Lords, I am sorry your Lordships Time should be taken up about a Thing of this kind. When the Objection was first made by my Counsel, which I apprehend is right, I stood up to acquaint your Lordships, that I did not insist upon the Nicety of it. This Gentleman used to pay me money, and I believe he is a very honest Gentleman; but when he comes to say he is not sure how much, and they were working him up to a higher Pitch, and these Gentlemen, for ought I know, or their Sollici-

tor, may have the Receipts in their Pockets, I thought it was then high Time to stop them. This Gentleman did say it was more than 1000 *l.* My Lords, I admit it, I believe it to be 1100 *l.* a Year, or thereabouts: if I knew exactly, I would tell it, I never intended to dispute the Matter.

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

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

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

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

Mr. *Pynsent.* No, I do not.

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

Mr. *Pynsent.* I think it is so.

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

Mr. *Pynsent.* I think it is thereabouts.

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

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

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

Mr.

Mr. *Thomas Bennet* sworn.

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

The Patent begun to be read.

‘ Teste, &c. 5^{to} Septemb’ An. 10 *Georgii* Regis.

Mr. *Serj. Pengelly*. Tho’ the Noble Lord’s Name be not mentioned in the Patent, yet it is sufficiently known from the Date and Time of it, that it was when the Noble Lord was one of the Lords Justices, and had the Custody of the Seals, and that at that time he affixed the Seals to this Patent.

Then the Patent was begun again to be read.

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

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

Clerk reads.

‘ **G** E O R G I U S Dei Gratia, Magnæ Bri-
 ‘ tanniæ, Franciæ & Hiberniæ Rex, Fidei
 ‘ Defensor, &c. Omnibus ad quos presentes li-
 ‘ teræ nostræ pervenerint salutem. Cum nos per
 ‘ Literas nostras Patentes sub Magno Sigillo nostro
 ‘ Magnæ Britanniæ confectas geren’ dat’ apud
 ‘ Westm’ vicesimo die Martii, Anno Regni no-
 ‘ stri tertio pro nobis Heredibus & Successoribus
 ‘ nostris dederimus & Concesserimus Dilecto &
 ‘ fideli nostro Thomæ Bennet Armigero Officium
 ‘ Clerici ad Scribend’ & Conficiend’ omnia & sin-
 ‘ gula Bria de diem clausit extremum, & Mandamus
 ‘ & Commissiones ad inquirend’ post mortem
 ‘ & de Ideotis & Lunaticis & ad melius inquirend’
 ‘ inde & superfed’ eorundem ac omnia al’ Bria
 ‘ & Process’ eorund’ ac omnia al’ Bria de Process’
 ‘ cujuscunque Generis Nominis Naturæ vel Spe-
 ‘ ciei essent vel forent que ante tum de vel nuper
 ‘ in Cur’ Wardor’ & Libationum aliquor’ Prede-
 ‘ cessor’ nostror’ antetunc Regum vel Reginar’
 ‘ Angl’ per Warrant’ ibidem dum eadm’ Cur’ stetit
 ‘ & fuit in Ufu & Vigore fact’ & Concess’ assignat’
 ‘ vel appunctuat’ fuerant, vel fieri concedi assignari
 ‘ vel appunctuari consueverant vel debuerant
 ‘ ac de vel in Cur’ nostra Cancellar’ vel aliquor’
 ‘ Predecessor’ nostror’ antetunc Regum vel Re-
 ‘ ginarum Angl’ sub Magno Sigillo Angl’ impetrat’
 ‘ & persecut’ fuerant vel impetrari & prosequi
 ‘ consueverant vel debuerant ac oies & singul’
 ‘ Literas Paten’ de Custod’ Corporum omnium
 ‘ Wardor’ Idiotor’ & Lunaticor’ nostror’ Hered’
 ‘ & Successor’ nostrorum & de Maritag’ eorund’
 ‘ Wardor’ sub Magno Sigillo Magnæ Britanniæ
 ‘ impetrand’ & prosequend’ necnon omnia al’ Bria
 ‘ Commissiones & process’ cujuscunque Generis
 ‘ Nominis Naturæ vel Speciei essent vel forent de
 ‘ vel in Cur’ nostra Cancellar’ Hæred’ & Successor’
 ‘ nostrorum sub magno Sigillo nro Magnæ
 ‘ Britanniæ Heredu’ vel Successorum nostrorum
 ‘ premissa predicta seu eorum aliqua tangen’
 ‘ vel concernen’ fiend’ concedend’ impetrand’

‘ seu prosequend’ HABEND’ tenend’ gau-
 ‘ dend’ & exercend’ predictum Officium & omnia
 ‘ & singula premissa predicta superius specificat’
 ‘ prefat’ Thomæ Bennett per seipsum vel per
 ‘ sufficientem Deputat’ suum sive Deputatos suos
 ‘ sufficientes a die dat’ prerecitat’ Literarum no-
 ‘ strarum Patentium ad Termin’ & pro Termino
 ‘ vitæ naturalis ipsius Thomæ Bennett una cum om-
 ‘ nibus predict’ profic’ & advantag’ ad inde spec-
 ‘ tan’ prout per easdem Literas Paten’ (inter al’)
 ‘ in eisdem content’ relatione inde habita pleni-
 ‘ liquet & apparet cumque præfat’ Thomas Ben-
 ‘ nett per quoddam Scriptum suum sub Manu &
 ‘ Sigillo suis sigillat’ geren’ Dat’ nono die Au-
 ‘ gusti, Anno Regni nostri decimo, ac in Cur’
 ‘ Cancellar’ nostra debito modo Irrotlat’ Officium
 ‘ & premissa predicta ac tot’ statum jus Titulum
 ‘ & interesse sua in eisdem una cum dictis recitat’
 ‘ Literis nostris Patentibus Cancelland’ in Ma-
 ‘ nus nostras sursum reddiderit. *Quam* quidem
 ‘ sursum redditionem nos acceptavimus ac per
 ‘ presentes acceptamus *Sciatis modo* quod nos de
 ‘ Gratia nostra speciali ac ex certa Scientia &
 ‘ mero motu nostris *Dedimus* & concessimus ac
 ‘ per presentes pro nobis Heredibus & Successo-
 ‘ ribus nostris *Damus* & concedimus dilecto &
 ‘ fideli nostro Hugoni Hamersley de Interiori
 ‘ Templo Londin’ Armigero dictum Officium Cle-
 ‘ rici ad scribend’ & conficiend’ omnia & singula
 ‘ Bria de diem clausit extremum & Mandamus
 ‘ & Commissiones ad inquirend’ post mortem &
 ‘ de Idiotis & Lunaticis & ad melius inquirend’
 ‘ inde & superfed’ eorund’ ac omnia al’ Bria &
 ‘ Process’ eorund’ ac omnia al’ Bria & Process’
 ‘ cujuscunque Generis Nominis Naturæ vel Spe-
 ‘ ciei sint vel fuerint quæ antehac de vel nuper
 ‘ in Cur’ Wardorum & Liberationum aliquorum
 ‘ Predecessorum nostrorum nuper Regum vel Re-
 ‘ ginarum Angl’ per Warrant’ ibidem dum eadem
 ‘ Cur’ stetit & fuit in Ufu & Vigore fact’ con-
 ‘ cess’ assignat’ vel appunctuat’ fuerunt vel fieri
 ‘ concedi assignari vel appunctuari consueverunt
 ‘ vel debuerunt ac de vel in Cur’ nostra Cancel-
 ‘ lar’ vel aliquorum Predecessorum nostrorum nu-
 ‘ per Regum vel Reginarum Angl’ sub Magno
 ‘ Sigillo Angl’ impetrat’ & persecut’ fuerunt vel
 ‘ impetrari & prosequi consueverunt vel debu-
 ‘ erunt ac omnes & singul’ Literas Paten’ de Cu-
 ‘ stodia Corporum omnium Wardorum Idiotorum
 ‘ & Lunaticorum nostrorum Hæred’ & Successor’
 ‘ nostrorum & de Maritag’ eorund’ Wardor’ sub
 ‘ Magno Sigillo Magnæ Britanniæ impetrand’ &
 ‘ prosequend’ necnon omnia al’ Bria Commissiones
 ‘ & process’ cujuscunque Generis nomis Na-
 ‘ turæ vel Speciei sint vel fuerint de vel in Cur’
 ‘ nostra Cancellar’ Heredum & Successorum no-
 ‘ strorum sub Magno Sigillo nostro Magnæ Bri-
 ‘ tanniæ Hered’ vel Successorum nostrorum pre-
 ‘ missa predicta seu eorum aliqua tangen’ vel con-
 ‘ cernen’ fiend’ concedend’ impetrand’ seu pro-
 ‘ sequend’ ac ipsum Hugonem Hamersley Cleri-
 ‘ cum & Officiarium nostrum Hered’ & Successor’
 ‘ nostrorum ad scribend’ & conficiend’ omnia &
 ‘ singula predicta Bria Commissiones process’
 ‘ superfed’ Literas Paten’ ac omnia & singula cæ-
 ‘ tera premissa superius specificat’ de vel in dict’
 ‘ Cur’ Cancellar’ nostra ac Hered’ & Successor’
 ‘ nostror’ impostherum de tempore in tempus
 ‘ concedend’ prosequend’ seu quovismodo impe-
 ‘ trand’ *Ordinamus, Constituimus, Erigimus* & Sta-
 ‘ bilimus per presentes *Habend’ Tenend’ Utend’*
 ‘ *Gaudend’ Exercend’ Fungend’* & Administrand’
 ‘ predict’ Offic’ & omnia & singula premissa pre-
 ‘ dicta

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

Per bre' de privato Sigillo,

C O C K S.

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

Mr. Com. Serj. I beg leave to make an Objection to that: The Foundation of this Article is a corrupt Agreement for the Resignation of an Office accepted by the Lord Chancellor. Now, in the Letters Patents in general, a Resignation is taken notice of; but they ought to make it ap-

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

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

Lords. Go on, go on.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Tho. Bennet*. Yes.

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

Mr. *Tho. Bennet*. Yes.

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

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

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

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

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

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

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

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

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

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

Sakes, will not permit this Question to be answered?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

could not do it without my Lord Chancellor's Consent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Peter Cottingham* sworn.

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

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

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

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

Mr.

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

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

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

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

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

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

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

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

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

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

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

Dr. *Sayer*. Was this on the first Applications?

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

Dr. *Sayer*. It is of Consequence; and therefore I desire it may be asked, whether at the first Time he applied, he made this Offer of One hundred Guineas?

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

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

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

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

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

Dr. *Sayer*. What Character had Mr. *Hamersley*?

Mr. *Cottingham*. A very good one.

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

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

Mr. *Strange*. He is pleased to say Mr. *Bennet* did not inform him what Agreement was made between him and Mr. *Hamersley*. But did not he say on what Account he resigned?

Mr. *Cottingham*. He told me he surrendered the

Office, to reimburse himself the Money he had paid to Mr. *Hiccocks* for his Office.

Mr. *Strange*. What Office was that?

Mr. *Cottingham*. The Master's Office.

Mr. *Strange*. Did he mention that?

Mr. *Cottingham*. Yes, he did mention it.

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

Mr. *Cottingham*. I acquainted his Lordship before.

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Cottingham*. He offered the 100 Guineas the first Time.

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

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

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

Mr. *Cottingham*. No, not as I remember.

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

Mr. *Cottingham*. I said on that Occasion, as he

he offered 100 Guineas, I told him my Lord was willing to accept of it.

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

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

Mr. *Lutwyche*. Was that the first Discourse?

Mr. *Cottingham*. The first that I remember.

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

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

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

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

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

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

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

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

Mr. *Lutwyche*. We do it to confirm the Testimony of our Witnesses.

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

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

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

Mr. *Tho. Bennet*. At the second meeting. At the first Time he did not, because there was no mention made of money.

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

E. of *Macclesfield*. These Gentlemen are pleased to differ in their Evidence. I would ask Mr. *Bennet* a second time, whether Mr. *Cottingham* told him that he did not know Mr. *Hamersley*.

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

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

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

E. of *Macclesfield*. You are not positive?

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

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

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

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

Mr. *Tho. Bennet*. Therefore I wondered at it.

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

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

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

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

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

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

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

Mr. *Delafaye* called.

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

Mr. *Delafaye* sworn.

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

Mr. *Delafaye*. Yes my Lords.

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

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

Mr. *Serj. Probyn*. I beg leave to ask him, whether he knew any thing of Mr. *Bennet's* Petition being transmitted to his Majesty abroad, and by whose Direction?

Mr. *Delafaye*. Mr. *Bennet's* Petition was transmitted

mitted to his Majesty abroad, by the Direction of the Lords Justices.

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

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

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

Friday May 7. The second Day.

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

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

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

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

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

Mr. *William Kynaston* sworn.

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

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

Mr. *Serj. Pengelly*. We desire that he may be asked, concerning the manner of his Admittance, what Transactions there were before-hand about it, with whom, and what he gave the Lord Chancellor for his Admission?

Mr. *Kynaston*. After I had agreed with Mr.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Kynaston*. I did not count it, but the Sum of

of fifteen hundred Guineas was carried in a Bag by Mr. *Baily* to Mr. *Cottingham*.

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

Mr. *Kynaston*. Yes.

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

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

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

Mr. *Kynaston*. 6000 *l.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Kynaston*. Yes, my Lords, the money lent me to pay Mr. *Cottingham*, I did accompt for that money out of the money belonging to the Suitors of the Court: I understood it was usual to do so, and that others had done it.

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

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

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

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

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

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

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

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

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

Mr. *Kynaston*. Yes.

Sir *Wm. Strickland*. When were the fifteen hundred Guineas paid?

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

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

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

Mr. *Charles Baily* sworn.

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

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

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

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

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

Mr. *Lutwyche*. Upon what Account?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Cottingham* appears.

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

Mr. *Cottingham* sworn.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Serj. Probyn*. I desire one Question more; Whether he remembers that there was any mention made of 1000*l.* or one thousand Guineas by Mr. *Kynaston*?

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

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

(Mr. *Thomas Bennet* sworn before.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Tbo. Bennet*. I had no Conversation with him before I was sworn. At that Time my Lord was in Bed, and as soon as I was sworn in, my Lord called me to him, shook me by the Hand and wish'd me Joy, and said he had a Respect for my Father Serjeant *Bennet*, his old

Friend and Acquaintance, and the Family; and said he, You are sworn in by a dying Chancellor. I told him, I hoped his Lordship would live a great many Years.

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

Mr. *Cottingham* called, and appeared.

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

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

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

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

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

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

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

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

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

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

Mr. *Cottingham*. 1500 Guineas.

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

Mr. *Cottingham*. Not a Farthing less; he asked me what was expected, I told him the Sum Mr. *Kynaston* had paid, which was 1500 Guineas; and he never offered a Farthing less.

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Onslow*. I would ask Mr. *Cottingham* one Question, which, I think, he hath not answered; I ask whether he had not, in general, Directions from the Lord Chancellor, to insist upon, or ask any particular Prices for these Places?

E. of *Macclesfield*. My Lords, I am sorry the

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

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

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

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

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

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

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

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

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

Mr. Serj. Pengelly. I desire he may be asked, whether he did not by Direction of my Lord Chancellor insist upon those Sums, and he would not receive under?

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

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

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

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

Mr. Cottingham. I had no such Instructions: The Gentlemen came and talked to me, and proposed to me the Sum they were willing to give, and I laid it before the Earl: I had no particular Instructions.

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

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

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

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

E. of Macclesfield. I desire he may be asked this Question, to each distinctly, whether I so much as knew any Thing of the matter as to any Sum offered by Mr. Kynaston or Mr. Bennet, till he told me the whole Sum?

Mr. Cottingham. No, never.

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

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

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

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

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

Mr.

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

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

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

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

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

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

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

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

Mr. *Elde* called.

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

(Sworn accordingly.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr.

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

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

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

Mr. *Elde*. I did not.

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

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

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

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

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

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

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

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

Mr. *Serj. Pengelly*. I desire to ask, Whether he had the Basket again?

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

Mr. *Serj. Pengelly*. Was any money returned in it?

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

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

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

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

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

Mr. *Elde*. 3400.

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

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

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Mr. *Onslow*. In what manner was that money returned to him?

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

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

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

Mr. *Elde*. Before I went out of Town.

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

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

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

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

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

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

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

Mr. *Elde*. I believe two or three Days.

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

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

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

Mr. *Onslow*. I desire that he may first answer in what manner, by whom, and where, this money was repaid to him, whether in money, or notes, or how?

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

Mr. *Onslow*. Who was this paid by?

Mr. *Elde*. By my Lord *Parker*.

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

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

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

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

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

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

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

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

Mr. *Elde*. Yes.

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

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

Mr. *Serj. Pengelly*. Whether it was not necessary for him to make use of this money, in order to make up this Balance?

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

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

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

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

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

Mr. *Lutwyche*. I mentioned a Question before; Mr. *Elde* was mentioning that my Lord *Macclesfield* had said to him before he went out of Town, that he would make him exceeding easy: I desire he may be asked where he was then going, and upon what Occasion?

Mr. *Elde*. My Lords, I was going into *Staffordshire*, where the little Effects I have in the World lie.

Mr. *Lutwyche*. I would know upon what Occasion?

Mr. *Elde*. I never missed going into the Country the Beginning of *August*, for these ten Years past.

Mr. *Lutwyche*. Whether there was any particular Occasion for his going down into the Country at that Time?

Mr. *Elde*. If your Lordships are of Opinion that this is a fair Question, I will as fairly answer it. I went down to my House, to look into what little Affairs I had there. I called at *Stafford* first, and there declared myself a Candidate for the Election that was to ensue.

Mr. *Lutwyche*. We desire he may be asked, When he returned?

Mr. *Elde*. I returned about the 19th or 20th of *November*.

Mr. *Plummer*. Mr. *Elde* says, when my Lord *Parker* paid him, he had a Note from him, acknowledging the Receipt of the money: I desire to know, Whether that Note was taken up again, and when?

Mr. *Elde*. The Note I gave my Lord *Parker*?

Mr. *Plummer*. Yes.

Mr. *Elde*. My Lord *Parker* sent for me, and gave me the Note again. I do not know that I saw my Lord *Macclesfield* till after I had seen Lord *Parker*, and he had given me up the Note again.

Mr. *Plummer*. I desire he may be asked, When the Note was delivered up to him?

Mr. *Elde*. That was asked before; I cannot tell the Day.

Mr. *Plummer*. It was never asked here before: The Question I ask is, When the Note was delivered up?

Mr. *Elde*. I do not remember the Day.

Mr. *Plummer*. As near as you can?

Mr. *Elde*. In the Beginning of *December*.

Mr. *Sandys*. I beg leave to ask one Question: He says that he applied this money, which he received of my Lord *Parker*, towards making good the Ballance of his Account; Whether or no, he did not first refuse to swear to the Ballance of that Account; and what was the Occasion of it?

Mr. *Elde*. When I had delivered in my Account, the Question I was asked the first Time, was proposed to me, not by any of the Judges who were appointed to inspect our Accounts, but by Sir *Nathaniel Gould*, who proposed it in such a manner, that I could not by any means take it. He asked me, Whether I owed any thing, and I was to swear I owed nothing: I told him I could not swear any such thing. I had some Arguments with him about the Absurdity of such an Oath, and said, if I owe a million of money, that is nothing to the purpose: There is the money due on the Ballance of my Account; I deliver it to you; I laid the money upon the Table, and insisted upon leaving it with them.

Mr. *Sandys*. Whether that Note was delivered to him after he refused to take the Oath?

Mr. *Elde*. It was.

Mr. *Sandys*. Whether that Note was not the Occasion of his refusing to take the Oath?

Mr. *Elde*. I cannot say but it was an Ingredient in it.

Sir *George Oxenden*. I would be glad to know where this Note is?

Mr. *Elde*. When my Lord *Parker* delivered it to me, I lapt it up, and put it in my Pocket: My Lord asked me why I did so? I answered, I would keep it as a memorandum of my Lord Chancellor's Favour to me; but when I came home, considering that it would be of no Service, and that it might be hazardous to keep it by me, I tore it.

Dr. *Sayer*. I desire he may be asked, Whether he did not look upon himself entirely discharged from any Demand on Account of that money, or did think himself bound to answer it?

Mr. *Elde*. I do not think myself bound to answer it.

Dr. *Sayer*. Whether he apprehends it to be a free and perfect Gift?

Mr. *Elde*. I do, my Lords.

Mr. *Cottingham* called again.

Mr. *Serj. Pengelly*. My Lords, we left the Basket in the Hands of Mr. *Cottingham*; therefore it is necessary that Mr. *Cottingham* inform your Lordships what became of it afterwards; what he did with the Basket, after he had it from Mr. *Elde*?

Mr. *Cottingham*. My Lords, I carried it up to my Lord, and set it down in his Study.

Mr. *Serj. Pengelly*. What did you say to my Lord?

Mr. *Cottingham*. Nothing. Mr. *Elde* ordered me to carry up the Basket; I carried it up, and there I set it down: I never saw it afterwards.

Mr.

Mr. *Serj. Pengelly*. Whether do you remember what Answer my Lord *Macclesfield* made at that Time?

Mr. *Cottingham*. None that I remember.

Mr. *Serj. Pengelly*. Whether did he open the Basket?

Mr. *Cottingham*. No. The Basket was covered up, and I set it down in my Lord's Closet.

Mr. *Serj. Pengelly*. Whether after that Time he appointed any Time for Mr. *Elde* to be admitted?

Mr. *Cottingham*. I think he was admitted that very same Day.

Mr. *Serj. Pengelly*. I desire this Witness may be asked, whether he received any Thing from Mr. *Elde*, besides what was in the Basket?

Mr. *Cottingham*. Not a Farthing; except my Fees: Nor no more of any of the Masters than my usual Fees.

Mr. *Serj. Probyn*. We desire Mr. *Cottingham* may be asked, whether at this Time, when Mr. *Elde* desired to be admitted into this Office, there was any other Person who desired it; or made any Offer for it?

Mr. *Cottingham*. Mr. *Lucas*, a Gentleman of the Temple, was recommended to the Earl by Mr. *Bulstrode*, who is since dead. He had been formerly a Commissioner of the Excise; his Name was *Woollock Bulstrode*. Mr. *Lucas* did tell me upon that Occasion, if the Earl would admit him, he would give him 6000 *l.* for the Office. I took a Memorandum of it at that Time, and I had it in my Hands four or five Days ago.

Mr. *Serj. Probyn*. When Mr. *Lucas* told you this, whether did you inform the then Lord Chancellor of it?

Mr. *Cottingham*. Yes, I am sure I did; and the Answer he made me was, that Mr. *Elde* was of a Family which were his particular Friends and Acquaintance, for whom he had a great Friendship and Value, and that he should have it 1000 *l.* cheaper, or lesser than any Body else.

Mr. *Strange*. I desire he may be asked, whether before Mr. *Elde* was admitted, he did not acquaint the noble Lord, that this Mr. *Lucas* would give 6000 *l.*?

Mr. *Cottingham*. Yes, I did.

Mr. *Serj. Pengelly*. I desire to know whether I understand Mr. *Cottingham* right? He says, that my Lord would let Mr. *Elde* have it cheaper than any Body else: Whether he understood by that, that my Lord expected some Body else would give him more?

Mr. *Cottingham*. My Lord said he would let Mr. *Elde* have it upon the Score of particular Friendship and Acquaintance.

Mr. *Serj. Pengelly*. If I heard him right, I submit it to your Lordships, whether he did not say that Mr. *Elde* should have it 1000 *l.* cheaper than any other Person. I ask whether he did not understand my Lord *Macclesfield* would have 1000 *l.* more from any other Person?

E. of *Macclesfield*. My Lords; I hope I am not to be charged with the Imaginations of this Gentleman; he is asked about his Apprehension of my Intention in a Case that did not happen. I desire he may be asked; if he knew what Character Mr. *Elde* had?

Mr. *Cottingham*. A very good one.

E. of *Macclesfield*. I desire it may be asked whether he did not know that I had a great Opinion of Mr. *Elde*'s Ability and Integrity?

Mr. *Cottingham*. He was one your Lordship had a great Opinion of, and that he was very deserving. I never heard your Lordship express a better Opinion of any Man than of Mr. *Elde*.

Mr. *Serj. Pengelly*. We have done with this Article: The next Article is the 8th. We desire Mr. *Thurston* may be sworn.

Mr. *Mark Thurston* sworn.

Mr. *Serj. Pengelly*. My Lords, we desire that Mr. *Thurston* may give your Lordships an Account, When he was admitted into one of the Offices of the Masters in *Chancery*, and upon whose Death?

Mr. *Thurston*. My Lords, I was admitted into this Office upon the Death of Mr. *Borret*, and the Day of my Admission was the 5th of *August* last.

Mr. *Serj. Pengelly*. I desire he may be asked, Whether, before his Admission, he had made any Application either to my Lord *Macclesfield* or his Secretary, or any Person concerned for him?

Mr. *Thurston*. My Lords, before my Admission, I did make some Application to my Lord Chancellor's Secretary Mr. *Cottingham*; and at that Time I made a Proposal of making a Present of 5000 Guineas, to be admitted into the Office. Mr. *Cottingham* asked me several Questions about my Circumstances, and what Persons I could name that would recommend me to his Lordship: To which I gave the proper Answers, and mentioned several Gentlemen he knew. After that, I having the Honour of being acquainted with my Lord Commissioner *Gilbert*, before I took any other Steps, I waited on his Lordship, and acquainted him with my Resolution, and begged the favour of him, that he would take the Trouble to recommend me to my Lord Chancellor, as his Friend, and a fit Person for the Office. His Lordship did take that Trouble, and waited upon my Lord at *Westminster*, who was then sitting upon the Bench; and after Notice was sent him of that Gentleman's being in the little Room behind, his Lordship came off the Bench; and some Time being spent in Conversation between them, I was called in, and kindly recommended by that honourable Person; and my Lord *Macclesfield* seemed to approve of me upon his Recommendation. But I should acquaint your Lordships, that as to that Part of the Transaction with Mr. *Cottingham*, he said that he would report those Things to my Lord *Macclesfield*, of my Character and Person, though he never reported any thing back to me again upon it: But I took the next ensuing Steps, by the intervention of the honourable Gentleman, my Lord Commissioner *Gilbert*.

Sir *Will. Strickland*. Whether he did not understand, that my Lord *Macclesfield* agreed to his Proposals?

Mr. *Thurston*. Yes.

Sir *Will. Strickland*. After this Transaction with Mr. *Cottingham*, what further Application was made? And why he was not immediately admitted at that Time?

Mr. *Thurston*. It was not expected by me to be immediately admitted at that Time: Because my Lord Chancellor did not absolutely determine me to be the Person; but said he had so good a Character of me, that he believed I should be the man.

Sir *Will. Strickland*. Whether Mr. *Thurston*, being uneasy about the delaying of admitting him, did apply to any other Person afterwards?

Mr. *Thur-*

Mr. *Thurston*. After my being introduced to my Lord Chancellor, there was some Time for my Lord's Consideration. Near a Week after, a Message was sent me by Mr. *Cottingham*, that my Lord would be ready to admit me such a Day. Before the Day came, I had a Message contradicting it, upon my Lord Chancellor's being engaged to attend the Council on that Day. After that, I expected the Appointment of another Day for that purpose; and in the mean time this Affair had got into the publick News-Papers, as every thing does, and I was named by every body to be the Person fixed upon; and People resorted to me to transact the Business of the Office, which I could not do without being duly admitted. And shortly after that Time, there was a Report spread, that my Lord Chancellor had designed to make a Present of the Place to some Gentleman in the Country, which gave me an Uneasiness, and put me upon an Expedient, that since I could not have ready Access to so great a Person as his Lordship, I went to *Kensington* one morning to wait upon the Countess of *Macclesfield*; and upon sending up my Name, and that I desired to speak with her, in a short Time I had the Honour of seeing her, and acquainted her that I was the Person that my Lord had promised the Office to, and that I could not proceed therein without being sworn; therefore I desired her Ladyship to intercede with my Lord, that I might be speedily sworn in. Her Ladyship said, she never did meddle in any Affairs of a publick Nature. I used several Arguments with her, as that the Thing was now publick and in Print, that it might be a great Disappointment to me, and might affect my Character, if my Lord did not think fit to admit me. I laid a good deal of Stress upon these Arguments, and I acquainted her Ladyship that I did not expect or desire to come in without the due Present that is always esteemed the Perquisite of the Great Seal. Then I repeated those other Arguments again, that my Character might be affected by these Disappointments; whereby her Ladyship was prevailed upon to promise she would write a letter, and acquaint my Lord Chancellor with it. Before I went away from the Room where I had the Honour to be with the Lady, I did leave upon the Table, Bank Notes to the Value of 5250 Pounds.

Mr. *Serj. Pengelly*. How were they directed?

Mr. *Thurston*. I directed them to the Countess of *Macclesfield*.

Mr. *Serj. Pengelly*. I desire he may be asked, How soon after this he was admitted?

Mr. *Thurston*. I believe it was within two or three Days after at farthest, that I was admitted and sworn into this Office.

Mr. *Serj. Pengelly*. We desire he may give your Lordships an Account who was his Predecessor?

Mr. *Thurston*. Mr. *Borret*, as I acquainted your Lordships before.

Mr. *Serj. Pengelly*. We desire he may acquaint your Lordships of the State of the Office, as it came into his Hands. What was the Deficiency of the Office, due to the Suitors of the Court, not answered by the Effects of Mr. *Borret*, when it came into your Hands?

Mr. *Thurston*. That is a Question I can't possibly answer, because I never had those Accompts

under my Inspection; and I don't find the Gentlemen that have, can give an Account of it.

Mr. *Serj. Pengelly*. I do not ask to a particular Sum; but whether there was a Deficiency, any Deficiency, and about what Sum?

Mr. *Thurston*. I do not know any Thing at all about the matter; I might as well guess what a Gentleman is worth that I know nothing of.

Mr. *Serj. Pengelly*. Whether there were Effects sufficient to answer all the Suitors Demands?

Mr. *Thurston*. I cannot tell; because there was not any particular or exact Accompt taken of it, that is come to my Knowledge.

Mr. *Serj. Pengelly*. Whether the Suitors have been paid the money left, or deposited by them in the hands of Mr. *Borret*?

E. of *Macclesfield*. My Lords, if there be any Order of the Court for their being paid, it will appear, and they may produce those Orders to your Lordships: How can they pay without any Order?

Mr. *Serj. Pengelly*. I do not speak of Orders, I only ask, Whether he knows that the Suitors have been paid?

Mr. *Thurston*. It is impossible for me to have any Knowledge of it, for the Reasons I gave you before; having had no Inspection of those Accompts.

Mr. *Lutwyche*. I desire he may be asked, Whether any Effects, or Money, or Cash, and to what Value, have been transferred to him, as the Effects of Mr. *Borret*?

Mr. *Thurston*. About 4200 *l*.

Mr. *Lutwyche*. Whether he knows what the Cash was, that was in Mr. *Borret's* Hands?

Mr. *Thurston*. No, my Lords, I do not know.

Mr. *Serj. Pengelly*. I desire he may be asked, Whether he has been applied to by any of the Suitors of the Court, upon the account of money deposited in Mr. *Borret's* Hands?

Mr. *Thurston*. I cannot say no body has applied to me for money due in Mr. *Borret's* Office; several Suitors or their Representatives have been enquiring after such Things, who have been satisfied with having such an Answer as the present Circumstances would furnish. There were some Sums of money, before this broke out, paid to Suitors, that was Interest money; and who were represented to me as People in Necessity, to the amount of 3 or 400 *l*. When this broke out, I then desisted Payment, upon the Advice of a great Friend.

Mr. *Lutwyche*. I desire he would explain himself, what he means by saying, before this broke out?

Mr. *Thurston*. What I mean was, the Inquiry made into the Masters Accompts, by his Majesty's Direction in Council.

Mr. *Lutwyche*. The Sum of money he paid, I desire he may be asked, Who he received that Sum from?

Mr. *Thurston*. I received it from Mr. *Godfrey*, the Master in *Chancery*.

Mr. *Lutwyche*. I desire he may be asked, Whether he knew of any Administration taken out to Mr. *Borret*, and at what Time?

Mr. *Thurston*. I believe Mr. *Godfrey* and Mr. *Bennet* were desired to take that Trouble upon them, to look into Mr. *Borret's* affairs, by the Lord Chancellor; which they proceeded and took some steps in, till

till they were discouraged from it by the Enquiry that was set on foot. They tell me now, that Administration is granted to Mr. Paxton.

Mr. Serj. Pengelly. I desire he may inform your Lordships, since he paid the Interest, why he did not pay the Principal?

E. of Macclesfield. I believe it would save your Lordships time, if Mr. Serjeant would ask his Questions in such a manner, as not to imply something which was not admitted, or said by the Witnesses. The Question supposes a principal Sum demanded; the proper Question is, first to ask if any principal Sum was demanded, and whether it was, or was not paid.

Mr. Serj. Pengelly. I apprehend that Mr. Thurston says, That Creditors came to him, Suitors of the Court, and he could not pay any more than the Interest; therefore I apprehend they came to him for the money lodged in the Hands of Mr. Borret. Therefore I desire he may be asked, whether any of those Persons that demanded their money were paid?

E. of Macclesfield. I desire he may be asked, whether any demanded the principal Sum? and by what Order?

Mr. Serj. Pengelly. I desire to ask my own Questions; I apprehend I am not to be directed in the asking my Questions by the Lord impeached. I desire to ask what Suitors applied, and what Sums they demanded?

Mr. Thurston. The Names of the Suitors I can't recollect, I believe it is not necessary to trouble your Lordships with them. The Sums demanded were only Interest money. The principal Sum, for which I paid the Interest, to the best of my remembrance, was 700*l*. There was no Demand made of principal money to be paid. But there might be Enquiries made, I believe, by a noble Peer of this House, which I was so very unfortunate, that I could not inform his Lordship of the State of what he enquired after.

Mr. Plummer. Mr. Thurston says, he desisted from paying any further Sums, upon very good Advice; I desire to know why, or by whose Advice, he desisted paying?

Mr. Thurston. It was upon a prudential Reason I did desist; because, when a publick Inquiry was set on foot, I did not know how far I might be affected, in being made answerable my self for it.

Mr. Plummer. Whether he had any Suspicion that there was a Deficiency in Mr. Borret's Office?

Mr. Thurston. There was a Suspicion that there was not competent money to satisfy all the Suitors Demands.

Mr. Lutwyche. I desire he may be asked, whether there was not an Order for transferring the Effects in Mr. Borret's Hands to him?

Mr. Thurston. Upon the Admission of every master, there is an Order of Course signed by the Lord Chancellor, to transfer the Effects to the Successor.

Mr. Lutwyche. I ask if any such Order came to him?

Mr. Thurston. There did, my Lords.

Mr. Lutwyche. Was there any Transfer of the Effects according to that Order?

Mr. Thurston. No, there was not a compleat Transfer.

Mr. Lutwyche. Why was it not, as usual in the Case of other masters, that either are removed,

and are able to transfer; or in Case, upon Death, where their Representatives are able to do it?

Mr. Thurston. The Reason it was not done, I conceive, was because it was impracticable, there being no Representative of my Predecessor, no Administration being taken out.

Mr. Serj. Pengelly. I desire he may inform your Lordships, whether he was not applied to, by a noble Peer of this House, concerning some Effects deposited in the Hands of Mr. Borret, and what account he then gave him of the State and Situation of the Office?

E. of Macclesfield. I am really very sorry to trouble your Lordships so often. What is it to me what this Gentleman said? He is now upon his Oath, and to give to your Lordships an Account what he knows; but to ask him what he said at such a Time, to affect me, I hope they will not insist upon it.

Mr. Serj. Pengelly. When he has declared what he said, then there will be another Question, whether that was true in Fact? And that Question will then affect the impeached Lord.

E. of Macclesfield. If Mr. Serjeant will ask a proper Question first, he may; but he should not ask an improper Thing, because he will ask a proper Question afterwards.

Mr. Serj. Pengelly. We apprehend it is proper Evidence to be given, that he gave such an Account of the Office, in answer to the noble Lord: Therefore I desire to know what Account he gave to that noble Lord?

E. of Macclesfield. My Lords, I humbly oppose that Question, and desire your Lordships Judgment, whether he is to ask what this Person said?

Mr. Lutwyche. I believe the same End may be obtained by asking a Question without Dispute, and to which there can be no Objection; that is, Whether or no he had any Reasons to think that there was a Deficiency in the Office, and what those Reasons were?

Mr. Strange. My Lords, we beg leave to oppose that Question: What his private Opinion may be, is no Evidence; he and another may think variously of the same matter. They are to ask him as to Fact, and not to his Opinion.

Mr. Plummer. I have not had the Happiness to be bred a Lawyer, and therefore may be mistaken as to legal Evidence: But surely when your Lordships are examining a Person to the Deficiency of his own Office, none can give a better Account than himself. I desire he would answer what he knows, whether he had the compleat money of Mr. Borret's transferred to him?

Mr. Thurston. The compleat money of the Office hath not been transferred to me, and for the Reasons I have mentioned to your Lordships; for want of an Administration.

Sir Wm. Strickland. I would beg leave to ask Mr. Thurston one Question, and I hope a material one; Whether, on his Admission into that Office, he did not find a great Confusion in it?

Mr. Thurston. I can't say that upon my Admission into that Office I found great Confusion in it, because all Papers that came within my View were very regular, and well adjusted to dispatch Business upon.

Sir W. Strickland. I desire he may be asked, whether, if he had known the State of this Office, he would have given Five thousand Guineas for it?

Mr. Thurston. If I had known the State of the Office, and the Consequences of it, as appear at

this Time before your Lordships, rather than have given 5000*l.* for it, I would have given 5000*l.* to have been without it.

Mr. *Serj. Probyn.* Of the money he paid or left at the time he mentions, on my Lady *Macclesfield's* Table, I desire to know if he received any of it back again?

Mr. *Thurston.* I received back again, from the Lady *Macclesfield*, the Sum of 3250*l.* in Bank-Notes, the same as I enclosed, when I first left it.

Dr. *Sayer.* Do you know the particular Circumstances of that Transaction, and upon what Occasion the Money came to be returned? Give a full Account of that whole Transaction.

Mr. *Thurston.* Soon after my Admission, and as soon as I could adjust the Affairs of my Office, it being the latter End of Summer, and little Business stirring, I went into the Country for my Health. The Servant I left in Town, sent me word, that there were several Messages from my Lord Chancellor, that he supposed might be of Importance. As soon as I could conveniently, I returned to *London*, and in a Day or two went myself to my Lord Chancellor's House, and I sent to know what the Occasion of those messages was. They said, it was not from my Lord Chancellor, but it was a message from my Lady *Macclesfield*. Upon that I immediately after waited upon her Ladyship. She informed me then, that she did not know that I had left so large a Present with her, as she found it was: And declaring I should be used with Honour, she returned to me 3250*l.* and the other part, she said she would appropriate to her own Use.

Mr. *Serj. Probyn.* We desire Mr. *Thurston* may be asked, if there was any notice taken of any Order or Directions from my Lord Chancellor about re-payment of the Money? or whether it was only a Transaction between him and my Lady *Macclesfield*.

Mr. *Thurston.* There was no Notice taken of any Orders from my Lord Chancellor; rather an express Desire that my Lord Chancellor should never be acquainted with it.

Mr. *Strange.* I would ask when this money was restored?

Mr. *Thurston.* The time when the money was restored, was about the middle of *October*.

Mr. *Com. Serj.* I desire he may be asked, whether at the time he first applied to Lady *Macclesfield*, he laid down the Paper those Bank Bills were in on the Table, before he received any Answer from my Lady, or afterwards?

Mr. *Thurston.* I laid down the Bank Bills on the Table, to the best of my Remembrance, at the time of my coming away, and taking leave.

Mr. *Com. Serj.* Whether they were inclosed in a Paper?

Mr. *Thurston.* They were inclosed in a Paper, and also sealed up.

Mr. *Com. Serj.* Whether they were opened during the Time he was there?

Mr. *Thurston.* No, they were not.

Mr. *Com. Serj.* Or taken up by my Lady during that Time?

Mr. *Thurston.* No, my Lords, I don't remember they were.

Mr. *Com. Serj.* Whether he named the particular Sum to her Ladyship?

Mr. *Thurston.* No, my Lords, not in the least. I did not give any Intimation what Sum was inclosed.

Mr. *Strange.* I desire he may be asked, whether he can remember that my Lady did or did not open it, before he went away?

Mr. *Thurston.* To the best of my Remembrance it was not opened, before I went out of the Room.

Mr. *Strange.* I desire he may be asked this further Question, whether he apprehended that my Lady *Macclesfield* was acquainted with the Contents, till after he was gone?

Mr. *Thurston.* I did not apprehend that my Lady *Macclesfield* was acquainted with the Contents of it, till afterwards.

Mr. *West.* Since that Gentleman hath been asked concerning his Apprehension, I desire he may be asked another Question of the same kind, which is, Whether he apprehended he should have been admitted, if he had not left the money?

Mr. *Serj. Probyn.* We submit it to your Lordships, whether that be a fair Question.

Mr. *West.* Really I think it is a proper Question, upon the Foundation of the Question asked before. The former Question was, whether he apprehended my Lady knew what he had left? I ask, whether he apprehended he should have been admitted, if he had not left that Sum?

Mr. *Thurston.* I do not apprehend, that if I had come without the money, I should have been admitted. But if the Notes had been return'd to me without any other Answer, then I should fully have apprehended that I should not have been admitted.

Sir *John Russhout.* I desire he may be ask'd, whether he had any particular Acquaintance with the Lady *Macclesfield* before?

Mr. *Thurston.* I had not that Honour.

Sir *John Russhout.* Whether he had ever seen her, or been in her Company before?

Mr. *Thurston.* My Lords, I believe I never was.

Sir *John Russhout.* My Lords, we desire he may be asked what he apprehends was the Reason of 3250*l.* being returned to him?

Mr. *Thurston.* I know not whether I should trouble your Lordships with my Apprehensions, they may not be just; but so far as I could collect from the Lady's Discourse, the Reason was, she thought it too large a Present.

Mr. *Serj. Pengelly.* I desire he may be ask'd, when the 3250*l.* was returned, in what month it was?

Mr. *Thurston.* It was in *October*.

Mr. *Serj. Pengelly.* Whether he can recollect in what Time of the month?

Mr. *Thurston.* I believe it was about the middle of *October*, to the best of my Remembrance.

Dr. *Sayer.* My Lords, we desire he may be ask'd, whether the return of this money was before or after the then first Seal before *Michaelmas* Term?

Mr. *Thurston.* To the best of my Remembrance, the first Seal was about the middle of *October*, and it was returned before the first Seal.

Mr. *Serj. Probyn.* My Lords, I desire he may be ask'd, whether there was any message sent about the returning of the money, before the Return was made?

Mr. *Thurston.* I have acquainted your Lordships that several messages past, while I was in the Country.

Mr. *Robins.* When he waited upon my Lady *Macclesfield*, after his Return out of the Country, I desire he may be asked, whether she mentioned any Thing to him of the Reason of those messages?

Mr. *Thurston.*

Mr. *Thurston*. She mentioned the Reason, and said, that it was to return the money, which she said was too large a Present, and that she was afraid my Lord Chancellor should come to the knowledge of it.

Mr. *Serj. Probyn*. I desire he would inform your Lordships, when he went to *Kensington* to my Lady *Macclesfield*, where my Lord *Macclesfield* was?

Mr. *Thurston*. When I went to *Kensington* to my Lady *Macclesfield*, my Lord *Macclesfield* was then engaged in the Business of the Court of Chancery, at the latter end of the Sittings, or first Seal after *Michaelmas* Term.

Mr. *Serj. Probyn*. In what state of Health was my Lord Chancellor at that time? Had he not continued some time before at *London*, and not at *Kensington*?

Mr. *Thurston*. My Lord Chancellor, by the enquiry I made, was at that time in *London*.

Mr. *Serj. Probyn*. How soon after your Admission did the Lord Chancellor go into *Oxfordshire*?

Mr. *Thurston*. The very Day after my Admission, my Lord Chancellor went into *Oxfordshire*, as I was informed by one of my Lord's Officers, who came to me that Day upon some Business.

Mr. *Cottingham* again call'd.

Mr. *Serj. Pengelly*. My Lords, I desire Mr. *Cottingham* may be asked, whether upon the Proposal of 5000 Guineas made to him by Mr. *Thurston*, he acquainted my Lord *Macclesfield* with it?

Mr. *Cottingham*. I acquainted my Lord Chancellor with the Proposal made by Mr. *Thurston* of 5000 Guineas.

Mr. *Serj. Pengelly*. Whether did he approve of it, or reject it?

Mr. *Cottingham*. I am not very certain, whether the Earl did not say he would take time to consider of it. But in the main, according to my Apprehension, the Earl seem'd to approve of it.

Mr. *Serj. Pengelly*. I desire he may be ask'd, Whether he receiv'd any thing for my Lord *Macclesfield*'s Use upon Mr. *Thurston*'s Admission?

Mr. *Cottingham*. No, my Lords, I receiv'd nothing but my own Fees.

Mr. *Serj. Pengelly*. If he received nothing, Whether he received any Directions from my Lord Chancellor, relating to his receiving, or not receiving any thing from him?

Mr. *Cottingham*. The Earl was pleased to tell me, he had a design to have given that place to Dr. *Sayer*, but he was at that time in the country, out of town, at *Durham*: He proceeded so far as to order me to take no money of Mr. *Thurston*.

Mr. *Serj. Pengelly*. When was that?

Mr. *Cottingham*. Very soon before he was admitted.

Mr. *Serj. Pengelly*. My Lords, we submit this as Evidence of the Lord's knowing of the Receipt of this Present of 5000 Guineas.

Mr. *Lutwyche*. My Lords, I desire to know of Mr. *Cottingham*, Whether my Lord *Macclesfield* had any acquaintance with Mr. *Thurston* before this Proposal?

Mr. *Cottingham*. I can't say as to that, whether he had or had not; I believe he had not, as I apprehend.

Mr. *Plummer*. I desire he may be ask'd one Question, Whether he made any difficulty of accepting his Fees on Mr. *Thurston*'s Admission?

Mr. *Cottingham*. Yes, I did.

Mr. *Plummer*. And why?

Mr. *Cottingham*. The Earl ordered me to take no money of him. Upon that general Order I made a little difficulty, and told him of it; the answer he made me was, Why should I make any difficulty, when he had been thus generously dealt with by my Lord Chancellor?

Sir *Wm. Strickland*. Whether at that time, when he first mention'd the 5000 Guineas, it was not a Day or two before his admission?

Mr. *Cottingham*. I believe it was a Day or two before his admission.

Mr. *Serj. Pengelly*. My Lords, we have done with Mr. *Cottingham*; since the name of Dr. *Sayer* is mentioned on this Occasion, whom the noble Earl declared he would compliment with the Place that fell vacant, I desire this Witness may be asked, Whether that was a real Compliment to Dr. *Sayer*, or whether Dr. *Sayer* made any application, or was to give any thing for it?

Mr. *Cottingham*. I believe, if Dr. *Sayer* had been then in Town, my Lord would really have made him a Compliment of it without any present. My Lord told me Dr. *Sayer* was his particular Friend, and he had a great Value and Respect for him.

Mr. *Plummer*. My Lords, I beg leave to ask a Question upon that Question. He says he thought my Lord *Macclesfield* would have given it him for nothing; I ask him, If he then thought he gave it Mr. *Thurston* for nothing?

Mr. *Cottingham*. The Answer I can make to that Question is, that I did not apprehend my Lord was so well acquainted with Mr. *Thurston*, as to give it him for nothing.

Dr. *Sayer*. I desire he may be ask'd, Whether he did not represent to the Earl of *Macclesfield*, that there was a necessity for the immediate putting a Master into that Office, for the dispatch of Business?

Mr. *Cottingham*. I did represent it to the Earl, that it was necessary to put somebody into the Office, for several Practisers had been with me about their affairs in that Office, and otherwise the Business might be transferred to another Office, which would have been a great prejudice. Upon that the Earl said, Mr. *Thurston* should be admitted.

Mr. *Serj. Probyn*. Whether you had not application from the Suitors themselves, and whether there was not a Clamour from them on account of the stop it put to Business?

Mr. *Cottingham*. Yes, there was; it happened to be in the long Vacation, and something, I told the Earl, must be done, there was an absolute Necessity to come to some Resolution or other in the matter.

Mr. *Serj. Pengelly*. In this Article, as an aggravation, it is alledg'd, that Mr. *Borret* died insolvent: We beg leave to call some Witnesses to give an account of the State of the Office at his admission, and afterwards at the time of his Death.

Mr. *Meller* called.

Mr. *Serj. Pengelly*. My Lords, we desire Mr. *Meller* may be ask'd, what Sums in Cash and Effects he delivered over to Mr. *Borret*, at the time of his coming into the Office?

Mr. *Meller*. My Lords, I take it to be about 120,000*l*. I refer myself to the account given in

to the Judges, and Directors of the Bank, and signed by my Hand.

Mr. *Serj. Probyn*. My Lords, we submit it, whether this is regular, to examine to an *Accompt Viva Voce*, which account hath been reduced into writing?

Mr. *Serj. Pengelly*. Surely the Witnesses may make use of his own paper to refresh his memory.

E. of *Macclesfield*. I don't know what these Gentlemen intend. They are reading a Charge against Mr. *Borret*, to shew what was delivered over to him, at the time he came into the Office. Is it expected I should be able to give an account what was paid to him, or by him, while he was Master? that I should give an account of his Estate and Effects, what it is, and if there was sufficient to pay, in his Hands, or not? If these Gentlemen had any Order of the Court, in which this had been fixed and settled, that might have been something. It is impossible for me to enter into it.—It appears he died intestate, Administration was not granted till a great while after his Death; not till very lately: What account hath been taken of his effects I don't know, nor can any way shew. They are beginning with an account which I apprehend is not a proper Evidence to be given as against me, to prove that this Gentleman had not Effects sufficient to answer the Demands upon his Office.

Mr. *Serj. Pengelly*. My Lords, this Evidence relates to an accompt delivered in by the approbation of the Lord impeached, on the Enquiry made before the Lords of the Council. As this Accompt was delivered in before them, we apprehend so far it is a proper Evidence, and a Foundation for a farther Enquiry, how much of it remains in the Office: We shall ask other persons afterwards, as to the Deficiency. All the use we now make of it, is, to shew the gross Sum that was at first transferred over to him.

E. of *Macclesfield*. My Lords, if they mean only to satisfy your Lordships Curiosity, by shewing how great a Sum there was in that Office, I think it is of no great importance.

Mr. *Lutwiche*. All that we endeavour to prove now, is, what was very notorious at the time of Mr. *Borret's* Death; that there was a great Deficiency, and that he died insolvent, and the Earl goes a great way in this matter in his own answer. He says in his answer, That on the Death of Mr. *Borret*, he desired Mr. *Godfrey* and Mr. *Bennet* to enquire into his Effects, and to enter a proper Caveat in the Prerogative Court, to prevent Administration being granted to any person who might embezzle the said *Borret's* Estate, and to obtain Administration to be granted to them for the benefit of the Suitors of the Court. This goes a good way, I apprehend, to incline your Lordships to believe, that there were those steps used, which are unusual in the case of a man's Solvency. Therefore what we would ask to, is, that the Witnesses would give an account of what he knows concerning the Deficiency in this Office, or give an account of such Circumstances, as may induce your Lordships to believe there was such a Deficiency.

Mr. *Com. Serj.* If the Gentlemen who appear on the behalf of the House of Commons think fit to rely upon our answer, they may do it.

Mr. *Sol. Gen.* I think Mr. *Meller* hath proved that he transferred 120,000*l.* to Mr. *Borret*; we will now go on, and prove the Deficiency.

Mr. *Com. Serj.* Mr. *Meller* hath spoke *Viva Voce*, in a matter which we apprehend is capable of much

better proof; therefore we hope what he has said shall not go for Evidence. There must have been a Schedule, and he has the counterpart of that Schedule, by which the Effects were deliver'd over.

Lord *Trevor*. Mr. *Meller* hath a Paper in his Hand; I desire to know, What that Paper is?

Mr. *Meller*. The Paper I have before me, is the very Account of the money delivered to Mr. *Borret*, and the several Times when; it is made by way of Schedule. There is another Paper by way of Abstract. I drew them together at the time I delivered it to the Judges. I had not time to draw out the full account, and therefore I made an Abstract, both which are signed.

E. of *Macclesfield*. The noble Lord asked the Question exceeding proper. The Question asked is, What this Paper was? Perhaps it is the very accompt Mr. *Borret* and he made up between them, and signed. I ask therefore, Whether it is the accompt between them, or whether it is an accompt of his own drawing up since?

Mr. *Meller*. This is the accompt I drew up from my Books, of which Mr. *Borret* had a Duplicate. I verified all these *Items*, and likewise proved the payment of the money by Goldsmiths and Bank Notes.

Mr. *Sol. Gen.* We apprehend that this is as full Evidence as can be laid before your Lordships.

Mr. *Serj. Probyn*. We submit it, Whether your Lordships are of opinion, that this is proper Evidence? Mr. *Meller* hath been proposing a Paper, which is not the original accompt delivered; it is not the Book, but a Copy of the Book taken out, and given in Evidence in another place: Now he would by this Evidence, signed by himself, charge Mr. *Borret* with money deliver'd over to him; but as it is an accompt only signed by Mr. *Meller*, we submit it, Whether it can be a Charge upon the Representative of *Borret*, and consequently if it can be any Evidence at all?

Mr. *Serj. Pengelly*. We beg leave to insist upon it as proper Evidence. When a person makes up an accompt of his own Hand-writing, and draws it up, and swears that to be a true accompt upon his own Knowledge, Whether this is not proper Evidence?

E. of *Macclesfield*. This Gentleman has really given his Evidence, though it was objected to: It will be a proper enquiry hereafter, when we come to consider the Evidence that hath been given, Whether it be good proof of what it is brought for?

Dr. *Sayer*. We shall reserve our Objection to the last.

Mr. *Sol. Gen.* They may reserve what Observations they please; it is an Objection to be made now, or not at all.

Lord *Lechmere*. It would be of some Service to prevent mispending your Lordship's Time, if the noble Lord would distinguish between Objections and Observations; for a great deal of Time has been taken up in Observations on Evidence, which are proper afterwards on the Defence.

Mr. *William Thompson* called.

Mr. *Serj. Pengelly*. Mr. *Thompson* is one of the Gentlemen, who by the consent of the Lord within the Bar, as well as of the rest of that Committee, did examine into the accompts of the Masters in Chancery; and we beg leave to ask him, In the accompt delivered in before the noble Lord himself

self, what appeared to be the Deficiency upon Mr. *Borret's* Account?

E. of *Macclesfield*. If it does appear by those accounts, those accounts may be produced before your Lordships, and your Lordships may be Judges; but I beg they may not insist upon this Gentleman giving his Opinion, in order to affect me with his Collections or Inferences upon them.

Mr. *Sol. Gen.* The original accounts are here. They are on your Lordships Table. It will be proper to examine this Gentleman as to that.

Mr. *Plummer*. I beg leave to make one Observation, and I believe it may prevent mispending your Lordships time. They make an Objection to this Evidence, as if your Lordships were going to try how the Deficiency was made up; whereas your Lordships are only trying, whether there was or was not a Deficiency.

E. of *Macclesfield*. If the accounts are before your Lordships, and lie upon your Lordships Table, and he only declares to your Lordships his Observations on those accounts, for your Lordships Ease, and to save you some Trouble, I have no Objection to it.

Mr. *Serj. Pengelly*. Upon the stating the account, which we apprehend is a matter of Evidence, when a Gentleman computes the Sum on one Side, and the Sum on the other Side, we desire to know what appears to Mr. *Thompson* to be the Deficiency?

Mr. *Thompson*. I can't rely upon my memory for the Sum, but I have in my Hand a Report made to the Committee of Council, that I signed with my Name; by which it appears, that Mr. *Meller*, at several times, paid to Mr. *Borret* 120,000*l.* That Mr. *Borret* paid out to the several Suitors 77,485*l.* and I find the Charge remaining on Mr. *Borret's* Office unpaid to the Suitors, is 42,515*l.* These are the Sums that, upon Examination of the accounts, we find to be right.

Dr. *Sayer*. If the Gentlemen that are Managers for the House of Commons have done, we beg leave to ask Mr. *Thompson* this Question, Whether on the making up of these accounts any Executor or Administrator of Mr. *Borret* was present.

Mr. *Thompson*. When we examined the accounts, we understood there was no Representative of Mr. *Borret*; and I think it is put in the Report, that we could get no account but from his Clerk, Mr. *Godfrey* and Mr. *Bennet*, two Masters in Chancery.

Mr. *Com. Serj.* What Books were they he formed those accounts from?

Mr. *Thompson*. The first Charge, or the Charge from Mr. *Meller* on Mr. *Borret*, was taken from Mr. *Meller's* account. The 77,485*l.* paid out, was an account from Mr. *Borret's* Books, made up by his Clerk, under the Inspection of Mr. *Godfrey* and Mr. *Bennet*.

Mr. *Com. Serj.* I desire he may be asked, Whether he himself knew those to be Mr. *Borret's* Books, or only by relation from other Persons?

Mr. *Thompson*. Only by relation from his Clerk.

Mr. *Com. Serj.* Then, with Submission, they must go further before the Ballance can be taken notice of. They must establish that these Books are Mr. *Borret's* Books.

Mr. *Sol. Gen.* We have done with Mr. *Thompson*.

Mr. *Serj. Pengelly*. We hope the Counsel for the Earl impeached, will be pleased to read his own Answer, wherein he owns that Mr. *Godfrey* and Mr.

Bennet, were employ'd by himself to take the Effects of Mr. *Borret* into their Custody.

E. of *Macclesfield*. If I apprehend Mr. *Thompson*, he says, the Charge is taken from the account given by Mr. *Meller* himself. I desire to know, Whether Mr. *Meller* was not called upon to discharge himself of the money he had in his hands, before he surrender'd to Mr. *Borret*, and whether that was not the Occasion of his being there?

Mr. *Thompson*. I apprehend Mr. *Meller* was sent for, in order to know the State of the Office at the time he left it.

E. of *Macclesfield*. So he gave an account how it stood at the time of quitting the Office, and what he paid over to Mr. *Borret*?

Mr. *Thompson*. I apprehend he did so.

Mr. *Serj. Probyn*. I desire Mr. *Thompson* may be ask'd, Whether the 77,485*l.* Discharge, was taken from the relation of Mr. *Godfrey* and Mr. *Bennet*, or from the Books themselves; or whether he did examine the Books himself?

Mr. *Thompson*. I went through every Particular of Mr. *Meller's* account; as to the other, my memory does not serve me to answer particularly.

E. of *Macclesfield*. Whether they did not report at that time, they could not take the accounts perfectly, for want of an Administrator?

Mr. *Thompson*. I believe, my Lords, we might do so; and I believe, if the Report is turn'd to, it will appear so. I don't mention these Sums as an exact account, they were the best accounts we could get?

Dr. *Sayer*. The Question I would trouble your Lordships with, because it is of great consequence, is, Whether the account of 120,000*l.* which lies as a Charge upon Mr. *Borret's* Office, is not the account which Mr. *Meller* is to discharge himself by, and of those Effects for which he otherwise remains responsible?

Mr. *Thompson*. How far Mr. *Meller* is to discharge himself, I am no competent Judge. This is the account that the Office, as I apprehend, stood charged with.

Dr. *Sayer*. To put the Question shorter, Whether it is the account of Mr. *Meller*, as Predecessor in the Office to Mr. *Borret*?

Mr. *Thompson*. I apprehend it so.

Mr. *Plummer*. Whether Mr. *Meller* did not produce Receipts for Mr. *Borret*, for this whole account?

Mr. *Thompson*. To the best of my remembrance, Mr. *Meller* did produce Vouchers for every article set down in his account.

Mr. *Serj. Probyn*. I desire he may be ask'd, Whether there were any Proofs made of these Vouchers?

Mr. *Thompson*. What the Gentleman means by Proofs, I don't know. They were Receipts under Mr. *Borret's* own Hand for the whole Sum.

Mr. *Com. Serj.* I desire he may be ask'd, Whether he is acquainted with Mr. *Borret's* Hand-Writing, or whether there was any Proof made of it?

Mr. *Thompson*. Mr. *Borret's* Clerk was there, and affirm'd every Receipt to be Mr. *Borret's* Hand-writing.

Mr. *Com. Serj.* I would ask, if there was any Oath made, or if it was only upon his Word?

Mr. *Thompson*. If your Lordships will give me leave to have recourse to the Report, I will recollect myself. I can't say whether Mr. *Borret's* Clerk was sworn or no, I think he was; I don't find it set down in the Report.

Mr. *Lutwyche*. I would beg leave to ask this Question; This Report, that is sign'd by him as one of the Committee, whether it was laid before the Council, and to whom delivered in, in order to be laid before the Council?

Mr. *Thompson*. This very Report was delivered by Mr. *Baron Gilbert*, to the Committee of Council.

E. of *Macclesfield*. I hope it is the same that is before your Lordships, if it is not, I can't tell what to say to it.

Mr. *Serj. Pengelly*. This is the original Report, of which your Lordships have a Copy on your Lordships Table.

E. of *Macclesfield*. I desire it may be delivered in, and lie upon the Table.

Mr. *Godfrey* called.

Mr. *Sol. Gen.* We desire Mr. *Godfrey* may be ask'd, Whether upon the Death of Mr. *Borret*, he was directed to take an account of the State of his Office?

Mr. *Godfrey*. Upon the Death of Mr. *Borret*, my Brother *Bennet* and I were desired by my Lord *Macclesfield*, to look into the Affairs of Mr. *Borret's* Office, and see how the accompt stood; and likewise to see what Securities were in the Bank, in the Exchequer, and *East-India* Company, and other Funds. Accordingly, I went to the Bank, and the *East-India* House, and took an Account of what I found stood in his Name there. I believe Mr. *Bennet* will satisfy your Lordships, he went to the Exchequer and other Places. I applied first to the Bank, to Mr. *Hanger*, who was then Deputy Governor, and he was so kind to send an Officer to search the several Books, and I had this Accompt: There was in Mr. *Borret's* Name 1000*l.* in 5*l.* per Cent. Annuities, 1000*l.* Bank Stock. And then I went to the *East-India* House, and there was 240*l.* *East-India* Stock in his Name. This was all the Account I took.

Mr. *Sol. Gen.* In what State was the Office in general?

Mr. *Godfrey*. I did not look over the Office Books. I believe Mr. *Bennet*, who was with me, took that Charge upon him: I believe he is capable of giving you an account. I did not see the Office-Books at all: But upon my talking with Mr. *Bennet* about it, he found there was more Stock and Security in Mr. *Borret's* Name in the several Funds, than he could find him charg'd with in the Books of the Office.

Mr. *Serj. Pengelly*. When Mr. *Thompson* and the other Gentlemen enquired into the particular Effects, whether, when he appear'd there, the accompt he gave in was a true accompt?

Mr. *Godfrey*. To the best of my knowledge, in relation to Mr. *Borret's*, it was.

Mr. *Sol. Gen.* I desire one Question more, Whether it is usual to enquire into the Effects of a Predecessor, unless there is reason to suspect a Deficiency?

Mr. *Godfrey*. I don't know whether it is usual, but it is extremely necessary. When this Gentleman was expiring in such an Office, having no Friends in Town, nor any intimate acquaintance besides myself to take care of his Effects; I thought I ought to take some care, that his Office should not be plundered; and that was the only Reason that induced me to take care of his Effects, that they might not be embezzled.

Mr. *Serj. Pengelly*. Whether they did not find the Office in great Confusion?

Mr. *Godfrey*. In that Part of his Office which

was at his Chambers in the Temple, we found his Papers in great Confusion, lying without any method or order. We collected them as well as we could, and what Things we found of Value, or belonging to the Suitors, as Goldsmiths Notes, Notes under Hand for money, we put them upon a File; and that File, together with other little moveables we found belonging to him, as rings and a watch, were all put in a Bag, and sealed up by Mr. *Bennet* and myself, Mr. *Grant*, who was Mr. *Borret's* Lady's Father, and Mr. *Grant* the Clergyman, who was his Lady's Uncle; and we put them into a Trunk, and lock'd them up; and they are now at my House.

Sir *Wm. Strickland*. I would ask him, Whether the next of Kin did not refuse to take out Administration, because of the Deficiency?

Mr. *Com. Serj.* Here can be no answer, but yes or no; I hope Gentlemen will not ask such Questions.

E. of *Macclesfield*. I desire he may be ask'd, Whether any Advice was given concerning taking out, or not taking out Administration?

Mr. *Godfrey*. Mr. *Grant* the Uncle said, that he was a Creditor of Mr. *Borret's* by Bond (which indeed I was surprized to hear, I did not think he owed any man a Shilling) between 6 and 700*l.* And being so great a Creditor, he thought if he took out Administration he should be paid first. I told him, as Mr. *Borret* had been in an Office of great weight, and there was a great Trust, I could not tell how matters stood in the Office; and if there should prove a Deficiency, I believed he would involve himself in taking out Administration, in much more trouble than he was aware of.

Sir *Wm. Strickland*. I desire he may be ask'd, If he did not apprehend there would be such Deficiency?

Mr. *Godfrey*. I did not apprehend at that time there would be any Deficiency. He had been in the Office about four Years; he had had Opportunities of re-imbursing himself: He had a handsome Fortune of his own when he came in, and had with his Lady 3000*l.* therefore I was under no apprehension that there would be a Deficiency.

E. of *Macclesfield*. I beg leave I may ask Mr. *Godfrey*, Whether he was acquainted very well with the Affairs of Mr. *Borret*, and knew his Circumstances?

Mr. *Godfrey*. I have had some Years acquaintance with Mr. *Borret*. As to his real Estate, I was not perfectly acquainted with it, I had it only by common relation, that he had an Estate of about 400*l.* a Year, or rather better; but I don't know it of my own Knowledge.

E. of *Macclesfield*. As to his real Estate, you say you don't know it of your own Knowledge; Whether are you particularly acquainted with his personal Estate?

Mr. *Godfrey*. No, my Lords.

E. of *Macclesfield*. I desire Mr. *Godfrey* to inform your Lordships, what he said to me after Mr. *Borret's* Death, Whether there would be a Loss or not a Loss in Mr. *Borret's* Office?

Mr. *Godfrey*. I can't at present remember what Discourse passed between the noble Earl and myself, upon the death of Mr. *Borret*. I believe I might say, and it was my opinion, that there would be no Deficiency. I have heard his Estate was such, and I knew very well that his Lady's Fortune was

so much, and that he disposed of a Place, which was the Filazer of *Yorkshire*, for which he had, as I have been inform'd, 4200*l.* And these were the Reasons that induced me to believe there wou'd be no Deficiency; and I knew very well that I could say of my own Knowledge, Mr. *Borret* liv'd at no extravagant rate; for I am sure all the Time he was a Master, and in Town, he never spent 200*l.* a Year.

Sir *Wm. Strick*. He says, he has heard he had 400*l.* a Year in Land: Does he not as well know that that Estate was settled upon his Family and Children?

Mr. *Godfrey*. I have heard, that upon his Marriage, some part of it was settled, but whether all be settled, or not, I can't tell.

E. of *Maccles*. It seems this Gentleman says, he did not spend 200*l.* a Year. How came you to imagine that he should spend no more than 200*l.* a Year?

Mr. *Godfrey*. He told me so.

E. of *Maccles*. Where was his Family?

Mr. *Godfrey*. In the Country.

E. of *Maccles*. With whom?

Mr. *Godfrey*. With his Lady's Father; and when he was in Town, he had private Chambers in the *Temple*, and only kept one Servant, and one Horse.

E. of *Maccles*. I desire he may be asked, whether he did not once intend and propose himself to take out Administration to Mr. *Borret*, and if he did not take some Steps towards it?

Mr. *Godfrey*. I had so great a concern for the Office, and the Securities not being transferred to a proper Hand, that I was willing to take out Administration, rather than there should be any clamours on account of the neglect of Business in the Office. But, my Lords, upon considering the Matter, I did not apprehend that I was so fit a Person for that purpose. I was not very young my self, I had two Children, and those young: I apprehended that if I should drop off before things were settled, the Case might be still the same as I found them: Therefore, I desired I might have somebody joined with me in this troublesome Affair, for I did foresee a good deal of Trouble in it. However, I said I was willing to engage in it, if my Brother *John Bennet* were joined with me, rather than there should be any clamour upon the Office; and I persuaded him to do the same; and accordingly, I went down to the Commons, to see if Administration could be granted to us two. The Relations in the Country, and those People concerned for them, were very willing that Administration should be granted to Mr. *Bennet* and my self; and accordingly Process was sent to cite the Children; and that done, as I am inform'd, Sentence was given, that I and my Brother *Bennet* should have the Administration. But then this unhappy enquiry coming out, we did not know what Situation we might be in, and for that Reason I declined it.

E. of *Maccles*. Has Mr. *Borret* a Wife living, or is she dead?

Mr. *Godfrey*. His Lady died a month before him.

E. of *Maccles*. What age are his Children?

Mr. *Godfrey*. The eldest is about three Years old, and the youngest about two, as I am informed; I never saw them.

Mr. *John Bennet* was called and sworn.

Sir *Wm. Strick*. The Question I desire he may be asked is, whether he did not, upon the enquiry

into the Affairs of Mr. *Borret*'s Office, apprehend that there was a Deficiency.

Mr. *J. Bennet*. I did hear it reported that there would be a great Deficiency in that Office, at the Time I was desired by my Lord *Macclesfield* to look into it; and I was likewise informed soon after, that there was like to be no Deficiency.

Sir *Wm. Strick*. I desire he may be asked, how he found it?

Mr. *J. Bennet*. I found his Papers and Accompts in the utmost Confusion. His Accompts were mostly in loose Papers: There was one Book indeed, but that extended no farther than to the *Christmas* before his death, which was near three quarters of a Year before he died. Mr. *Godfrey* desired I would join with him in taking out Administration; after a good deal of importunity I did consent.

Sir *Wm. Strick*. I desire one Question more. He says he was informed soon after, there was like to be no Deficiency in the Office. I desire to know, whether he did inform the Earl of *Macclesfield* there was like to be no Deficiency?

Mr. *J. Bennet*. No, I did not, but I did inform him, that there was not so great a Deficiency as was reported, which was 25 or 30,000*l.* I could make no regular Computation, every thing was in the utmost Confusion, as I acquainted my Lord.

E. of *Maccles*. I desire he may be asked, whether he did not inform me, that he found more Stock in *Borret*'s name, in the Books of the several companies, than he could find charged upon him in the Office?

Mr. *J. Bennet*. Not to my Remembrance; for I did not look into the Stocks of the Companies; that was Mr. *Godfrey*'s Business.

E. of *Maccles*. You then look'd into his Books?

Mr. *J. Bennet*. I did so.

E. of *Maccles*. Then upon your looking into his Books, and Mr. *Godfrey*'s looking into the Companies Books, and comparing them together, I desire you would inform my Lords, whether you did not take more to be in his Name, than he was charged with in the Books of the Office?

Mr. *J. Bennet*. Upon Mr. *Godfrey*'s Accompt there appeared, upon casting it up, to be more Stock in his Name than the Securities he was answerable for to the Court.

E. of *Maccles*. He has said, he could not tell what the Deficiency would be, because he could not make up a regular Accompt; I desire he may be asked, whether he did not tell me that he believed there would be no Deficiency?

Mr. *J. Bennet*. No, I did not.

E. of *Maccles*. Did you not upon your Oath?

Mr. *J. Bennet*. After Mr. *Borret*'s death, I did say to several People, when they were clamorous (but whether I said so to my Lord *Macclesfield*, I can't tell) that upon the best Accompt I could make of his confused Affairs, there would be a Deficiency of 4 or 5000*l.* and I believed not more.

Mr. *Com. Serj.* Tho' Mr. *Bennet* did not look into the Books of the publick Companies; yet whether he did not examine at the Exchequer upon that Occasion?

Mr. *J. Bennet*. Yes.

Mr. *Com. Serj.* I desire he may be asked, whether he did not tell Mr. *Godfrey* afterwards, that upon what appear'd, there would be no Deficiency?

Mr. *J. Bennet*. No.

Mr. *Plummer*. Mr. *Bennet* has said, upon comparing the Books, he found more Stock in Mr. *Borret*'s

Borret's Name, than he was charged with to the Court. I desire he may be asked, if he found more Stock than the money and the Effects he was charged with to the Court?

Mr. *J. Bennet*. No my Lords, the best Calculation I could make, was, that there was near 4 or 5000 *l.* Deficient.

Mr. *Serj. Pengelly*. We shall leave this Article, with this Observation, that Mr. *Borret* died insolvent, and a debtor to the Suitors of the Court, of which we have given full Evidence; and that Mr. *Thurston* was admitted into that Office by the Earl Impeach'd, without procuring satisfaction to the Suitors of the Court, or Security for their Debts: If that was done, it lies upon the noble Lord to prove it.

Mr. *Onslow*. My Lords, the Commons having made good that part of their *Impeachment*, by which the *Earl of Macclesfield* stands charged with *extorting* many great, and extravagant Sums of money, for the admission of several of the Masters of the Court of Chancery into their respective Offices: We shall now proceed, my Lords, to support the *Eleventh* and *Twelfth* Articles, which contain many *corrupt Practices*, used by the said Earl, to advance and encrease the illegal Gain, arising to himself from the Sale and Disposal of those Employments.

The *Eleventh* Article charges him, my Lords, with admitting several Persons to those Offices, who at the Time of their Admission, were of *small Substance and Ability*, and highly unfit for so great a Trust, as by the nature of their Employments at that Time, was to be placed in 'em.

The Masters in Chancery, my Lords, have of late Years, been the *Treasurers* of that Court; the *Repository* of the money and the Effects brought into the Court; brought there my Lords, not by the *choice* and *consent* of the Parties concerned, but by the *compulsion* of the Court, under the Faith of a better Security: But so, my Lords, has it fallen out, that this pretended Security, has served only to *delude* the Suitors of the Court, into a false Quiet, whilst their Estates have been made a Prey to infamous *Stock-jobbers*, and wantonly *wasted*, by some of 'em, to support the extravagancy of their Living.

The Fortunes, my Lords, of *Orphans* and *Lunatics*, are from the Compassion of our Government, a part of the Care of the Court of Chancery; and have been lodged in the Hands of the Masters, as a Place of *Sanctuary*, till the Owners should become capable of managing their Estates themselves: When they come my Lords, to require their Fortunes, he, who was the *Supreme Judge* in a Court established for their Relief; He, who was the *Great Guardian* of Infants and Lunatics, will be found to have *suffer'd* an advantage to be taken of the *weakness* of the *One*, and the *misery* of the *Other*, to render their *helpless condition* a means of their *Ruin*, instead of their *Protection*.

This, my Lords, is the nature of the *Trust* reposed in the Masters of the Court of Chancery, and this the *Use* they have been permitted to make of it. The *Greatness* of the Trust, will shew your Lordships, what Precautions a Lord Chancellor ought to have taken, as to the Officers admitted into these Employments; and the *Abuse* of this Trust, will demonstrate how little His *care* has been, whose Duty it was to provide Persons of Integrity, and responsible Men, for the execution of these Offices; but *who*, my Lords, unfortunately

for the Suitors, and to the dishonour of the publick Justice of the Kingdom, *presided* seven Years in the Court of Chancery; in which Time, a *deficiency* of above *four-score thousand Pounds*, has happened upon the Masters He admitted; and, what perhaps may be worthy of *your Lordships* particular Notice, of the *six* masters on whom there appears to be a Deficiency, *Four* of them were admitted by *Him*. If our Evidence, my Lords, as to this Article, rested only on the Proof of these Deficiencies, it would, we apprehend, be sufficient to evince what the Commons have here alledged, That Persons of small Substance and Ability, have, by the *Earl* at the Bar, been preferred to be masters of the Court of Chancery. But, my Lords, to bring this Charge still nearer to the *Earl*, we have it in Proof, and strongly so, that little or no *inquiry* was ever made by him, into the *Characters* and *Circumstances* of those He admitted into these Offices. That in fact, my Lords, they were Men of very mean Fortunes. No security ever required of Them; which still made it the more necessary, that their own Ability should be thoroughly *looked into* and *well approved*. We shall shew your Lordships, That they were entrusted, some of 'em, with *forty, sixty*, one of 'em, I think, to the amount of a *hundred thousand Pounds* in Cash and Securities: And yet, my Lords, no other Use was made of This, but to *enbance* the Price of the Office, when it was to be *Sold* and *Barter'd*, for the benefit of the *Earl*. The Argument used; to bring up any Person to the *Rate* the *Earl* insisted on, was the largeness of the Sum to be transferr'd to the Purchaser. The *Temptation* generally succeeded: The *Reason* your Lordships will easily imagine; and when the *Price* was thus agreed upon, no other Qualification was required, the Person stood right in the *Earl's* Opinion, and was thought proper to be *Associated* to him. — Were it only that, my Lords, the Commons would not have troubled your Lordships with this Article, — but to be *Associated* to him in the Administration and Execution of Justice, and to be *entrusted* with the Fortunes of whole Families, whose only support, perhaps, depended on the Ability and Integrity of these Men: How well, my Lords, the *Earl* consulted in the appointment of these Officers, the *Honour* of that publick Justice they were to *assist* him in; What *Regard* He has had for the *Interest* of Those, whose Estates He thus flung into their Hands, The Evidence we shall produce to *your Lordships*, and your own Observations upon it, will abundantly shew, notwithstanding his flat denial of this part of the Charge.

I will trouble *your Lordships* but with one particular more in this Article, and it is what the Article concludes with. A remarkable *Declaration* by the *Earl*, of the Ability, and other Qualifications of the Masters, particularly those promoted by him; and this happened, my Lords, upon as remarkable an *Occasion*. A very honourable Person, then a *Judge* also in that Court, and now justly at the Head of it, having seen with Indignation, the *Havock* that was making of the Effects of the Suitors; out of compassion to them, and from a Zeal for Justice, endeavour'd to put some stop to it, in an Instance that came within his Cognizance. An Order was made by him, my Lords, on one of the masters, to allow some Profit to a Suitor arising from her own money, which the master designed as it was thought, to have sunk to his own Use. The master thought himself aggrieved, and fled for Redress to his *Patron*,

tron, the then *Lord Chancellor*, the *Earl* now under your Lordships Consideration; and he was secure in so doing, for the Order was immediately discharged; and then it was, my Lords, to obviate the Clamours that were breaking out from all sorts of People against the Masters, that the *Earl* did in open Court, then sitting as *Lord Chancellor*, in his *judicial Capacity*, declare, that the present Masters were Men of as great Probity, Fortunes, and Abilities, as any set of Masters that ever were in that Court; and that he had had the Satisfaction of putting in most of them himself. As this, my Lords, was spoken in general of them all, but with a peculiar Regard to those he had admitted; the Commons have laid it to be to the manifest *Deceit* and *Injury* of the Suitors of the Court, which they are justified in doing, by the Thing itself being *false*, by the Proof we have, my Lords, that the *Earl* must know it to be *false*, and by the Resemblance it bears to that Series of other mean *Artifices* he had long been practising to give a *counterfeit* Credit to these *corrupt* Officers. A Credit, my Lords, he was soon to receive some *Benefit* from; for the Witness will inform your Lordships, that a Vacancy of a Master in Chancery happened the Day before this *significant* and *memorable* Declaration was made.

My Lords, The Commons have made this Article a part of their *Charge* against the *Earl of Macclesfield*, as being the great Source of the *Evil* that is likely to befall the unhappy *Sufferers* in the Court of Chancery; and as it was the *Means* he made use of to draw to himself those extravagant Sums of Money we have proved him to have received: For Men of small Fortunes, my Lords, as they have more Temptations, so they run less hazard than others in preying upon Money that is entrusted with them; and it is this, my Lords, that encourages such Men to give exorbitant Rates for Employments which afford them those Opportunities.

Thus, my Lords, I have opened to your Lordships the Substance of the *Eleventh* Article, and the nature of our Proof upon it. The *Twelfth* Article will be opened and enforced to your Lordships by the Gentleman who is to come after me. I shall therefore detain your Lordships no longer than to make this one Observation, That as the Office of a Master in Chancery is of great *Trust* and *Importance*, that as these Officers are appointed to this Trust by the *sole Discretion* of the Lord Chancellor; and that the Effects of the Suitors of the Court are deposited in their Custody, by his *immediate* Orders, which he might have placed in *safer* Hands if he had thought fit; he becomes by all this in the nature of a *superior Trustee* for, and is therefore justly *answerable* to the Suitors for the Behaviour of these Men. So, my Lords, in some Degree may the Publick be thought *answerable* for him; which makes his Guilt without Measure, who has thus brought a Disgrace upon his Country, by prostituting one of its highest Courts of Justice to his own *Avarice* and *Corruption*, to the *Rapine* and *Corruption* of his inferior Officers, and to the *Undoing* of those, who, by the Constitution of the Kingdom, have been forced into his Power.

Mr. Palmer. My Lords, The Gentleman that spoke last has fully opened the Evidence of the *Eleventh* Article, and has shewn to your Lordships, that for his own private and illegal Gain, the impeach'd Lord did commit the Money and Effects of the Suitors, to Men no way of Substance sufficient

for so great a Trust. The *Twelfth* Article will lay before you a most corrupt Practice, used without Controul, while the *Earl* was Chancellor, by which this illegal Gain was immensely increased; and whereby those Masters of whom the Commons complain in the preceding Article, were tempted and enabled to buy their Offices at extravagant Prices.

Your Lordships will see what Methods were used on the Admission of Masters in Chancery: Great Sums were paid for the Surrenders and Admissions, and those Sums were taken from the Money of the Suitors; sometimes the Purchase-Money was borrowed; but after Admission, repaid from the Cash of the Office; sometimes the Value of the Purchase was left in the surrendering Master's Hands: Whatever different ways were taken at the beginning, they all tended to this; the Suitors were to make the Purchaser easy, and the People were persuaded to bid high, by being told how easily the largest Sums could be raised.

It was a common Recommendation to a Purchaser, to tell him how much Cash was in the Office; and that he need not be afraid to make any Contract good, Money would be ready as soon as he was admitted: Your Lordships will see the Consequences of such Recommendations. Masters did offer, and give more than could be presumed they were worth, the Suitors Money was at Hand to make good the Bargain; and these are the masters in whose Offices appear the greatest Deficiencies.

It will appear to your Lordships, that Mr. *Kynaston*, and Mr. *Thomas Bennet*, procured their Places in this manner. Mr. *Kynaston* discharged a Bond of six thousand Pounds to his Predecessor, by giving a Receipt of the same Value. Mr. *Bennet* gave a Receipt to his Predecessor for ten Thousand Pounds; both acknowledged a Transfer of so much of the Suitors money, the one received but Nine Pounds, and the other Fifteen Hundred, the rest was kept back as part of the price of their Office; and is now a part of their Deficiencies. How great their Deficiencies are, may be observed to your Lordships; Mr. *Bennet's* is near Ten Thousand Pounds, and Mr. *Kynaston's* above Twenty Thousand.

This is the Practice, the impeached Lord, in his Answer, declares himself totally ignorant of, and is what the Commons declare he knew, connived at, and encouraged; and as they have been always careful to aver nothing but what they are satisfied will be fully maintained, this Article will be supported by Proofs, that the impeached Lord was well informed of what he now denies the Knowledge of; that it was the Subject of his Discourse, and that he feared, and endeavoured to prevent a Discovery.

And your Lordships will find him observing on the Accounts of some of the Masters, as they were given in on the late Enquiry, *That they were given in in the worst Manner; That they should convince the World that they paid for their Places out of the Suitors Money; and, That they would at last discover what he had always, when asked, taken care to deny.*

The impeached Lord admits, in his Answer, that he never caused any Schedules to be made of the Suitors Effects, to be transferred over to succeeding Masters: That it was what his Predecessors never

ver did before him, and that if the Consequences alledged by the Commons, have arisen from this Practice, or the not ordering such Schedules, he thinks he is not Criminal.

My Lords, the Charge of the Commons is general, that he knew the Abuse, and took no Care to reform it; if he had taken Care that the Effects of the Suitors should have been transferred by Schedule; if he had appointed any one to overlook the Transfer; if he had taken any method at all to be assured that the Effects of the Suitors were duly made over according to this Order of Transfer, the Commons would not have charged as they have done, and perhaps he had not at this Time appeared so nigh your Lordships Bar.

But if the impeached Lord thinks he is justified by saying, it was not his Duty, and therefore the Omission no Offence: The Commons aver in their Article, that it is the Duty of the Chancellor of *Great Britain*, to superintend the Masters and their Accounts; and it is submitted to your Lordships, whether he is not Criminal, if he suffers money deposited by the Orders of his Court in the Hands of the masters, to be without Order, conveyed or left in private Hands.

I shall say no more to your Lordships on this Article, but leave the Proof of it to the Evidence.

Mr. Serj. *Pengelly*. My Lords, the Proof in support of these Articles, will go to them both promiscuously. In the first Place we beg leave to shew to your Lordships, the several Orders of Court, which state the Deficiencies of several Masters.

Mr. *Ralph Paxton* sworn.

Mr. Serj. *Pengelly*. We desire he may be asked, whether the Papers he produces, are true Copies of the Orders Examined by the Books in the Office.

Mr. *R. Paxton*. My Lords, they are true Copies, I examined them.

Lords Com. *Ordo Curie.*

Veneris 29. Die Januarii, 1724.

WHEREAS, by an Order made by the Rt. Hon. the late Lord High Chancellor of *Great Britain*, the *Seventeenth* Day of *December* last, it was (*inter al'*) ordered, That the Bank Notes, and other Effects therein specified, produced before Mr. Baron *Gilbert*, Mr. Justice *Denton*, and Mr. Justice *Raymond*, Sir *Nath. Gould*, Mr. *Thomson*, and Mr. *Hanger*, three of the Directors, and one of them Deputy-Governour of the Bank of *England*, by the several masters of this Court, upon the Examination of their Accompts, for or towards answering the Ballance of Cash admitted by their said Accompts, to remain in their respective Hands belonging to the Suitors of this Court, should be deposited in several Chests, and that then the said Chests should be locked up and left in the Custody of the Bank of *England*, in such manner as by the said Order is provided: And whereas, the masters had in their several Accompts, given in Particulars of Stock and of Annuities, transferrable in the Books of the several Companies, standing in their Names, which belonged to the several Suitors of this Court,

or as their own proper Stock and Annuities, by which part of the Ballance of Cash in their Hands might be made good, or secured. It was further ordered, That they should each of them forthwith, deliver into the respective Companies, a Declaration in writing, wherein such Stock in each respective Company, or the Annuities there transferrable, as by their respective Accompts appeared to belong to the Suitors of the Court, and likewise the Stock and Annuities by them respectively proposed towards making good, or securing their Ballance of Cash, or so much thereof as should equal the Ballance of their said Accompts; in Case they had in their Names, more than sufficient for that purpose should be declar'd to be upon Trust to attend the Orders of this Court: And it was further order'd; That the said several masters, should forthwith give to the said Mr. Baron *Gilbert*, their Post Accompts of their Receipts and Payments since the former Accompts; and by a subsequent Order of the 21st Day of the said *December*, It was order'd, That the several and respective masters, whose Effects so ordered to be secured, did not amount to the whole Ballance of the Cash admitted by their Accompts to be in their Hands, should forthwith secure the rest of the Ballance of the Cash appearing to be due on their respective Accounts, by depositing in like manner Bank Notes, or other Effects to the Amount thereof, or enter into a Recognizance in a competent Sum of money, with two or more Sureties to be approved of by Mr. Baron *Gilbert*, Mr. Justice *Denton*, and Mr. Justice *Raymond*, or any two of them, for duly answering from Time to Time as this Court should direct, such Sum and Sums as the remaining Deficiencies of their said respective Ballances amount unto. And whereas, Mr. *Edward Conway*, one of the masters of this Court, did, on the 19th Instant, attend the Right Hon. the Lords Commissioners for the Custody of the Great Seal of *Great Britain*, and acknowledge that he was Debtor to the Suitors of the Court on the Ballance of his Cash Accompt, the Sum of 13039*l.* 4*s.* 4*d.* $\frac{1}{2}$. and that he had brought into the Chest the Sum of 3000*l.* only, so that he remains Debtor on the said Cash Ballance, the sum of 10039*l.* 4*s.* 4*d.* $\frac{1}{2}$. and that since making the said former Orders, he had sold 3500*l.* South Sea Stock, in the Cause between the Lord and Lady *Faulconberg*, which was intended a Security for the sum of 3425*l.* and that he had since paid off only the sum of 2593*l.* 9*s.* 3*d.* pursuant to the Orders of this Court in that Cause, so that there remained the sum of 831*l.* 10*s.* 9*d.* in his Hands, to be applied to the Parties concerned in that Cause; and that he had since sold 2000*l.* South Sea Annuities Stock, part of the Sum of 17950*l.* South Sea Annuities Stock, belonging to the Suitors of the Court in several Causes, which he ought to re-place. Their Lordships did thereupon order, That the said Mr. *Conway*, should in a Week, depostite the Sum of 10039*l.* 4*s.* 4*d.* $\frac{1}{2}$. and also the said Sum of 831*l.* 10*s.* 9*d.* belonging to the said Cause of *Faulconberg* and *Faulconberg* in Bank Notes, or money in his Chest at the Bank of *England*, and also should replace the said Sum of 2000*l.* South Sea Annuity Stock, or that he should enter into a Recognizance of 26000*l.* with two sufficient Sureties to be approved of by one of the Lords Commissioners for the Custody of the Great Seal of *Great Britain*, for answering the said Sums, and replacing the said 2000*l.* South Sea Annuity Stock, in such

such Manner as this Court should direct: And this Court being Yesterday informed by Mr. *Attorney General*, on behalf of the Suitors of this Court, that the said Mr. *Conway* had not deposited either of the Sums aforesaid, or entered into a Recognizance with two Sureties, as by the said Order he was directed: It was thereupon ordered that he should on this Day attend the Court, to shew Cause why he did not yield Obedience to the said Order. And he now attending accordingly, and admitting that he had not deposited either of the Sums aforesaid, nor replaced the said 2000 *l.* South-Sea Annuity Stock, or given Security with two Sureties, as by the said Order is required: And whereas he did formerly upon Examination of his Accompts, produce to the Persons who inspected the same, bank bills, and notes, sufficient to make good the said Sum of 13039 *l.* 4 *s.* and 4 *d.* $\frac{1}{2}$: being the whole ballance of his Cash Accompts, but had only deposited 3000 *l.* part thereof in pursuance of the said Order: And it being several times demanded by the Court, whether he did know or remember the Names of the person or persons from whom he had the said bank notes, or any of them, or did know or remember the Names of the person or persons to whom he had since paid or delivered them, or any of them, he declined giving any direct Answer to the said question relating to his own proper knowledge and remembrance, but upon Oath said, it was impossible for him to answer the same; whereupon, and upon hearing of Mr. *Attorney General* and Mr. *Sol. Gen.* on behalf of the Suitors; and what was farther insisted on, this Court doth declare, that the said Mr. *Conway* is guilty of very high Contempts, and doth therefore do for his said Contempts, stand committed to the prison of the *Fleet*; and that for making provision for the Execution of his Office, and that no prejudice may happen to the Suitors of the Court by reason of the said Commitment, he do in the Custody of the Warden this Afternoon, deliver all his books and papers belonging to his Office, unto Mr. *Holford* one other of the Masters of this Court, who is to act therein as he the said Mr. *Conway* ought to have done during his Commitment; and the Clerk of Mr. *Conway* is to be at liberty, if he thinks fit, to attend Mr. *Holford* therein, and Mr. *Conway* is at liberty from time to time to make such Proposals to the Court for making good his Deficiency as he shall think proper.

R. P. Examined 6th of May, 1720. by Book of Entries, Cur' Canc' Letter B.

Lords Com. Ordo Curie.

*Mercur. tertio Die Febr. Ann.
Regni Georgii Regis undecimo.*

Whereas, by an Order of the 29th of *Jan.* last, for the Reasons therein contain'd, it was ordered that Mr. *Thomas Bennet*, one of the

Masters of this Court, should then sitting in the Court, give his own Recognizance to be taken by Mr. *Holford*, one other of the Masters of this Court in the Penalty of 18150 *l.* conditioned to answer and pay the Sum of 9075 *l.* therein mentioned, in such Manner as this Court should direct; and that upon his so doing, the time for his performing of an Order of the 12th of *Jan.* last, for depositing the said 9075 *l.* or procuring two or more Sureties, to enter into a Recognizance of the Penalty aforesaid, as in the said Order is mentioned, should be enlarged till this Day: And if he should procure such Sureties to enter into such Recognizance, he was first to give the Names of the intended Sureties to Mr. *Paxton* (Soll. on behalf of the suitors of this court) to the end he might enquire after their Abilities; and the said Mr. *Thomas Bennet*, was this Day to attend the Right Honourable the Lords Commissioners, for the Custody of the Great Seal of *Great Britain*, when such farther Order should be made as should be just. And the said Mr. *Thomas Bennet* this Day attending their Lordships, in the Presence of Mr. *Attorney General*, and Mr. *Sollicitor General*, on behalf of the Suitors of the Court; and the said Mr. *Thomas Bennet*, now delivering into Court a Particular of several Estates which he proposed to assign and convey as the Court shall direct, in trust for the Suitors of the Court, and submitting to be examined upon Interrogatories, for discovery of all other Estate he has both Real and Personal, and that the same shall be also assigned and conveyed to the same Trust: Their Lordships do therefore Order, that the time for the said Mr. *Thomas Bennet's* giving his Recognizance with two or more Sureties in the Penalty aforesaid, be enlarged until *Wednesday* next, at which time the said Mr. *Thomas Bennet* is to attend in Court, when such farther Order shall be made as shall be just. But in the mean time, he is to assign and convey the several Estates by him now proposed, unto the said Mr. *Holford*, as he, the said Mr. *Holford*, shall approve and direct, and is also within that time to produce and leave with the said Mr. *Holford*, all Deeds and Writings in his own Hands relating thereto; and so far as he is able to procure the Mortgagee and Annuitant, to produce and leave with the said Mr. *Holford*, the several Deeds and Writings in their respective Hands relating to the said Persons. And the said Mr. *Thomas Bennet* is also within the same time to be examined upon Interrogatories, before the said Mr. *Holford*, for discovery of all other, his real and personal Estates, and is also to assign and convey the same to the said Mr. *Holford*, as he shall approve and direct. And what Estates shall be by him, the said Mr. *Thomas Bennet*, so assigned and conveyed to the said Mr. *Holford*, as aforesaid, the same are to be upon Trust for the Suitors of the Court, as the Court shall direct; and the said Mr. *Paxton* is forthwith to prepare and lay Interrogatories before the said Mr. *Holford* for the Purpose aforesaid.

R. P. Examined 6th of May, 1725; by Book of Entry, Cur' Canc' Letter B.

Ordo Curiae.

Martis Decimo Nono Die Januarii, 1724.

W Hereas, by an Order made by the Right Honourable the Lord High Chancellor of *Great Britain*, the seventeenth Day of *December* last, it was (amongst other things) ordered, that the bank notes and other Effects therein specified, produced before Mr. Baron *Gilbert*, Mr. Justice *Denton*, and Mr. Justice *Raymond*, Sir *Nathanael Gould*, Mr. *Thompson*, and Mr. *Hanger*, three of the Directors, and one of them Deputy Governor of the Bank of *England*, by the several Masters of this Court, upon the Examination of their Accounts, for, or towards answering the ballance of cash admitted by their said Accompts to remain in their respective hands belonging to the Suitors of this Court, should be deposited in several Chests, and that then the said Chests should be locked up, and left in the Custody of the *Bank of England*, in such manner as by the said Order is provided. And it was further ordered, that the said several masters should forthwith give to the said Mr. Baron *Gilbert*, Post Accompts of their Receipts and Payments since their former Accompts. And by a subsequent Order of the one and twentieth Day of the said *December*, it was ordered, that the several and respective Masters of this Court, whose Effects, so ordered to be secured, did not amount to the whole Ballance of the Cash admitted by their Accompts to be in their Hands, should forthwith secure the rest of the Ballance of the Cash appearing to be due on their respective Accompts, by depositing in like manner, Bank Notes, or other Effects, to the Amount thereof, or enter into a Recognizance in a competent Sum of Money, with two or more Sureties, to be approved by Mr. Baron *Gilbert*, Mr. Justice *Denton*, and Mr. Justice *Raymond*, or any two of them, for duly answering from time to time, as this Court should direct, such Sum and Sums, as the remaining Deficiencies of their said respective Ballances amount unto. And Mr. *Edward Conway*, one of the Masters of this Court, this day attending the Lords Commissioners for the Custody of the *Great Seal of Great Britain*, and acknowledging that he was debtor to the Suitors of the Court on the Ballance of his Cash Account, in the Sum of thirteen Thousand and thirty nine Pounds four Shillings and four Pence half Penny; and that he had brought into the Chest the Sum of three thousand Pounds only, so that he remains Debtor on the said Cash Ballance, the Sum of ten Thousand and thirty nine Pounds four Shillings and four Pence Half Penny; and that since the making the said former Orders, he has sold three Thousand five Hundred Pounds South-Sea Stock, in the Cause between the Lord and Lady *Faulconberg*, which was intended a Security for the Sum of Three Thousand four Hundred and twenty five Pounds; and that he hath since paid off only the Sum of two Thousand five Hundred and ninety three Pounds nine Shillings and three Pence pursuant to the Orders of this Court in that Cause; so that there remains the

Sum of eight Hundred and thirty one Pounds ten Shillings and nine Pence, in his Hands, to be applied to the Parties concerned in that Cause; and that he has since sold two Thousand Pounds South Sea Annuity Stock, part of the Sum of seventeen Thousand nine Hundred and fifty Pounds South Sea Annuity Stock, belonging to the Suitors of the Court in several Causes, which he ought to replace: Their Lordships do thereupon Order, that the said Master *Conway*, do in a Week, deposit the said Sum of ten Thousand and thirty nine Pounds four Shillings and four Pence Half Penny, and also the said Sum of eight Hundred and thirty one Pounds ten Shillings and nine Pence, belonging to the said Cause of *Faulconberg* and *Faulconberg*, in Bank Notes or Money in his Chest at the Bank of *England*; and also do replace the said Sum of two Thousand Pounds South-Sea Annuity Stock; or that he do enter into a Recognizance of twenty six Thousand Pounds, with two sufficient Sureties, to be approved of by one of the Lords Commissioners for the Custody of the *Great Seal of Great Britain*, for answering the said Sums, and replacing the said two Thousand Pounds South-Sea Annuity Stock, in such Manner as this Court shall direct.

Tho. Parnell, Dep. Reg.

R. P. Examined 6th of May, 1725. with
Book of Entries, Court Canc' Letter B.

Ordo Curiae.

Mercurii Vicesimo Die, Januarii. 1724.

W Hereas by an Order made by the Right Honourable the late Lord Chancellor of *Great Britain*, the seventeenth day of *December* last, it was (among other Things) ordered, That the Bank Notes, and other Effects therein specified, produced before Mr. Baron *Gilbert*, Mr. Justice *Denton*, and Mr. Justice *Raymond*; and Sir *Nathanael Gould*, Mr. *Thompson*, and Mr. *Hanger*, three of the Directors, and one of them Deputy Governor of the Bank of *England*, by the several masters of this Court, upon the examination of their accounts, for, or towards answering the ballance of cash admitted by their said accounts to remain in their respective Hands belonging to the Suitors of this Court, should be deposited in several chests, and that then the said chests should be locked up and left in the custody of the Bank of *England*, in such manner, as by the said Order is provided. And it was further ordered, that the said several masters should forthwith give to the said Mr. Baron *Gilbert* Post Accounts of their receipts and payments since their former accounts. And by a subsequent Order of the one and twentieth day of the said *December*, It was ordered, That the several and respective masters of this Court, whose Effects so Ordered to be secured, did not amount to the whole ballance of the Cash admitted in their accounts to be in their Hands, should forthwith secure the rest of the ballance of cash appearing to be due on their respective accounts, by depositing, in like manner, bank Notes, or other effects, to the amount thereof, or enter into a Recognizance in a competent Sum of money, with two or more Sureties

ties, to be approved by Mr. Baron Gilbert, Mr. Justice Denton, and Mr. Justice Raymond, or any two of them: for duly answering from Time to Time, as this Court should direct; such Sum and Sums as the remaining Deficiencies of their said respective Ballances amounted unto; and Mr. Kynaston, one of the Masters of this Court, being this Day present before the Right Honourable Sir Jeffery Gilbert, Knight, one of the Lords Commissioners for the Custody of the Great Seal of Great Britain, and being examined touching the Money and Effects for which he was answerable to the Suitors of the Court, did admit, that the Sum of thirty one thousand nine hundred and fifty four Pounds, fifteen Shillings and a Farthing, was the Cash Ballance in his Hands, due to the Suitors; and that he had deposited in his Chest at the Bank, the Sum of four thousand six hundred and eighty six Pounds, one Shilling and nine Pence, in pursuance of the Order of the seventeenth of December aforesaid; and that he had declared a Trust of three hundred Pounds South-Sea Stock for the Suitors, which at the present valuation is three hundred and sixty Pounds; so that there remains the Sum of twenty six thousand nine hundred and eight Pounds, eleven Shillings and three Pence Farthing, deficient and unsecured to the Suitors of the Court; and proposed towards Satisfaction thereof, to Assign over a Debt of twenty thousand eight hundred and fifty Pounds, owing to him from Mr. Delabaye, in such manner as should be thought proper for the benefit of the Suitors: But alledged that he was not to be charged with the Sum of seven thousand five hundred and seventy five Pounds, mentioned in his Accounts to be part of the aforesaid twenty six thousand nine hundred and eight Pounds, eleven Shillings and three Pence Farthing. Whereupon their Lordships considering what was alledged by him, were of Opinion, That he was answerable to the Suitors of the Court for the said Sum of seven thousand five hundred and seventy five Pounds; and do therefore Order, That the said Mr. Kynaston do, in a Week, depostite the said Sum of twenty six thousand nine hundred and eight Pounds, eleven Shillings and three Pence Farthing, in Money or Bank Notes, in his Chest at the Bank of England, or enter into a Recognizance in the penalty of fifty three thousand eight hundred and seventeen Pounds, with two or more Sureties, to be approved of by one of the Lords Commissioners for the Custody of the Great Seal of Great Britain, to Answer and Pay the said Sum of twenty six thousand nine hundred and eight pounds, eleven Shillings and three pence Farthing, in such manner as this Court shall direct.

Tbo. Parnell,
Dep. Reg.

R. P. Examined the 6th of May, 1725. by the
Book of Entries. Cur' Canc' Letter B.

Mr. Sol. Gen. The Managers for the House of Commons lay before your Lordships these Orders, to shew, that the several Masters therein mentioned, were deficient. It will be incumbent on the noble Lord to shew; that when they were admitted, they were of Ability proper for such a Trust. We now proceed upon the Declaration that was made on the 21st of January last was twelve-month, and desire that Mr. Waller may be called.

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Mr. Waller Sworn.

Mr. Sol. Gen. My Lords, we desire he may be ask'd, whether he applied to my Lord Chancellor upon an Order made by his Honour the Master of the Rolls, relating to Mr. Conway; and what it was my Lord Chancellor said on that Occasion?

Mr. Waller. In July 1723. I had Directions from my Client, to apply to Mr. Conway, to lay out upon South-Sea Annuities the Sum of 4000 l. that had been brought before him in a Cause between Mr. Davenant and my Lord Cardigan. The Master told me at first, he would take Care of it. Upon further Application, he said the Order had directed another Sum of Money should be brought before him in the same Cause, and that he could not put out the one without the other. Upon this, I applied, by Petition, to the Master of the Rolls, praying, that Mr. Conway might be oblig'd to put out the Money, and that he might answer Interest for it after he had had it a reasonable Time in his Hands. Upon that, the Master of the Rolls directed he should lay out the Money immediately.

Mr. Serj. Probyn. I beg your Lordships Pardon for interrupting this Witness. In the manner he is going on, your Lordships observe, he is taking Notice of Orders, Petitions, Acts of the Court, and this he gives upon his Memory. We think these ought to be produced.—

Mr. Sol. Gen. If they are desirous to entertain your Lordships with them, we have them all here. We only make use of them to let in the Declaration of the noble Lord.

E. of Maccles. If that be all the Use, there is no need to produce these Orders: But if they are to introduce Evidence with relation to the Merits of the Cause, it is proper to have them produced.

Mr. Sol. Gen. We don't dispute the Justice of the Order then made, but ask the Occasion of it; and all we desire is what was declared, and what was the Occasion of the Declaration.

Mr. Serj. Pengelly. The Managers don't enter into the Consideration whether the Order is just, or no. All they represent to your Lordships, is the Occasion of this Declaration. Whether a Man acts justly, that detains Money, and does not pay it out when he ought to do it, that we leave to another Determination. But what we ask now, is the Declaration of the Earl of Macclesfield, and the Occasion of it.

Mr. Waller. Upon the Petition to the Master of the Rolls, he made an Order to put the Money out, and that the Master should pay some Interest. On this, he applied to my Lord Chancellor, to discharge this Order. My Lord, upon that Occasion, said, the Master was not to blame, and that the then Masters were a Set of Masters of as great probity, ability, and fortune, as ever had been before; and that his Lordship had had the Satisfaction of having put in most of them himself. I can't say that these were the very Words, but it was to this Effect.

Mr. Sol. Gen. When, at what Time was this?

Mr. Waller. This Declaration was made the 21st of January, 1723.

Mr. Sol. Gen. Where was it?

Mr. *Waller*. In Court, at my Lord's House in *Lincoln's-Inn-Fields*, where he usually sat.

Mr. *Sol. Gen.* Was there at that time any Vacancy of any Master's Office; and how long did that Vacancy happen before?

Mr. *Waller*. Mr. *Fellowes* died either the Day before, or the Day but one before.

Mr. *Sol. Gen.* Was there any Observations made at that Time of any Person in Court that took notice of what was said?

Mr. *Waller*. One of the Counsel took Notice of somebody taking Notes, and said he believed it would be in the *Amsterdam Gazette* in a short Time; or to that Purpose. My Lord Chancellor ask'd who he was?

E. of *Macclesf.* I desire he may tell your Lordships, when Application was made to me by way of Complaint of it, what it was I said at that Time?

Mr. *Waller*. I don't remember.

E. of *Macclesf.* Pray recollect your self, if I did not say it was right, and they had a Right to take Notes there.

Mr. *Waller*. I don't remember that you did.

E. of *Macclesf.* Did I make no Answer?

Mr. *Waller*. Not as I remember.

Mr. *Serj. Probyn*. I desire he may be ask'd, whether he kept any Notes or Memorandum of the Words that were then said?

Mr. *Waller*. No, my Lords.

Mr. *Serj. Probyn*. How does he then come to remember the very Words?

Mr. *Waller*. Since my Lord *Macclesfield's* Counsel will have it, I must acquaint your Lordships, that it struck me with so much Astonishment to hear such a Declaration made on the Masters, which most People thought they did not deserve, that indeed I could not but remember it, and have remembred it ever since.

Mr. *Serj. Pengelly*. We have several other Persons who were present at this Time, when this Declaration was made; but we apprehend it was so publick, so notorious, and has been so distinctly proved by a Person present, that it will be unnecessary to call further Evidence to it.

Mr. *Sol. Gen.* We beg leave to trouble your Lordships as to one Circumstance, to ascertain the Death of Mr. *Fellowes*: We have one of Mr. *Fellowes's* Servants here.

Edward Ange sworn.

Mr. *Sol. Gen.* We desire he may be ask'd, whether he was a Servant to Mr. *Fellowes*?

Mr. *Ange*. I was a Clerk in Mr. *Fellowes's* Office, at the Time of his Death, and many Years before.

Mr. *Sol. Gen.* When did he die, what Day?

Mr. *Ange*. Upon the 19th of *January*, 1723.

Mr. *Sol. Gen.* It was the 21st that the Declaration was made, so that it seems that it was necessary; and such a Declaration was wanting at that Time to keep up the price of the Office.

Mr. *Lightboun* called.

Mr. *Sol. Gen.* We desire Mr. *Lightboun* may be ask'd, whether he gave any Intimation to the Earl of *Macclesfield*, that the Circumstances of some of the Masters were suspicious, before the 21st of *January* was twelve-month?

Mr. *Lutwyche*. I desire Mr. *Lightboun* would give your Lordships an Account what Discourse he had concerning the Masters with the Earl of *Macclesfield*.

Mr. *Lightboun*. I can't say I acquainted him with my suspecting any of the Masters by Name, being deficient, but I told him in Conversation, that as a Deficiency had happened in Mr. *Dormer's* Office, the like Accident might happen in others; and that it might be proper for his Lordship to take some measures to prevent the like for the future, if possible.

Mr. *Lutwyche*. In the Year 1723. Whether had you any Discourse with my Lord Chancellor relating to the Circumstances of any of the Masters, or about any Proposals of Security to be given by them?

Mr. *Lightboun*. In the Year 1723. I had some Conversation with my Lord upon that Subject, and it was upon the Occasion of my Lord's sending for me to know why I had not complied with a Proposal of the Masters, to pay 500*l.* towards making good Mr. *Dormer's* Deficiency. I ask'd, whether it was his Lordship's Proposal, or whether it was a Proposal from some of the Masters. My Lord said, it was mention'd by the Masters, and he approved of it; and as the rest had complied, he hoped I would.

Mr. *Sol. Gen.* You need not now give a particular Account of this; this will be proper on another Occasion; that I desire to ask you now, is only in general, whether before the 21st of *January* 1723. you had any Conversation with my Lord about the Deficiency of the Masters, and that there was Reason to suspect a Deficiency in some of the Masters?

Mr. *Lightboun*. I did not mention any particular Person, but only that an Accident had lately happen'd, and as it had happen'd, it might happen again; but I was far from mentioning any Master by Name, for I might thereby have made my self liable to an Action.

Mr. *Sol. Gen.* We don't desire to ask him whether he mention'd any particular Master, but only in general, whether he did not say he had Grounds to suspect some of them? The Question is in general.

Mr. *Com. Serj.* The Question was first ask'd in general, but the Answer not coming out to their Satisfaction, they now apply it to a particular Fact, to which the Answer required is only Yea and No. This we apprehend not to be altogether so regular, we therefore desire the Question may be ask'd in other Terms.

Mr. *Sol. Gen.* My Lords, I will ask the Question in general, whether he gave any Intimation in general, that there might be a Suspicion of the Masters?

Mr. *Lightboun*. I did in general acquaint my Lord, as this Accident had happen'd, I did not know how soon it might happen again. The Year 1720. had made great Havock, and I did not know what Effect it might have had amongst us.

Mr. *Serj. Pengelly*. I desire Mr. *Lightboun* may be ask'd, whether he can recollect that he had any Discourse with my Lord *Macclesfield* to that Effect at any other Time before *January* 1723.

Mr. *Lightboun*. My Lords, I can't confine my self to a particular Time. I have had the Honour of many Conversations with my Lord *Macclesfield* on this Subject, and what passed at one particular Time

Time more than another, I can't remember I have often had the Honour to hear his Lordship mentioning the Methods which he thought of, to prevent it, and to propose such Methods as I thought of, but I can't tell all the particular Times.

Mr. Serj. *Pengelly*. I desire he may be ask'd, whether from the Conversation which pass'd between the Earl of *Macclesfield* and himself, it appear'd to him, that the Earl had any Suspicion of a Want of Substance in the Masters?

Mr. *Lightboun*. My Lord, when I mention'd it, seem'd unwilling to think so. He said he hop'd not; he hop'd there was no manner of Danger, they were all recommended to him for Men of Fortunes, or to that Effect. Latterly, this last Year, when my Lord was talking of this Matter, he seem'd to think there was a Necessity that there should be an enquiry into this Affair: and when the Masters were ordered to bring in their own Accompts, I remember I told my Lord I question'd if they were able to do it. My Lord said he hop'd it, and wish'd it.

E. of *Abington*. If Mr. *Lightboun* be left to his own Discretion, to relate without Interruption whatever he can recollect that pass'd between him and Lord *Macclesfield* before *January* 1723. when this Declaration was made in Court, it may give your Lordships a fuller Light and Satisfaction.

Mr. *Lightboun*. I don't remember to have had any particular Conversation about the Abilities of the Masters, farther than I have mentioned to your Lordships. I have told you that I did give some Hints in a doubtful Manner, that I was dissatisfied; but it would very ill have become me to have mentioned particular People whom I was doubtful of.

Mr. Serj. *Pengelly*. My Lords, we proceed now to examine some Witnesses upon the Article relating to the Masters coming in, and in what manner the Money was paid upon their Admission, either on a Surrender, or Death of a former Master; and out of what Fund that Money was paid. We beg leave to call Mr. *Kynaston*.

Mr. *Kynaston* called.

Mr. Serj. *Pengelly*. We beg leave he may be ask'd, in relation to his Treaty with Mr. *Rogers*, when he came into his Office? and in what Manner the Money paid for the Office was rais'd?

Mr. *Kynaston*. It was in *May* 1721.

Mr. *Com. Serj.* Before Mr. *Kynaston* answers to this, we hope the Managers shall intimate to your Lordships, that they have Evidence to apply this to the Lord who now stands accused; otherwise a bare Discourse between Mr. *Rogers* and Mr. *Kynaston*, cannot affect the Earl of *Macclesfield*.

Mr. *Lutwyche*. I apprehend this Interruption is very unnecessary: It is the first part of the Article we are going to prove, that it was a Practice among the Masters in Chancery, to pay the Money for their Places out of the Suitors Money; and that though the Chancellor had good reason to suspect or know this, yet he applied no Remedy or Redress, but let it go on for his own Benefit: Therefore we must begin with the first part of the Article. They are not to examine and ask the Managers, whether they have any Proof of the latter part of the Article; we are beginning

with the first part of the Article, and then shall bring it home to the noble Lord.

Mr. *Sol. Gen.* We shall prove the whole, that there was such a Practice, and that it is reasonable to think the noble Lord knew it, or had reason to suspect it, and did not prevent it. We must first begin with the Practice.

Mr. Serj. *Pengelly*. My Lords, we desire he may give your Lordships an Account of the Methods taken at the time he came into the Office, of selling and paying for those Offices, and in what Manner the Agreement for his Office was transacted?

Mr. *Kynaston*. My Lords, I treated with Mr. *Rogers* for the Sale of his Place in *May*, 1721. I did understand then, and had heard before, that the Method was, that they retained so much of the Money belonging to the Office for their places, and that such had been the practice. I did agree with him, and entered into Articles to pay him 6000*l.* for his Place. I went for some time into the Country, and when I was there, he wrote to me, and told me that he designed to resign the place on the 9th of *August*. I did come up to Town, and on the 9th of *August* I gave him a Bond for 6000*l.* Then I went with him to my Lord *Macclesfield*, and was sworn in Master. There was a general Order for him to deliver over the Effects and Securities to me; after this he delivered up the Bond which I had given him, and retain'd so much Money belonging to the Suitors of the Court, as amounted to 6000*l.* He paid me nine Pounds, and delivered me up my Bond, and I gave him a Receipt for 6009*l.*

Mr. Serj. *Pengelly*. I desire to know what was paid for his Admission?

Mr. *Kynaston*. 1500 Guineas were paid to Mr. *Cottingham* by Mr. *Baily*.

Mr. Serj. *Pengelly*. How was it repaid?

Mr. *Kynaston*. In *February* afterwards, I stated an Account with the Person that was my Cash-Keeper and kept my Money, in relation to the Money receiv'd and paid, and he charg'd me with the 1575*l.* and deducted it out of the Money of the Suitors which he had received.

Mr. Serj. *Pengelly*. I desire he may be asked, how much Cash, what Sum of Money, came to his Hands from Mr. *Rogers*?

Mr. *Kynaston*. Something above 20000*l.*

Mr. Serj. *Pengelly*. I desire he may be asked, whether when these Effects were by the Order of Transfer delivered from Mr. *Rogers* to him, there was any Person present on behalf of my Lord *Macclesfield*, to see them delivered over?

Mr. *Kynaston*. No.

Mr. Serj. *Pengelly*. Was there any Account demanded of him afterwards, either by my lord Chancellor or his Agent, of the *Quantum* of the Effects or Cash?

Mr. *Kynaston*. I don't remember there ever was.

Mr. Serj. *Pengelly*. I beg leave to ask, whether at that Time he had Money enough of his own to pay Mr. *Rogers* 6000*l.* for his Place, and 1500 Guineas to my Lord *Macclesfield* for his Admission?

Mr. *Kynaston*. Yes, I believe I had more Money at that time, but it was out upon Security; I was worth more.

Mr. Serj. *Pengelly*. What was his Inducement to come into this Office?

Mr.

Mr. *Sol. Gen.* Or, I would ask it in other Words, whether the easiness of his paying for his Place was not one Thing that induc'd him to Purchase?

Mr. *Kynaston.* Yes, I believe it was one Inducement to me to purchase the Place.

Sir *Wm. Strickland.* I beg leave to ask another Question. Mr. *Kynaston* says he had more Money of his own at that Time, but I desire to know whether he could have paid 7575 *l.* which he gave for his Office, unless he had paid it out of the Suitors Money?

Mr. *Kynaston.* No, I could not have paid the whole.

Mr. Serj. *Probyn.* If the Gentlemen have done, I desire he may be asked, what Money he had of his own at that Time, either in Cash, or in his Banker's Hands; or in Security?

Mr. *Kynaston.* I really cannot tell, I believe I might have between 2 and 3000 *l.*

Mr. Serj. *Probyn.* How much can you take upon you to say you had?

Mr. *Kynaston.* Really I cannot tell.

Mr. Serj. *Probyn.* Speak to the nearest you can.

Mr. *Kynaston.* I believe I had about 2000 *l.* very near three in Money and Effects.

Mr. Serj. *Probyn.* What other Estate had you? Had you any real Estate?

Mr. *Kynaston.* I had an Estate settled upon me at my Marriage, no other Estate.

Mr. Serj. *Probyn.* I desire you to give an Account, whether you had any other personal Estate?

Mr. *Kynaston.* No. I do not remember I had; except you reckon Timber such.

Mr. *Com. Serj.* I desire my Lords, he may be asked, what the annual value of his real Estate was?

Mr. Serj. *Pengelly.* I submit, whether he be obliged to tell his whole Circumstances?

Mr. *Kynaston.* I am very willing to tell, it was about 400 *l.* a Year.

Mr. *Com. Serj.* Whether he had not his Estate without Impeachment of Waste?

Mr. *Kynaston.* Yes.

Mr. Serj. *Probyn.* Of what Value might the Timber be?

Mr. *Kynaston.* I was once bid 2500 *l.* for it, but now they know I have an Occasion to sell, they will not give me so much.

Mr. Serj. *Pengelly.* I beg leave he may be asked, whether at that Time his Father was living?

Mr. *Kynaston.* Yes, he was at the Time of my purchasing the Place.

Mr. Serj. *Pengelly.* As the Cash was above 20000 *l.* of what Value were the Securities?

Mr. *Kynaston.* Really I cannot tell, I have given in an Account of the Effects.

Mr. Serj. *Pengelly.* About what Sum?

Mr. *Kynaston.* I have given it in my Accounts what it was.

Mr. Serj. *Pengelly.* To what Sum doth the whole both in Cash and Securities amount?

Mr. *Kynaston.* I believe under 50,000 *l.* about 46000 *l.*

Mr. Serj. *Pengelly.* The Securities as well as the Cash?

Mr. *Kynaston.* I mean the Securities and the Cash together.

Mr. Serj. *Pengelly.* Upon this evidence, we submit it to your Lordships, whether the Timber upon his Estate was a proper Security for 50,000 *l.* to be put into his Hands.

E. of *Maccles.* He now represents his Estate to be 400 *l.* a Year. How was it reputed?

Mr. *Kynaston.* I believe about 500 *l.* per Annum.

Mr. *Plummer.* I desire to ask him, whether if he had felled every stick of Timber on his Estate, that and his personal Estate would have paid what he was to give for his Master's Place?

Mr. *Kynaston.* No, it would not.

Mr. Serj. *Pengelly.* My Lords, We make Use of this as a Proof of the former Article.

Mr. *Thomas Bennet* called.

Mr. Serj. *Pengelly.* My Lords, We desire he may be asked in what manner the Transfer of his Office was transacted, and how the money was paid for his Master's Place?

Mr. *Tho. Bennet.* My Lords, when I treated with Mr. *Hiccocks* about the Surrender of his Office, one of the first Things he told me was, that I need raise no money to come into this Office, for whatever money we agreed for, should be deducted out of the money to be paid over to me, which I understood to be the money belonging to the Suitors of the Court.

Mr. Serj. *Pengelly.* What was done in pursuance of this?

Mr. *Tho. Bennet.* This encouraged me to go on and proceed, in order to come into this Office, I supposed this to be the Practice, else I had not gone in.

Mr. Serj. *Pengelly.* Whether was that generally reputed to be the Practice?

Mr. *Tho. Bennet.* I own I thought so. I was a younger Brother, and had not money enough of my own to come into that Office.

Mr. Serj. *Pengelly.* We beg leave that he may inform your Lordships how much he was to pay, and how it was raised and paid?

Mr. *Tho. Bennet.* The Sum I agreed to pay Mr. *Hiccocks* was 1500 *l.* and the Sum to my Lord Chancellor was 1500 Guineas, which is 9075 *l.*

Mr. Serj. *Pengelly.* We hope that he shall inform your Lordships how it was raised and paid.

Mr. *Tho. Bennet.* As to the 1500 Guineas, I acquainted your Lordships I borrowed it of my Brother, and the next Day returned it him again out of the money I received of Mr. *Hiccocks.* As soon as I was admitted, I went to Mr. *Hiccocks,* and demanded of him the Suitors effects. He paid me 1500 *l.* and told me I must give a Receipt for 9000 *l.* I told him, it was hard to have no more money paid me, when he told me there was much more Cash in the Office, and that I had given my Lord *Macclesfield* more than he had offered to pay me: He said he should pay me more afterwards, but he insisted on my taking this now, so I took the 1500 *l.* and gave him a Receipt for 9000 *l.*

Mr. Serj. *Pengelly.* I desire he may be asked, whether upon any Occasion he had any Discourse with the Earl of *Macclesfield* relating to the method of his coming in, or about the re-payment of the 1500 Guineas he paid him.

Mr. *Tho. Bennet.* In order to give an account of this, I must acquaint your Lordships of the Occasion of my waiting on his Lordship. Mr. *Holford* told me, that my lord Chancellor had sent to him, and desired that he and my Brother *John Bennet* would endeavour to accommodate matters between Mr. *Hiccocks* and my self, on Occasion of the Deficiency of my Accounts. Mr. *Holford* said he did not care to go, but my Brother did go to Mr. *Hiccocks.* He would do nothing, no Accommodation could be made; but my Brother told me that my lord Chancellor would pay back to me the 1500 Guineas which he had received, so the matter with Mr. *Hiccocks* might be accommodated.

Mr. Serj.

Mr. Serj. *Pengelly*. When was this?

Mr. *Tho. Bennet*. It was about the time of our giving in our Accompts.

Mr. Serj. *Pengelly*. Was it before *Christmas*, or after?

Mr. *Tho. Bennet*. It was before *Christmas* last, in *December*. I think about the 7th of *December*. Upon that I asked my Brother, whether I might depend upon it, that my Lord Chancellor would pay back the 1500 Guineas? And he said, Yes, he had it from his Lordship; and he did assure me I might depend upon it; but he said nothing could be done with Mr. *Hiccocks*. Then I desired them to acquaint my Lord with it; they both declined it, and desired I would go my self upon this Occasion. I went, and I told my lord, I was come to wait upon his Lordship to thank him for the kind Offer he had made to my Brother, of returning the 1500 Guineas, and I wished the same could be said of Mr. *Hiccocks*, and I could prevail with him; but nothing could be done: I came to return his Lordship thanks; and I thought I should have received the Money then. My Lord asked me to sit down, and then told me if he had known I had been to give so great a Sum of Money for the Office, he would not have admitted me. I told him I did give so great a Sum, but immediately as soon as I was admitted, I ensured my Life to the Value of 8000*l.* which cost me 400*l.* so that if I had died, no harm would have come to the Suitors. My Lord said, it was very honourably done. Soon after that, he said, he was very sorry to see the *Items* that were put into my Accompt and Mr. *Kynaston's* in relation to Sums in the Hands of an honourable Person; for, says he, that hath discovered the Method of purchasing these Offices, that the Money is deducted out of the Suitors Money, which, said he, I have always taken pains to deny, when ever I have been asked the Question.

Mr. Serj. *Pengelly*. We beg leave now to ask him, how much the whole of the Cash, and Securities transferred from Mr. *Hiccocks* to him, amounted to?

Mr. *Tho. Bennet*. I believe near 100,000*l.*

Mr. Serj. *Pengelly*. I apprehend he said before, he was a younger Brother, and had but little Fortune of his own; I desire he may be asked whether any Care was taken by my Lord *Macclesfield* as to the transferring the Effects of the Suitors in Mr. *Hiccocks's* Hands over to him? and whether any Person was employed by my Lord to see the Effects transferred over?

Mr. *Tho. Bennet*. No.

Mr. Serj. *Pengelly*. Whether there was any other Security for this great Sum of Money deposited in his Hands, besides what was made by this Insurance on his Life?

Mr. *Tho. Bennet*. No, my Lords, I know of no other Security. That was a voluntary Act of my own, and I paid for it.

Mr. *Lutwyche*. My Lords, Mr. *Bennet* says, he had some reason to hope that the 1500 Guineas would be given him back again; I desire he may be asked whether there was any subsequent Overture about paying the 1500 Guineas back again?

Mr. *Tho. Bennet*. My Lord Chancellor dismissed me at that time, and told me, I should not know by what means, or by what methods I should receive the Money, or by whose Hands; but his Lordship would take Care that one way or other I

should receive it: He would not say how, because I might be called upon to answer what Discourse passed between his Lordship and me in another place.

Mr. *Lutwyche*. Was there any thing done upon that?

Mr. *Tho. Bennet*. Hearing nothing from my Lord Chancellor for a Fortnight after, I went to his Secretary, Mr. *Dixon*, and told him that I had used such Expressions in my Accompt, that if the Money was not produced, it would oblige me to name my Lord Chancellor; and I desired him to acquaint my Lord that I could not pay this Money, and that I must discover it in a Day or two. This was *Sunday* Night: The same Night Mr. *Dixon* return'd from my Lord, and told me, that if Mr. *Holford* would be present the next morning at the payment of the Money at Mr. *Kynaston's* Chambers, that Mr. *Kynaston* and my self should receive it. We were there the next day. Mr. *Dixon* came, but brought no Money, said my Lord expected some Indemnification. We said, as to an Indemnification we could give none. He said he would go to my Lord. I was in hopes he would have brought the Money; but when he came back, he said it was an Holiday, and no Money could be had, and desired we would go to the Judges, and desire two or three days time to produce this Money. I told him we could not do it, for that very Night the Report was to be laid before the King and Council. He then returned again to my Lord Chancellor, as he told us, and when he came back, he said my Lord Chancellor was gone out. Upon that we gave in my Lord Chancellor's Name to the Judges, and the Gentlemen of the Bank, and they gave it in to the Council, as I am informed.

Mr. *Lutwyche*. My Lords we desire he may answer this Question, whether it was explained what that Indemnification was, which was expected, and in what manner it was to be?

Mr. *Tho. Bennet*. My Lords, Mr. *Dixon* explained it thus, —

E. of *Macclesfield*. I hope whatever Mr. *Dixon* said, shall not affect me; but that they will produce him: He is able to speak for himself.

Mr. *Lutwyche*. Then I only desire he may be asked what Officer Mr. *Dixon* was under my Lord Chancellor?

Mr. *Tho. Bennet*. Mr. *Dixon* was my Lord's Secretary.

Mr. *Lutwyche*. Whether at that time that you had the Discourse with my Lord *Macclesfield*, you mentioned or said any thing of Mr. *Dixon's* having come to you, in my Lord *Macclesfield's* name?

Mr. *Tho. Bennet*. No my Lords, that was before Mr. *Dixon's* coming to me.

Mr. *Lutwyche*. Did you take Notice at any time to my Lord *Macclesfield* of Mr. *Dixon's* coming to you?

Mr. *Tho. Bennet*. No, I never spoke to my Lord Chancellor afterwards. This was the 27th of *December*, and it was the 7th of *December* that I waited upon my Lord.

Mr. Serj. *Pengelly*. We think it appears that Mr. *Dixon* was an Agent of my Lord *Macclesfield's*: I desire to know what the Nature of the Proposal of Indemnification was, that he made?

E. of *Macclesfield*. I can't think Mr. Serjeant is in earnest. Have they proved that he was employed

ployed by me? I have heard no proof of it, only Mr. *Serjeant* hath said it. Mr. *Dixon* himself is the proper person to give an Account of what he told them from me. If they do insist upon it, I must beg your lordships Judgment.

Mr. *Serj. Pengelly*. If it is insisted upon by the Noble lord, to disavow the proceedings of his own Agent, we will wave it.

E. of *Macclesfield*. I neither avow nor disavow, but I object to the Evidence of this Gentleman about the Discourse of what Mr. *Dixon* said, who is living, and can speak for himself.

Mr. *Serj. Pengelly*. If the noble lord will ask him any thing, he may, we have done.

E. of *Macclesfield*. I beg leave that Mr. *Bennet* may be asked two or three Questions: He has indeed given Evidence which greatly surprizes me. In the first place I desire he may inform your lordships, whether, when he was with me, he did not tell me that if Mr. *Hiccocks* would pay 2000 *l.* he would make good the whole Money?

Mr. *Tho. Bennet*. No, I did not say so; I could not make good the whole Money, or any thing like it. I said that such a Report had been spread, that I proposed, that if Mr. *Hiccocks* would pay me 2000 *l.* I would answer the rest; but I was not able.

E. of *Macclesfield*. I would be glad to know how he came to tell me of a Report of his own Act: Was it a Report without any Foundation?

Mr. *Tho. Bennet*. I went to Mr. *Hiccocks*, and told him I wanted 6000 *l.* but he said if 2000 *l.* would do, he believ'd he could lend me that. Lend it me, said I; if you give me 2000 *l.* it is something. And this was the Foundation of this Report.

E. of *Macclesfield*. I cannot give Evidence myself to disprove him in this; and therefore I desire to know whether he has said to any other Persons, that if Mr. *Hiccocks* would pay him two thousand, or three thousand Pounds, or thereabouts, he would pay the rest?

Mr. *Tho. Bennet*. I might say, I would endeavour to raise the rest; but I never said I would pay the whole, for I knew I was not able.

E. of *Macclesfield*. Mr. *Bennet* understands my Question, to which he hath given no Answer. My Question is, Whether he hath not told some other People, that in Case Mr. *Hiccocks* would pay 2 or 3000 *l.* he would pay all the rest?

Mr. *Tho. Bennet*. No, my Lords, I never told any Body that I would pay the rest; but I believe I might say, if Mr. *Hiccocks* would give me 2 or 3000 *l.* I would stand the Hazard; for I did not expect that all the Money should be taken out of my Hand.

E. of *Macclesfield*. I desire he may be asked, whether at that time he was with me, I did not ask him, with what Conscience and Honesty he could buy a Place, when he had not Money to pay for it? or whether it was not in answer to that, that he told me that he had insured his life?

Mr. *Tho. Bennet*. My Lord did say so to me. I answered, I had not Money; that I had not bought the Place, had it not been for the Cash of the Suitors; and that I had since insured 8000 *l.* on my life, in order to secure the Suitors.

E. of *Macclesfield*. I desire to know what visible Estate the Gentleman then had, and of what yearly Value?

Mr. *Tho. Bennet*. My Lords, when I came into the Office, I believe I had about 250 *l.* a Year, or thereabouts.

E. of *Macclesfield*. I desire to know whether he was married before?

Mr. *Tho. Bennet*. I was.

E. of *Macclesfield*. What Fortune had you with your Wife?

Mr. *Tho. Bennet*. The Fortune I had with my Wife, was in the Whole between 2 and 3000 *l.* part of it was an House.

E. of *Macclesfield*. What was the Value of that House?

Mr. *Tho. Bennet*. I had not let it then, but since my coming into the Office I have let it for 90 *l.* a Year.

E. of *Macclesfield*. I desire to know if he did not keep his Coach and Equipage at that time?

Mr. *Tho. Bennet*. I did set up my Coach in the unfortunate Year 1720. I was once worth 20,000 Pounds, but lost it all, and became much indebted; the Estate I had of my own was mortgaged for more than it was worth.

E. of *Macclesfield*. Whether he was married in the Year, 1720?

Mr. *Tho. Bennet*. No, I was not.

E. of *Macclesfield*. I desire to know what Estate he hath given into the Court of Chancery?

Mr. *Tho. Bennet*. That Account lies upon the Table.

E. of *Macclesfield*. What yearly Value is that?

Mr. *Tho. Bennet*. About 900 *l.* per Annum; part of it is settled, the rest mortgaged, and an Annuity charged on it more than it is worth.

E. of *Macclesfield*. Has any Estate been purchased with your Money, or Money which came from you, since you was a Master?

Mr. *Tho. Bennet*. Part of that given in was so, 68 *l.* per Annum, and 40 *l.* per Annum.

E. of *Macclesfield*. Has any other Estate been purchased with your Money, or Money which came from you, since you was a Master?

Mr. *Tho. Bennet*. None, but what I have given in. I have given in every Shilling.

Mr. *Com. Serj.* My Lords, I desire he may be asked, whether he was not at the Time of his becoming Master in Chancery, in Possession of the Office of Clerk of the Custodies?

Mr. *Tho. Bennet*. Yes, I was.

Mr. *Com. Serj.* Now, my Lords, it will be very proper to ask him what that was sold for, that the Value of his Estate may be known.

Mr. *Tho. Bennet*. That may affect me and my Successor.

Mr. *Lutwyche*. I don't know whether we need put you in mind, that the late Act of Parliament only indemnifies the Masters, but there is none to indemnify the Clerk of the Custodies.

Mr. *Com. Serj.* Which way it will affect Mr. *Bennet* I don't know. I apprehend no Action can lie against him for the Money he received, nor any criminal Prosecution or Information. But that I may not mispend your Lordships Time; I desire Mr. *Bennet* may inform your Lordships of the yearly Value of the Place.

Mr. *Tho. Bennet*. It is about 250 *l.* a Year.

E. of *Macclesfield*. A Patent for Life?

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

Mr. *Serj. Probyn*. How much hath it been sold for?

Mr. *Tho. Bennet*. I can't tell what it hath been sold for: It may have been once sold for about 1200 *l.*

Mr. *Serj.*

Mr. *Serj. Probyn*. At that time when you surrendered, what might it have been sold for?

Mr. *Tho. Bennet*. I beg leave to submit, whether I am obliged to answer that Question.

Mr. *Serj. Pengelly*. If it was not saleable by Law, it was not worth a Farthing. I beg leave to put your Lordships in mind, that Mr. *Bennet* was excused Yesterday from answering a Question of the same Nature: The Counsel hope that this Day, being a new Day, they may have Liberty to ask the same question over again.

Mr. *Com. Serj.* There was another Ingredient in your Lordships Resolution Yesterday. I hope it is no Injury to him to answer how much he hath known it to be sold for; without mentioning by whom.

Mr. *Serj. Probyn*. We hope Mr. *Bennet* will answer the question, what is the most he hath known it to be sold for?

Mr. *Plummer*. My Lords, I object to his answering that question, because if he did sell it himself, that might be the greatest Sum that he hath known to be given for it, and that will subject him to a Penalty.

Mr. *Serj. Probyn*. We don't ask who gave it, or who received it: but what is the greatest Price he hath known that Office to be sold for?

E. of *Macclesfield*. He says he hath known it to be sold for 1200 *l.* I desire he may be asked whether he hath not known that it hath been sold for more?

Mr. *Thomas Bennet*. I believe it hath been sold for more.

E. of *Macclesfield*. And how much more?

Mr. *West*. This question is an indirect way to come at that question that was denied them Yesterday.

Sir *Will. Strickland*. My Lords, with humble Submission, the question asked by the Noble Lord, tends directly to make Mr. *Bennet* tell what he sold his own Office for; for if his own Office was sold, it is probable that he sold it for the greatest price; and to tell that, is to make him say what he sold his own Office for.

Mr. *Lutwyche*. By this method your Lordships Resolution of Yesterday will be evaded. We took it then, that the Witness was not obliged to discover what he sold the Office for. Now they are asking what is the greatest price he knew the Office sold for? Then the next question may be, to whom was the Office sold, and by whom was it sold? Therefore we must humbly submit it to your Lordships, that it is not a question to be asked.

Mr. *Com. Serj.* To object to a question because another may follow, is odd arguing. When such a question is made, it will be then time enough to oppose it: Therefore I hope that we shall go on.

Mr. *Serj. Probyn*. My Lords, I apprehend this question is proper, and the Answer to it is necessary.

Lord *Lechmere*. Your Lordships will observe some Rules in your proceedings. An Objection hath been made: An Answer hath been given: both Sides insist upon your Lordship's Judgment: that being done, they must withdraw. Therefore I desire they may withdraw.

E. of *Macclesfield*. The Reply is not yet made; something has been said by the Gentlemen who are managers by way of Objection to the questi-

on that was proposed, which, if they insist upon, I desire my Counsel who are to reply, may be heard before they withdraw.

Mr. *Serj. Probyn*. The managers for the House of Commons have been pleased to examine into the Circumstances of Mr. *Bennet*, at the time he was admitted Master, in order to shew that he was then not of Substance fit to be intrusted with so great a Sum of money. We are then in Duty obliged to examine him as to that substance, and the value of his Effects. He hath told your Lordships what Estate he hath in land; we are now to examine him as to his personal estate: He hath told us he had an Office, the Clerk of the Custodies; that he hath parted with it; the money arising by that Office must be reckoned as part of his personal Estate. To come at the Value of the Office, we do not ask him any question that makes him liable to a penalty; but such a question, where the answer to it may be given with safety; and that is, what is the greatest sum he hath known to have been given for the Office of the Clerk of the Custodies? He may answer this without involving himself in any Difficulties, for it is not asked what he himself hath sold that Office for? No answer to this general question can affect him with any ill Consequence.

Dr. *Sayer*. I humbly apprehend this is no way irregular. We are inquiring about his Effects; it is owned he had the Office of Clerk of the Custodies, therefore that must be a part of his personal Estate: The answer to our question can't any way involve him in Danger, or subject him to any Penalty; because it doth not necessarily follow that he sold his place at the greatest price that he ever knew it sold for. We submit it, whether it is not a question fair with regard to the Witness, and proper to be put to him.

Mr. *Robins*. We agree that where he may subject himself to a loss, there is no forcing him to answer; no person is bound to accuse himself. But this is only a matter of discovery what the Value of this Office is; the answer cannot affect him; and therefore we hope we shall have an answer.

Mr. *Strange*. My Lords, I am surprized to hear it said that this is not a question material for the Noble Earl's defence: Surely it is as material for us to increase his estate, as it is for them to diminish it. They have already examined into particulars, to shew what small substance he was of, and what the Estate he had was mortgaged for: the proper answer to be given to that, as far as it will go, will be to shew that he had other Estate and effects, and we are not able to shew that without examining him. I humbly submit it therefore that we are as proper to go into that Evidence, as they were; it is equally material; and as they have examined to it on behalf of the Commons, we are intitled to examine to it likewise on behalf of the Noble Earl.

E. of *Macclesfield*. I apprehend the Objection is, That he is not to be asked a question, which if he answers he will charge himself with a Crime or penalty. Whatever answer he makes to this question cannot charge him: Let him answer and say that he hath known this place sold for 1000, 1500, or 2000 *l.* can that be given in Evidence so as to affect him? Therefore the Question to Day is not the same as was asked yesterday: It was then asked, what he had received for his place? and if he had

had answered and said what he had received, it would have been a Confession, which would have convicted him: But if the Answer be, That he knows it was sold for such a price, and that is given in Evidence, by that answer it doth not appear that he sold it: Therefore upon that I humbly submit to your Lordships, and we are ready to withdraw.

Mr. *Serj. Pengelly*. This is by a Side-wind to know your Lordships Opinion upon the 9th Article.

E. of *Macclesfield*. I beg leave to interrupt that worthy Gentleman. I agree that the Commons that bring in the Charge, have a right to reply; but with Submission this is an Objection arising from my Counsel, and the reply belongs to them.

Mr. *Serj. Pengelly*. My Lords, we apprehend the Objection arises from the managers, and therefore the Reply belongs to them. The managers made the Objection, therefore we beg leave to observe, that this is in Consequence to desire your Lordships Judgment upon the 9th Article, Whether the office of the Clerk of the Custodies be saleable by law, or no? If he is obliged to answer this Question, it is upon a supposition that the Transaction is lawful: Therefore in an Affair of this Nature, there can be no other View but to get an opinion upon this article. My Lords, we apprehend this proceeding is in consequence the same as if a question was proposed to your Lordships, whether my Lord *Macclesfield* could by law sell the Place of Clerk of the Custodies?

Mr. *Lutwyche*. My Lords, I must beg leave to mention this to your Lordships. When it is considered upon what Foundation this question is asked, and what it doth mean, it can be only to elude your Lordships Resolution yesterday, and to make that of no Effect. My Lords, there should be always the greatest candour used before your Lordships, that no Tricks or Methods should be made use of to ask that which should not be asked. Now, my Lords, what is the question they are examining to, and the Use to be made of it? Here is a Person that is alledged to be of mean Ability, and the question is, What Substance and Estate he hath? and they would reckon into part of his Estate an Office not saleable by law, and ask him, what that Office is worth? From whence the Inference must be, that he sold it.

E. of *Macclesfield*. That is not the question, what it is worth; but a particular Fact, what is the most that it hath been sold for?

Mr. *Lutwyche*. What doth that tend to? The question is, What Estate this Gentleman had that could enable him to pay this money for this office? They have examined him about his own Estate, and his Wife's Estate, but then there is another part of his Estate; which was this office of Clerk of the Custodies. What is that? It is that very thing which we say it is unlawful to sell. Therefore we submit it to your Lordships as no way material to the Defence of the Earl. We hope your Lordships will not admit that to be done by an indirect method, which would not be admitted to be done by a direct one.

Ordered to withdraw. Which was accordingly done; and all parties concerned being after some time called in again,

The Lord Chief Justice *King* declared to them, That it was the order and judgment of the Lords, that the said question was not to be asked.

Mr. *Plummer*. I would ask Mr. *Tho. Bennet* one question, Whether every thing he had in the World at the Time of his Purchase of the Mastership, was worth the money he gave for it?

Mr. *Tho. Bennet*. All I had in the World was not worth it.

Mr. *Serj. Probyn*. My Lords, Mr. *Bennet* says he mortgaged his Estate for more than it was worth; I desire he may be asked whether he knew at that time, that it was not worth so much as it was mortgaged for?

Lords. No, No.

Mr. *Plummer*. My Lords, I beg leave to ask this question, and I hope it will be very proper, that is, I desire to ask Mr. *Bennet*, as he hath given an account of a conversation with my Lord *Macclesfield*; I desire to know if my lord *Macclesfield*, at the time of his Admission into his office, did ask him what he was worth?

Mr. *Tho. Bennet*. My lord *Macclesfield* never asked me any questions in Relation to my circumstances, or any thing like it.

E. of *Macclesfield*. My lords, I desire he may be asked, whether I had any notice of his losses by the *South-Sea*?

Mr. *Tho. Bennet*. Not that I know of: I don't know that my lord *Chancellor* had any Notice of it.

Mr. *Serj. Pengelly*. My Lords, if the Counsel have done, we shall not give your Lordships any farther trouble on these two Articles: Both of them are as clearly and as fully proved and substantiated as it is possible. It comes out now upon the Examination, that tho' several masters were intrusted with 40, 50, or 80,000 *l*: they were not of any competent Substance, not really worth what they paid for their particular places. As to the manner of their paying for their places, if we have not given a direct evidence that his Lordship knew it, yet the practice and notoriety of the Fact being proved, and that it was thus generally understood, is a reasonable evidence in itself, and by the notice the Earl took of it himself by the several questions he hath asked, we think it is yet clearer. We humbly submit whether upon this evidence every part of these two Articles is not sufficiently proved? We depend upon the Examination already taken, and will take up your Lordships time no farther.

Then the Managers and the Counsel were directed to withdraw; and the Lords adjourn'd to the next Morning at Ten a Clock in the Forenoon.

Saturday May 8th. *The Third Day.*

THE Lords being seated in their House, proclamation was made by the Serjeant at Arms for Silence; and another Proclamation, That all persons concerned were to take Notice, that *Thomas Earl of Macclesfield* now stood upon his Trial, and they might come forth in order to make good the Charge.

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

Mr.

Mr. *Gibbon*. My Lords, Your Lordships having already heard what has been offered in Support of the preceding Articles, I am commanded by the Commons to assist in maintaining the 13th and 14th Articles of their Impeachment against the Earl of *Macclesfield*.

The Charge in these Articles is, That the Earl knowing Mr. *Dormer* (one of the Masters in Chancery) had disposed of great Part of the Suitors Money for his own private Advantage, by which there became and still continues a Deficiency of at least 25000*l.* and that Mr. *Dormer* absconded upon that Occasion; That Application was made to the Earl thereupon, who instead of taking proper Methods to compel Mr. *Dormer* to make Satisfaction to the Suitors (from an Apprehension that a publick Discovery of the said Deficiency might lessen the unjust Gain the Earl proposed to himself, by selling and disposing of the said Offices) did endeavour by many indirect Practices to conceal from the Suitors of the Court the true State and Condition of the said Office, and did falsely and deceitfully declare that Mr. *Dormer* was only gone to take the Air; that he would return in a little time, and all would be well. That Mr. *Dormer* having towards a Satisfaction to the Suitors of the Court, assigned to Mr. *Edwards* (who succeeded him in his Office of Master) a Debt of 24046*l.* 4*s.* due from Mr. *Wilson* (a Banker) to Mr. *Dormer*, to the intent the Money received on that Account should be applied as the Court of Chancery should direct, the Earl of *Macclesfield*, for the unlawful Purposes aforesaid, without regard to the Interest of the said Suitors, by Colour of his said Office, did in an unwarrantable, clandestine, and unusual Manner, authorize, direct and establish a precarious and trifling Composition with the said *Wilson*, upon his paying 1463*l.* 2*s.* 1*d.* and assigning 10,000*l.* part of a Debt of 22,060*l.* 12*s.* 5*d.* pretended to be due to the said *Wilson* from *Edward Poulter*, in Discharge of the said Debt; and to that End, on Mr. *Hiccocks's* Report, then one of the Masters of the said Court, without any Attendance ordered or had thereupon, and without Notice to the said Suitors, did by a private Order, not made in open Court, order Mr. *Edwards* to accept the said Composition in full Discharge of the said Debt; which said *Poulter* was a Person Insolvent, and has since absconded for Debt, and none, or very small part of the said 10,000*l.* has been, or is ever likely to be received.

Your Lordships will please to observe, that the Earl is charged with the highest Breach of Trust in relation to the Suitors of the Court of Chancery, and to have committed that Breach of Trust for the most unjustifiable End.

The Crimes, my Lords, stated in these Articles, are in themselves so heinous, they need no aggravation; and I think the noble Lord's Answer shews they are capable of no Excuse.

He is pleased to say, "That Mr. *Dormer* being out of Reach, his Effects unknown, except the Stock, which could not be transferred without his Concurrence, and the Earl seeing no other way open to get any thing for the Suitors, and being made believe, if a Deficiency

" should happen, the same should be made up by other Masters; did agree, that in Case Mr. *Dormer* would come over, and make a full Discovery of all his Effects, and assign the same for the benefit of the Suitors, the said Earl would allow him his Liberty on that Condition, and not otherwise.

The noble Lord says, No other way was open to get any thing. Sure, my Lords, the granting of a Sequestration would have been one and the speediest way to have found out and secured the Effects; but it might have been a way too open; for it must have published the Deficiency of the Office; whereas Mr. *Dormer's* coming home, and quietly resigning, hushed all Enquiry.

What the Earl means by being made to believe the Deficiency should be made up, I am at a Loss, my Lords, to know. Made believe! how, or by whom? It does not appear the Masters entered into any Contract to do it; and could his Lordship think any Discourse between him and the Masters (if such there was) could be a sufficient Security for the Suitors of the Court?

But suppose the Masters had contracted to supply the Deficiency, I submit to your Lordships how far that Contract would have been justifiable; for how should that Supply arise? If out of the Suitors Money in the Masters Hands, that was only supplying one Deficiency by making another; and if it was to be out of their own Estates, that likewise, by lessening the Substance of the Masters, would diminish the Security of their own Suitors; and what, my Lords, could induce the Masters to enter into such a Contract? I can imagine nothing, but to conceal the Deficiency, in order to raise a Value on their own Places upon their Resignations. I therefore submit to your Lordships, whether the Earl's Answer is not an implied Confession of an Endeavour to conceal this Deficiency, in order to keep up the Price of the Office? Your Lordships observe on what Condition the Earl says he permitted Mr. *Dormer* to come over. But I do not find the noble Lord alledges, that in order to gain the End proposed, Mr. *Dormer* was examined on Interrogatories touching the Debts due to the Suitors of the Court, or to what Estate or Effects he had to answer the same: We can shew your Lordships there was no such Examination. We shall prove, that Mr. *Dormer* did not give a satisfactory Account of his Balance, and with great Difficulty was prevailed on to convey his Estate for the Benefit of the Suitors: But yet, my Lords, he continued to have his Liberty. How the Earl will account for those Proceedings, I leave to your Lordships Consideration: I can see no possible Account can be given but this, that an Examination on Interrogatories touching the Debts of the Suitors, and Mr. *Dormer's* Answer and Confinement, must have published the Deficiency of the Office. The Earl is pleased to say, "He did not doubt but the whole Debt upon the said *Fleetwood Dormer* would be paid.

I presume he did not doubt but it would be, because he knew in Justice it ought to be paid; and since it is before your Lordships, I likewise do not doubt but it will be paid.

The noble Lord in his Answer is pleased to quote on some Occasions the Example of his Predecessors; I wish, for the Sake of the unhappy Suitors, and for the Honour and Justice of the Court of Chancery, he had here followed the Steps of his Predecessors in the Case of Dr. *Eddisbury*.

“ The noble Lord insists, He does not remember any Application made by the Masters for any Assistance of the Court, touching the Person or Effects of Mr. *Dormer*, but what he granted, as far as he thought tended to the Benefit of the Suitors.

We shall offer Proof to the contrary: But had that been so, was that, my Lords, sufficient? Was the Earl to wait the setting of a Prosecution on Foot, ’till Application made by the Masters? It was not probable many of them (who had bought at high Prices, and on Resignations, were to make the most of their Places) would apply for the securing the Person or Effects of Mr. *Dormer*, they would not willingly have had a Master imprisoned; the Discovery of a Deficiency in him would have made other Suitors apprehensive that the same might have happened to them; for every one knew how freely those Gentlemen trafficked in the fatal Year 1720. The very Notion of a Deficiency would have put the Suitors on an Inquiry, and upon calling the Money out of the Masters Hands. Could then the Earl expect they would interest themselves much in an Examination of this Kind? But was it less his Duty to enquire and give all necessary Orders, and take all proper Precautions for the Suitors Safety, because the Masters neglected it? No, certainly, unless for the Reason assigned in the Article.

The Earl says, “ He did never endeavour to conceal the true State and Condition of the Office from the Suitors, nor did any of them, until very lately, apply to him to look into the same.

He well knew, that many of them called for their Money, and were ordered their whole Demands, while Mr. *Edwards* had wherewithal to pay; but those unhappy Suitors, who did not know of the Deficiency and, from such Orders for the whole Money, might well be persuaded there was no Deficiency, and consequently did not complain, have now, I fear, a melancholy Case. And with what Grace the Earl can insist, that no Suitors ever did, or at least till very lately, complain, I leave to your Lordships Consideration.

The Earl is pleased to say, “ He remembers nothing of his using the Expression charged in the Article, either before or after he knew of Mr. *Dormer*’s absconding.

I believe the noble Lord, on a little Recollection, will easier call to Mind what he said on this Occasion, than be able to give a justifiable Reason for it.

He is pleas’d to say in his Answer to the 14th Article, “ He quitted all the Advantage of the Disposal of Mr. *Dormer*’s Office.

The Gentlemen, who have spoke before me, have, I hope, sufficiently made it appear to your Lordships, that there could be no such

legal or just Advantage. Where then is the Generosity? A Sum of Money, which he ought not to have taken, is given up towards answering the Debt of the Court, for which I take it his Lordship himself is answerable.

He is pleased to say, “ That after Mr. *Dormer*’s assigning Mr. *Wilson*’s Debt to Mr. *Edwards*, the Earl believes Mr. *Edwards*, used great endeavours to obtain Payment and Satisfaction of the said Debt from Mr. *Wilson*; but finding all Endeavours fruitless, and that Mr. *Wilson* had stopped Payment, and was in no Condition of paying his Creditors the whole of their Debts, but had offered to come to a Composition, and to pay them in Proportion the utmost he was able, Mr. *Edwards* thereupon petitioned his Lordship.

What those great endeavours were, I am, my Lords, at a Loss to know; for I can’t find there was any Commission of Bankruptcy taken out against *Wilson* (though that was advised and pressed as a safe and necessary Method) no Suit in the Court of Chancery, or in any other Court commenced against him, to get in this Debt, or that he was so much as served with any Process about it. How then the Earl can say, that all Endeavours were found fruitless, I leave to your Lordships Consideration.

He is pleased to say, “ Mr. *Hiccocks* reported, ’twas his Opinion the accepting the said Composition would be for the Benefit of the Persons entitled to receive the same.

My Lords, It does not appear Mr. *Hiccocks* had looked much into *Wilson*’s Circumstances, had examined the Particulars of his Books on Oath, had called the Creditors before him to enquire into the Justice of their Debts, or to know the Amount; but yet took upon him to apportion Part of *Poulter*’s Debt, as a Composition for the Suitors of the Court, though it will appear that *Wilson* paid several of his Creditors afterwards their full Demands.

Strange Proceeding sure in an Affair of this Nature! for which I will not pretend to Account. But, my Lords, I cannot but observe that the two Masters, who were employed to take Care on this important Occasion, for the innocent unhappy Suitors, were very soon (pending the Affair) allowed to sell their Places at exorbitant Prices. Mr. *Rogers*, August 1721. for 6,000*l.* and Mr. *Hiccocks*, June 1723. for 7,500*l.* and which very Sums now remain a Debt to the Suitors of the respective Offices. Your Lordships have already heard what was demanded and paid on those Resignations.

The Earl is pleased to say, “ That on Mr. *Edwards*’s second Petition with Mr. *Hiccocks*’s Report annexed (in which Mr. *Edwards* expressly prayed, that he might be ordered to accept the said Composition) the Earl in a proper and usual Manner ordered the same as prayed, and was informed, and believes, that the said Composition was made and agreed to on a Consultation of all or most of the Masters of the said Court.

I have heard, my Lords, the proper and usual Manner is to have Petitions of this Nature set down to be heard in Publick, and the Parties concerned

concerned to be summoned; Petitions relating to Bankrupts, to Lunaticks, to Ideots, I believe are so: The Statute in the Case of Bankrupts directs publick Notice to be given in the *Gazette*, for the Creditors to meet; they have an Opportunity there to make all proper enquiries, and see every thing done that may be most for their Advantage; the Bankrupt is not entitled to his liberty, nor any Benefit allowed him, without a Certificate that he has made a full Discovery of his effects, and that there appears no Reason to doubt of the Truth of such Discovery; and not then neither, unless four Parts in five in Number and Value of his Creditors sign such Certificate, and testify their Consent. How the Earl could think it just that the Suitors of the Court of Chancery (whose money was forced from them by the Power of that Court, and put into the Hands of a Bankrupt Master) should have less Care taken of them, less Privileges allowed them for their Security, than any other Creditors in the Kingdom, I can no way comprehend, but must think, my lords, this clandestine and unusual Proceeding a strong Proof of the Crime charged in these Articles.

“As to what the Earl says of the Composition on being agreed to by most of the masters; if that, my Lords, had been so (though we shall give Evidence to the contrary) I should not at all have wondered at it; for any Composition obstructed the Inquiry and Proceedings, which otherwise must necessarily have been publick: But, my Lords, had the Composition been agreed to on a Consultation of all or most of the Suitors concerned, that indeed would have been a good Defence of the noble Lord.

“He is pleased to say, at the Time of *Wilson's* Assignment of *Poulter's* Debt, that *Poulter* was looked on to be a substantial Person.

We shall produce to your lordships evidence to the contrary: And I must observe that the Earl does not offer to shew any proper Inquiry was made touching his Solvency. Sure, my lords, when that Debt was taken as a Payment for the Suitors of the Court, his Circumstances should have been carefully looked to, and a Recognizance with Securities taken in Court; but that could not be done without a publick Notice of the Deficiency.

When I consider, my lords, the long experience and great Abilities of the noble Earl, I can never think the Remisness in this Inquiry these clandestine and unusual Proceedings, this precarious and trifling Composition, could have happened through Inadvertency only: I therefore, my lords, must insist upon it as a manifest Proof of the Charge contained in these Articles.

The Gentleman who speaks after me on this Occasion, will open the evidence we shall offer, and I will therefore take up no more of your lordships time.

Mr. Hedges. My lords, it falls to my Share to endeavour to be Assistant to the Gentleman who spoke last, in maintaining the 13th and 14th Articles; which I shall do by stating the evidence to your lordships, as shortly as I can.

My lords, The 13th Article sets forth, that *Mr. Dormer* having *embezzled* great Part of the

Suitors effects, to the amount of 25,000 *l.* or some other great Sum, and he thereupon *absconding*, Application was made to the Earl of *Macclesfield*, then lord Chancellor, to *secure his Person and Effects*, which his lordship *neglected* and *declined* to do; and *endeavoured* to *conceal* the true State of the Office, as well with respect to *Mr. Dormer's* effects, as to the Debt due from him to the Suitors. And upon motion made in the Court of Chancery (after his lordship *knew* that *Mr. Dormer* had *absconded*) that the effects of some of the Suitors might be *transfer'd* to a more *secure* Office, his lordship in order to *delude* the Suitors into a Belief of the Safety of their effects, and to prevent a publick Inquiry, then sitting in open Court, did say, That the Parties need not be in haste; *falsely and deceitfully* at the same Time declaring that *Mr. Dormer* was only gone to *take the Air in the Country*, and that he would return in a little time, and *all would be well*, or to that Effect. And, my Lords, notwithstanding the Earl's Endeavour in his Answer to *evade* the Charge contain'd in this Article, I am persuaded, upon hearing the Evidence, your Lordships will rest satisfy'd, that it has been *made out* in every particular. For, my Lords, as to the first part of the Charge, where he denies that he was ever *advis'd* to *secure Mr. Dormer's* person, it will be made appear to your Lordships, that *Mr. John Bennet*, and *Mr. Lightboun*, went from a Meeting of several of the Masters, and in their Names *acquainted* the Lord Chancellor, that it was their Opinion, that *Mr. Dormer* had *not fairly* stated his Accounts; that there was a *Deficiency* of upwards of 20,000 *l.* and that it was necessary for example's sake, he should be committed, according to the *Precedent* set him by the lord *Cowper* in *Dr. Eddisbury's* Case. But the Earl insisting on *Mr. Dormer's* Liberty, they again repeated the *necessity* of making such an Example, but at last left the Earl *fixed* in his Resolution of continuing *Mr. Dormer* at Liberty.

My Lords, this Promise of Freedom to *Mr. Dormer* was only conditional; If he gave in a fair and just Account, and assisted in getting in the Debts. But he was so *far* from complying with these Conditions, that when he gave an Account in Writing of the Ballance of his Cash, amounting to 49,000 *l.* he only inform'd them, that 24,000 *l.* of it was due from one *Wilson* a Banker, *since broke*; but as to the Remainder, the Master, to whom it was given, could never obtain from him any other Notice where it lay, or what was become of it.

Immediately upon this, the Masters were *summon'd*, and *acquainted* with it; and the next morning that Account was *left* with *Mr. Cottingham* for the Lord Chancellor's perusal.

Your Lordships will be farther inform'd, that *Mr. Rogers* and *Mr. Hiccocks*, being directed by the Lord Chancellor to procure a Conveyance of *Mr. Dormer's* Estate to them, for the Benefit of the Suitors, it was with the *greatest Difficulty* that *Mr. Dormer* was *prevailed* upon to *comply* with it.

In the next place, my Lords, his Lordship, in his Answer, denies, that he endeavour'd to *conceal* the true State of the Office from the Suitors; or that he *remembers* any thing concern-

ing the *Expression* he is charg'd with; that Mr. *Dormer* was only gone into the Country to take the Air, and that he wou'd return in a little time, and all wou'd be well.

My Lords, I must agree, that, since his Lordship is resolv'd to deny that he endeavour'd to conceal the State of the Office, it were to be wish'd by him that he cou'd safely deny this Expression, since if true, it proves that endeavour directly upon him. But, my Lords, the Words were spoken by his Lordship in open Court, and can be sworn to by a Person, whose Business in Court at that time was such, as can possibly leave no room for a Doubt, or a Mistake.

For farther proof, my Lords, of his Lordship's Endeavour to conceal the State of this Office, we shall shew, that a message was sent from the Lord Chancellor to Mr. *Lightboun* with a Proposal that he shou'd advance 500 l. towards this Deficiency: Acquainting him, at the same time, that it was for the Honour of the Court; and that the Appearance of a Deficiency wou'd be attended with ill Consequences. But Mr. *Lightboun* refus'd to comply with that Demand, which he thought wou'd only skin over the Wound, and not effectually cure it. And yet, my Lords, this Proposal, which Mr. *Lightboun* had the Honesty and Courage to reject, was enforc'd by the impeach'd Earl with the Threats of a Parliamentary Enquiry; asserting, that if the masters did not contribute towards the Concealment of this Deficiency, it would occasion a publick Enquiry; wherein, if it shou'd appear, that they had bought their Places contrary to the Statute 5 and 6 of Edward 6. it might go ill with him, but that it wou'd fare much worse with them; turning even that Parliamentary Enquiry, which he ought to have dreaded as his sure Punishment, into means for extorting of money. We have also Proofs that at another meeting of the masters, a farther Demand was made upon them, in order to conceal the State of that Office; but all the masters then refusing to contribute to a Concealment so unreasonable in its own nature, the Lord Chancellor paid that Demand of 1000 l. himself; not out of any just regard to the Suitors, but for his own Profit and Advantage, well knowing, that the Notoriety of this Insolvency, wou'd make the masters Places less valuable; and therefore was content to part with this Sum, to insure to himself a greater prospect of Gain at his next Sale. Nor was it necessary for those, who dealt at this Auction, to bring any money of their own to it; the mere admittance into the Office immediately giving them Possession of a Cash sufficient to answer his Lordship's Expectations. And thus Beggars were his best Purchasers; though sure to be the worst Trustees for the Publick.

How great a Hardship must it be, my Lords, to the Suitors of that High Court, to be contending many Years for their just Property, at an Expence possibly no ways proportionable to their remaining Fortunes; and to find at last, when they had obtain'd a Decree in their Favour, that their money was lost in a Bankrupt Office, without hopes of recovery? This is a Consideration in which every man in Great Britain is more or less concern'd. For what Estate is there, which may

not some way or other in the Course of a few years, come under the Direction of that Court? How much then does it concern every Individual, and even the Legislature itself, that all its Avenues of Justice shou'd be safe and open? But how much more does it concern the Honour and Conscience of the Person, who presides in it, if there shou'd be a dangerous Precipice in the way, to be the first in setting up a Mark for all the World to avoid it?

But, my Lords, if in this Article, which I have open'd to your Lordships, there appears a Criminal Endeavour to conceal the Deficiency of this Office, supported by a false Assertion made in open Court, in order to delude the Suitors into an Opinion that their Money was safe, and a great neglect in not securing Mr. *Dormer's* Person; in the 14th Article, he will appear in a yet more guilty Light, not only neglecting, as in the former, to enquire into his effects, but on Enquiry made, and Time had for mature deliberation, confirming a precarious and trifling Composition, and tying down the Suitors of the Court by his Authority, to the certain Diminution of one half at least of their effects, and in all probability to the irrecoverable loss of the whole.

My Lords, in the Answer which his Lordship returns to this Article, he denies none of the matters of Fact contain'd in it, but admits them as they there stand charg'd. I shall therefore only make some Observations on the nature of this Transaction, and on the Assertions in his Lordship's Answer.

In the first place, my Lords, he insinuates that Mr. *Edwards* us'd great endeavours to obtain payment from *Wilson*, but found them fruitless; *Wilson* having stopp'd payment long before.

My Lords, I know not what endeavours his lordship can prove Mr. *Edwards* to have us'd; but whatever they were, they were not unlikely to prove fruitless, since as his lordship adds immediately, *Wilson* had long before stopp'd payment: But this we can prove, That *Wilson's* Books were never inspected by Mr. *Edwards*; that he never knew what his Debts were; nor any thing more of him, than that *Wilson* came voluntarily to Mr. *Edwards*, and propos'd of himself to pay him 1400 l. in ready money, and to assign over to him a Debt of 10,000 l. due from one *Poulter*, whose Circumstances were still more precarious than his own.

In the next Place, his Lordship asserts, that he order'd this whole Affair of *Wilson's* Composition in the usual manner; and is inform'd, and believes, that this Composition was made and agreed to, upon a Consultation of all, or most of the Masters. But, my Lords, we shall make it appear, that the Delivery of the Petitions, the Orders made upon them, and the whole Transaction of this Affair, was carried on from first to last in a clandestine, private, and unusual manner.

As to the Consent which his Lordship says he believes the other masters gave to this Composition, we shall prove my lords, that Mr. *Edwards* was the only Person concerned on behalf of the Suitors, and so far was he or any of the rest of the masters from taking the best Care they could, that the first Draught of a Composition, which *Wilson* brought, was accepted and settled between him

him and Mr. *Hiccocks*. And that when Mr. *Edwards* did mention this Composition to *some* of the Masters, they were so far from approving of it, that Mr. *Edwards* acquainted the lord Chancellor, that it was the Opinion of one of them, that a *better Composition* was to be had. And another of the Masters was so far from agreeing to this Method at all, that he propos'd a *Commission of Bankruptcy* as the *only* means to bring this matter to a *proper Light*.

But that *Light*, my lords, was what his lordship was most *afraid* of. That wou'd have *discover'd* the *deficiency* of this Office, which would have brought a *disrepute* upon others, and consequently have *lower'd* their *Price*. This was his lordships *only* Care; whilst for the rest he cou'd sit *unconcern'd*, and see so great a Sum of the Suitors Money *wasting away to nothing*, as it pass'd thro' the Hands successively of three Bankrupts.

But, my lords, we shall farther prove, that when his lordship order'd a Petition to be prefer'd to himself, that he might approve of this Composition, he never order'd the *Suitors* to be acquainted with it, nor had they *any Notice* of it. Nor did his lordship *ask*, if *Wilson* had *compounded* with any other Creditors, nor so much as *enquire* if he had *sworn* to his Circumstances.

It will be made appear, that at this very time Mr. *Edwards* was inform'd, and *did believe* that *Poulter's* Circumstances were *very bad*, and that neither he nor any one else *attended* the Commission of Bankruptcy against *Poulter* on Behalf of the Suitors.

And, my lords, to judge a little farther of this matter, by a very sure Rule of Justice; that, of *doing as one would be done by*: Your lordships will find that Mr. *Edwards* *confesses*, that if it had been his *own* money, he wou'd have lookt more *carefully* after it.

Farther yet, my lords, we shall prove, that notwithstanding this Debt was *compounded* with *Wilson*, yet he has paid the *whole Amount* of other Debts, with Interest, to *several* of his Creditors.

Lastly, my lords, his lordship in his Answer says, that he *believes* Mr. *Edwards* has since got in one thousand Pounds of *Poulter's* Debt. The Truth is, one thousand Pounds has been recover'd; but it was by an *accidental Discovery* of *conceal'd* Effects belonging to *Poulter*; one thousand Pounds of *which* was paid to Mr. *Edwards* by *Wilson*, as Part of *Poulter's* Debt.

But does his lordship *seriously* intend this for any *Vindication* of himself, or any *Compensation* to the Suitors, that after *four or five years expectation*, instead of *twentyfour thousand Pounds due to them*, he *believes* one thousand Pounds *may* have been since recover'd?

I cannot help observing here to your lordships, how *different* a Care has appear'd throughout his lordship's whole Behaviour, with Regard to his *private Advantage*, and the *Safety* and *Protection* of the Suitors of the Court.

In *their Case*, he could think it *equitable* to subject *their Estates* to the losses of a *Master in Chancery*, who had *squander'd* and *gam'd* away their Substance and his own. But in his own *private* Affairs, how *cautiously* *circumspect* was his lordship? The least Advantage was not neglected, and if a Master's Place was to be alienated, a *difference* of Guineas was meanly insisted upon, instead of

the Pounds which had before been oppressively extorted.

But, my lords, in this impeachment, the Commons, with Regard to the Dignity of their own Proceedings, with Regard to this august Judicature, are not desirous to enlarge upon Matters of *smaller Moment*. His lordship might have enjoy'd his *hundred Guineas* in quiet, had not a *long Series* of his Conduct in so high a Station, tended to *destroy* the Reverence due to the laws, by an *Execution* of them instrumental to the Ruin of the Subject.—Against apparent Extortioners and Robbers, we guard ourselves with a Caution proportionable to the infamy of their Characters: But when the Sanctity of the laws, and the *Ensigns* of Authority, design'd to defend and protect us, are made use of to *invite* us into Ruin, how sure and extensive must that Ruin be?

My lords, The Commons have beheld with the deepest Concern such corrupt Practices in this high Court; such, as have *deform'd* the *Beauty* of Justice, and render'd the Administration of it *grievous*, and even *fatal* to the Subject. They have beheld that Minister of Justice, whom the laws of the land have invest'd with an *extraordinary* Power to punish *Frauds and Deceits*, himself carrying on a most *pernicious* Deceit, to the great *dishonour* of the Court, and the *ruin* of its Suitors. The *Guardian* of Orphans become their *Oppressor*, the Keeper of the King's Conscience prostituting his *own*, and the Dignity of his high Station, to an ignominious *Traffick* with the best bidder, and employing the SCALES OF JUSTICE in the Business of an *Usurer*.

But, my lords, that Parliamentary Enquiry is *now* come, with the *Terrors* of which he *forc'd* the Masters into Compliance with his *arbitrary* Demands. He then *foretold* it might possibly GO ILL WITH HIM, tho' it would fare worse with them. So *just* a *Decree* pronounc'd by *himself* against *himself*, is, we trust, in no Danger of being *revers'd*; but rest assur'd, that as far as it regards him, it will be unanimously *confirm'd* by your Lordships.

Mr. *Lutwyche*. My Lords, we shall now proceed to our Evidence on these two Articles together: To shew to your Lordships that the Deficiency of *Dormer's* Office was endeavour'd to be conceal'd by many indirect Practices: and first of all we shall call a Witness to prove Mr. *Dormer's* Deficiency to be about twenty-five thousand Pounds.

Mr. *Thomson* called, and appeared.

Mr. *Lutwyche*. My Lords, we desire that Mr. *Thompson* may refresh his Memory, as this Matter was referred to him to examine; and that he would please to give your Lordships an Account how he found the State of Mr. *Dormer's* Office, and what Deficiency there was in it?

Mr. *Thompson*. My Lords, I find in our Report the Debt due from Mr. *Dormer's* Office was stated at 49604*l.* 11*s.* 11*d.* and I find that Mr. *Edwards*, who succeeded Mr. *Dormer* in that Office, had paid to the Suitors 23725*l.* 15*s.* 9½ so that there remains due to the Suitors of the Court, such as have paid their Money into Mr. *Dormer's* Office, the Sum of 25878*l.* 16*s.* 1*d.* ½. And this I believe to be a true State of the Account, from such Evidence as was laid before us.

Mr. *Lutwyche*. If the Counsel on the other Side don't think fit to ask this Evidence any Question, we beg Leave to call Mr. *Edwards*, who succeed-

ed Mr. *Dormer*, and will give your Lordships an account of the State of that Office, and what the Deficiency was.

Mr. *Henry Edwards* sworn.

Mr. *Lutwyche*. My lords, we desire that Mr. *Edwards* may be asked, how much the Deficiency is in Mr. *Dormer's* Office?

Mr. *Edwards*. My lords, according to the Account given in, the Deficiency appears to be about twenty five thousand odd hundred Pounds; but since that, there is discover'd about fifteen hundred Pounds more, which was not brought into the Account. It was discover'd about three Weeks or a Month ago, and not before.

Mr. *Lutwyche*. I desire he may be ask'd whether he knows of any other Deficiency discover'd?

Mr. *Edwards*. No, my lords, I do not.

Mr. *Serj. Probyn*. My lords, I desire Mr. *Edwards* may be asked, that as there hath been a further Deficiency discovered, whether there hath not also been a Discovery of further Effects?

Mr. *Edwards*. Not as I know of. I am inform'd Administration hath been lately taken out to Mr. *Dormer*, that there hath been a Discovery of Effects, but to what Value I can't tell.

Mr. *Strange*. I would desire he may be ask'd, whether he hath had any Account from the Administrator?

Mr. *Edwards*. I have seen Mr. *Paxton*, who I understand administr'd. He told me he had discover'd some Effects, but he did not tell me to what Value.

Mr. *Lutwyche*. If the Counsel for the noble Earl have done, we would beg leave to ask another Question, in relation to this matter. They examine what were the other Effects of Mr. *Dormer*, we desire to know, if Mr. *Edwards* can inform us, how long ago this Discovery was?

Mr. *Edwards*. I can't certainly tell. I believe it is about two months ago that Mr. *Paxton* hath had Administration; and since that he hath made this Discovery.

Mr. *Lutwyche*. It is proper from this Question that hath been ask'd by the Counsel for the noble lord, to call another Witness to prove that there have been effects discovered, and that there have been Goods laid by three or four Years, and almost spoil'd, because no Care was taken of his Effects.

Mr. *Serj. Probyn*. My lords, before this Gentleman goes, I beg leave he may be asked one other Question, whether he had not Notice before *Christmas* last, that there were other Effects of Mr. *Dormer*, and from whom?

Mr. *Edwards*. Yes, I believe I had; and when I understood that Mr. *Paxton* was the Person who had taken out the Administration, I told him of it.

E. of *Macclesfield*. My lords, I desire he may be asked who it was that brought him Notice of these Effects?

Mr. *Edwards*. It was a Gentleman that came out of the Country. I don't remember his Name. He was a Person that lived near the Place where Mr. *Dormer's* Country House was. I have forgot his Name.

E. of *Macclesfield*. Can you recollect if you hear his Name? Was his Name *Goodfellow*?

Mr. *Edwards*. I believe it was.

E. of *Macclesfield*. I desire, if you can recollect, who he said he came from?

Mr. *Edwards*. I think he said he came from Mr. *Cottingham*; I don't know that he mention'd your lordship. I understood your lordship had been acquainted with it, but not that he acquainted you of it.

Mr. *Campbel* sworn.

Mr. *Lutwyche*. My lords, I desire that this Witness may be asked, whether he knows of any Goods or Effects of Mr. *Dormer* being discover'd, and at what Time, and how long they had lain in that Place where they were found.

Mr. *Campbel*. In the Year 1721, I did buy a Parcel of Hops, but who they belong'd to I did not then know; but since I find they were Mr. *Dormer's*. They were one hundred and forty eight Bags of Hops. I sold sixteen of them the same Year, one hundred and one since. I bought them of Countrymen; some of one man, and some of another. I bought them by Commission, but Mr. *Dormer* was not the man that employ'd me, neither did I receive the money from his Hands.

Mr. *Lutwyche*. We desire to know how long the Goods did lie in that Place where they were; and whether there were any Loss by the Sale of those Goods, being left so long there.

Mr. *Campbel*. They had lain there above three Years, and I believe, modestly speaking, there was above five hundred Pounds loss upon them.

Mr. *Plummer*. I desire Mr. *Campbel* may be asked how he came to know they were Mr. *Dormer's* Hops?

Mr. *Campbel*. I never did know they were Mr. *Dormer's* Hops, nor do I still know it, but as I am told.

Mr. *Plummer*. My lords, I desire he may be asked who told him so?

Mr. *Campbel*. This Gentleman told me so [pointing to Mr. *Paxton*.]

Mr. *Serj. Pengelly*. My lords, we shall now call Mr. *Paxton*, who hath taken out Administration by the Direction of the lords Commissioners of the Great Seal; and under that Administration he hath possess'd himself of those Effects, which were scatter'd and lay waste before.

Mr. *Serj. Probyn*. My lords, I beg leave this Witness may be first asked one Question. I think he hath said that he bought those Hops by Commission, not by the Order of Mr. *Dormer*, nor for Mr. *Dormer*: I desire he may be asked, by whose Direction they were kept so long by him?

Mr. *Campbel*. He that gave me the Orders to buy them was not Mr. *Dormer*, neither did he pay me the money. The Reason they lay so long was, I had no orders to sell them.

Mr. *Serj. Prob*. Who was the Person that gave you orders to buy them?

Mr. *Campbel*. The Person's Name is Mr. *Longmead*.

Mr. *Serj. Prob*. Where does this Person live?

Mr. *Campbel*. He lives at *Islington*.

Mr. *Com. Serj*. My lords, I desire this Witness may be asked, whether or no about the time that these Hops were bought, they were not very cheap, and at a low Price?

Mr. *Campbel*. They were at a low Price.

Mr. *Com. Serj*. Whether a great Number of People have not kept Hops upon a Supposition that they would rise?

Mr. *Campbel*. Yes they have a great many.

Mr. *Serj. Probyn*. I desire he may be asked, whether he did not keep other Hops as well as these by him, for the Advantage of a better Market?

Mr. *Campbel*. Yes, I had several other Hops bought in that Year that I kept for a better Market, and still had a worse. I have Hops by me cost me 5*l.* a Hundred, not worth now 10*s.* a Hundred.

E. of Macclesfield. How much a Bag might that be?

Mr. *Campbel*. I can't tell how many hundred may be in a Bag: I can't tell, because they are not weighed.

E. of Macclesfield. Whereabouts?

Mr. *Campbel*. Sometimes there are three hundred, sometimes 2 and a half, sometimes 2 and 3*qrs.*

Mr. *Lutwyche*. My Lords, to explain this Matter I desire he may be asked, whether this Loss he speaks of, of 4 or 500*l.* happened in the Difference of the Price, or by the Hops being spoiled?

Mr. *Campbel*. Both by the Difference of Price, Hops being cheaper, and by the Antiquity of the Hops.

Mr. *Lutwyche*. My Lords, we desire he may be asked who is this Mr. *Longmead*?

Mr. *Campbel*. He keeps a Shop in *Islington*, he keeps a Grocer's Shop.

Mr. *Lutwyche*. My Lords, I desire he may be ask'd, whether he is not Mr. *Dormer*'s Servant, or an Agent for him?

Mr. *Campbel*. For any thing I know he was an Agent for Mr. *Dormer*.

Mr. *Com. Serj.* My Lords, we desire he may be ask'd, whether for ought he knows he was not an Agent for Mr. *Dormer*?

Mr. *Campbel*. I believe he was an Agent for him, and I have good Reason to believe it, because he paid me all the Money, and gave me Orders to buy the Goods.

E. of Macclesfield. I desire to know whether the Witness infers that *Longmead* was Mr. *Dormer*'s Agent because he paid him money; might not he have paid him the money, tho' he had not been his Agent?

Ld. Ch. Jus. King. Speak your own Knowledge, whether he was Agent for Mr. *Dormer* or no.

Mr. *Campbel*. I never did ask him whose they were: He employed me, and I bought the Goods, and did suppose they were for Mr. *Dormer*. I never ask'd him whether they were his Goods or not.

Mr. *Sol. Gen.* My Lords, we desire that Mr. *Paxton* may be called, to shew how he discovered these Effects.

Mr. *Nicholas Paxton* Sworn.

Mr. *Lutwyche*. My Lords, we desire Mr. *Paxton* may give your Lordships an Account what he knows of these Hops.

Mr. *Paxton*. After I had got Letters of Administration to Mr. *Dormer* granted me, I did make what Inquiry I could, relating to the Effects of Mr. *Dormer*. This Mr. *Longmead* came and told me of some Hops; that he was Servant to Mr. *Dormer*, and had bought them by his Direction. Then we went to Mr. *Campbel*'s who took out a Handful and said they were Saleable, and would bring in about 200*l.* He told me they cost 800*l.* and it would be best to dispose of them as fast as I could, that there might be no more Loss.

They are not yet sold, they may be worth about 200*l.*

Mr. *Lutwyche*. My Lords, It is admitted by the Answer, that Mr. *Dormer* absented himself and absconded. It was notorious, and talked of by every Body: It will lie upon this Noble Lord to give an Account what he did thereon. My Lords, we will now proceed to give your Lordships an Account of this Composition made with *Wilson* who was indebted to *Dormer*. This *Wilson* was a Banker, the Person that Mr. *Dormer* intrusted with Money; and upon that Occasion, there being a great Debt due to *Dormer*, as is set forth in the Articles, a Composition is made with *Wilson* on Account of that Debt. There were such Dealings and Proceedings therein, as will appear to your Lordships to have been unusual and unwarrantable. We beg Leave therefore to shew your Lordships a written Evidence, an Order under the Hand of this noble Lord himself for this Composition though never drawn up: And indeed your Lordships will observe that through the whole Course of these Proceedings, there is not any one Affidavit, or any one Order, or any Report filed in the usual Manner. From whence we may infer, that it was intended to be a clandestine thing, that nothing might appear of it upon Record, as other things do. The first thing we shall beg Leave to shew is, an Assignment from Mr. *Dormer* to one of the Masters in Chancery of this Debt. When we have shewn that Assignment, then we shall beg Leave to give your Lordships an Account of the Methods and Proceedings thereupon.

Mr. *William Green* sworn, and the Assignment produced.

Mr. *Lutwyche*. My Lords, we desire this Witness may be asked, whether he saw this Deed executed, and by whom?

Mr. *Green*. My Lords, I did see this Deed executed by the late Mr. *Dormer*: I am one of the Witnesses to it, and *John Jones* is the other Witness.

Mr. *Lutwyche*. My Lords, we desire this Deed may be read.

Clerk reads. This Indenture made the six and twentieth Day of July, *Ann. Dom.* 1721, and in the seventh Year of the Reign of our Sovereign Lord *George* by the Grace of God, King of *Great-Britain, France* and *Ireland*, Defender of the Faith, &c. Between *Fleetwood Dormer* of *Lincolns-Inn* in the County of *Middlesex, Esq;* late one of the masters of the High Court of *Chancery* of the one Part, and *Henry Edwards* of *Lincolns-Inn* aforesaid, *Esq;* one of the masters of the said High Court of *Chancery* of the other Part. Whereas *William Wilson* Citizen and Goldsmith of *London*, is and stands justly indebted unto the said *Fleetwood Dormer* upon Account, in the full and just sum of twenty four thousand and forty six Pounds and four Shillings of lawful money of *Great Britain*, or upwards, as by the Books of the said *William Wilson* may and doth appear: And whereas the said *Fleetwood Dormer* is and stands justly indebted to divers Persons, Suitors in the said High Court of *Chancery*, in several considerable sums of money, for and on Accompt of moneys brought before and paid to him as one of the masters of the said Court: Now therefore for the more speedy getting in and recovering of the aforesaid Debt, due and owing by and

and from the said *William Wilson* as aforesaid; and also for the more speedy and effectual Payment of all such Sum and Sums of money as are owing by the said *Fleetwood Dormer* as aforesaid: This Indenture witnesseth, That for the Ends and Purposes aforesaid, and for and in Consideration of the sum of 10 s. of lawful money of *Great-Britain* to the said *Fleetwood Dormer* in Hand paid by the said *Henry Edwards*, at or before the enfealing and delivery of these Presents, the Receipt whereof is hereby acknowledged: He, the said *Fleetwood Dormer*, hath granted, assigned, transferred, and set over, and by these Presents, doth grant, assign, transfer, and set over unto the said *Henry Edwards*, his Executors, Administrators, and Assigns, the said Debt or Sum of twenty four thousand and forty six Pounds and four Shillings, and all and every Part thereof, and all and every other Debt or Debts, Sum or Sums of money any ways due or owing by or from the said *William Wilson* to the said *Fleetwood Dormer* and every Part thereof, and all Interest due or to grow due for the same, and all Bonds, Bills, Notes, and other Securities, for the same or any Part thereof. And all the Right, Title, Interest, Property, Benefit, Advantage, Claim, and Demand whatsoever, both in Law and Equity, of him, the said *Fleetwood Dormer*, of, in, to, or out of the same, and every or any part thereof, to have, hold, receive, perceive, take, and enjoy the said Debt or Sum of twenty four thousand and forty six Pounds and four Shillings, and all such other Debts and Sums of Money as are due or owing to the said *Fleetwood Dormer* by the said *William Wilson* as aforesaid, and every Part thereof, and all the Benefit thereof, and all and singular other the Premises unto the said *Henry Edwards*, his Executors, Administrators, and Assigns upon trust. Nevertheless, and to the Intent and Purpose that he, the said *Henry Edwards*, his Executors, Administrators, or Assigns, shall and do issue, pay, apply, and dispose of the same, or such Part or Parts thereof, as shall from time to time be by him or them got in and received in such manner as the said high Court of *Chancery* shall in that Behalf order or direct, for and towards Payment and Satisfaction of such Debts and Sums of money as are now due and owing by the said *Fleetwood Dormer*, for or on Account of monies brought before and paid to him, as one of the masters of the said Court. And in the mean time, after Receipt thereof, and until the same shall be so paid, applied, and disposed of, shall and do deposit, lend, or place out the same, or any part thereof, in such manner as the said Court of *Chancery* shall in that Behalf order or direct. And for the better enabling the said *Henry Edwards*, his Executors, Administrators, and Assigns, to get, call in, and receive the aforesaid Debt or Sum of twenty four thousand and forty six Pounds and four Shillings, and other the said hereby assigned Premises upon the Trusts aforesaid; He, the said *Fleetwood Dormer*, hath made, ordained, constituted and appointed, and in his Place and Stead put and deputed, and by these Presents doth make, ordain, constitute and appoint, and in his Place and Stead, put and depute the said *Henry Edwards*, his Executors, Administrators, and Assigns, his true and lawful Attorney and Attornies irrevocable for him the said *Fleetwood Dormer*, and in his Name; but upon the Trusts aforesaid, to ask, demand, sue for, recover, and receive of and from the said *William Wilson*, his Heirs, Executors, or

Administrators, and all and every, or any other Person or Persons whom it may concern, the aforesaid Debt or Sum of twenty four thousand and forty six Pounds and four Shillings, and other the said hereby assigned Premises, and every or any Part thereof upon the Trusts aforesaid, and likewise to compound for the same, and every or any Part thereof, as he or they shall in their Discretions think fit, and upon Non-payment of the same Debt or Sum, Debts or Sums, or any Part thereof, or bring, commence, and prosecute such Action or Actions, Suit or Suits, either at Law or in Equity, or elsewhere, for the Recovery thereof, as he or they shall be advised, and on Payment thereof, or any Part thereof, to give Receipts and Discharges for the same, and one or more Attorney or Attornies for the Purpose aforesaid, to make and constitute, and at Pleasure to revoke, and generally to do and act in the Premises for the recovering and obtaining of the said Debt or Sum of twenty four thousand and forty six Pounds and four Shillings, and other the said hereby assigned Premises, and every or any Part thereof, as fully and effectually to all Intents and Purposes as he the said *Fleetwood Dormer*, his Executors or Administrators might have done; giving and hereby granting unto the said *Henry Edwards*, his Executors, Administrators and Assigns, the full and whole Power and Authority of him the said *Fleetwood Dormer*, in and about the Premises upon the Trusts aforesaid; hereby ratifying, confirming, and allowing all, and whatever the said *Henry Edwards*, his Executors, Administrators, or Assigns, or his or their Attorney or Attornies shall lawfully do or cause to be done in or about the Premises by Vertue of these Presents. And the said *Fleetwood Dormer* doth hereby for himself, his Heirs, Executors, and Administrators, covenant, promise, and agree to and with the said *Henry Edwards*, his Executors, Administrators, and Assigns in manner following: That is to say, that he, the said *Fleetwood Dormer*, hath not received, compounded, released or discharged, or consented to the receiving, compounding, releasing, or discharging the said Debt or Sum of twenty four thousand and forty six Pounds and four Shillings, and other the hereby assigned Premises, or any part thereof, and that he, his Executors, or Administrators shall not, nor will at any time hereafter, receive, compound, release, or discharge the same or any part thereof, without the Consent of the said *Henry Edwards*, his Executors, Administrators, or Assigns, first thereunto had and obtained in writing under his or their Hands. And further, That he the said *Fleetwood Dormer*, his Executors and Administrators, shall and will at the Requests, Cost and Charges of the said *Henry Edwards*, his Executors, Administrators, or Assigns, make, do, and execute, or cause and procure to be made, done, and executed, any further or other lawful and reasonable Acts, Deeds, Powers and Authorities, for the better enabling him, the said *Henry Edwards*, his Executors, Administrators, and Assigns, to sue for, recover, and obtain the said Debt and Premises hereby assigned, and every or any part thereof upon the Trust aforesaid. And it is hereby declared and agreed that the said *Henry Edwards*, his Executors, Administrators, or Assigns shall not be charged or chargeable with, or accountable for any more monies than he or they shall actually receive, or shall come to his or their Hands by Vertue of these Presents; and that it shall and may be lawful

lawful to and for the said *Henry Edwards*, his Executors, Administrators and Assigns, in the first place, by and out of the premises, to deduct and reimburse him and themselves all such losses, costs, charges and expences as he, they, or any of them shall sustain or be put unto, by Reason of the Trust hereby in him reposed, or the Management or Execution thereof, or any other thing in any wise relating thereunto: In witness whereof, the said parties to these presents have hereunto interchangeably set their Hands and Seals the Day and Year first above written.

Fleetwood Dormer.

Mr. *Lutwyche*. The next thing we shall trouble your Lordships with in relation to this matter of the Composition, is a petition of Mr. *Edwards*, to which there is an answer. The answer is writ by Mr. *Cottingham*, and signed by the noble Lord. I mentioned to your Lordships that no Order is drawn up upon it: Nothing appears in publick: Therefore we must beg leave to prove the Earl's Hand to this Order made upon this Petition.

E. of *Macclesfield*. After taking the petition in his Hand and looking upon the Name subscribed to the answer written upon it, said, My Lords, this is my Hand.

Clerk reads,

To the Right Honourable Thomas Earl of Macclesfield, Lord High Chancellor of Great Britain.

The humble Petition and Representation of Henry Edwards, Esq; one of the Masters of the high and honourable Court of Chancery.

Sheweth,

THAT *William Wilson*, Citizen and Goldsmith of *London*, is and stands justly indebted to *Fleetwood Dormer*, Esq; late one of the masters of this Court upon account, in the full Sum of twenty four thousand and forty six pounds, four Shillings, as by the Books of the said *William Wilson* doth and may appear.

That the said *Fleetwood Dormer* is and stands justly indebted to divers persons, Suitors in this Court, in several considerable Sums of Money. And for the more speedy getting in and recovering the said Debt, and effectual Payment of all such sum and sums of Money as are owing by the said *Fleetwood Dormer* as aforesaid, the said *Fleetwood Dormer*, for that End and Purpose, hath by Indenture bearing date the 26th of *July* 1721, granted, assigned, transferr'd, and set over to your petitioner, his Executors, Administrators, and Assigns, the said debt or sum of twenty four thousand and forty six pounds four Shillings in Trust, and to the Intent that your Petitioner shall pay, apply, and dispose of the same, or such part thereof as shall from time to time be by him got in and received of and from the said *William Wilson*, in such Manner as this Court shall order and direct.

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That it appears to your Petitioner, that the said *William Wilson* is indebted to divers other Persons in great Sums of Money, and for some time hath not been able to carry on his Business, or to make good and pay the said Debt so assigned to your Petitioner; but hath lately offered to your Petitioner and his other Creditors to come to a Composition, and to pay them in proportion the utmost he is able. And your Petitioner doubting whether he can with safety to himself, agree to any such Composition,

Humbly prays your Lordship would be pleased to refer it to one of the masters of this Court, to see if such Composition so proposed by the said *Wilson* be for the Benefit of the persons intituled to receive the same.

And your Petitioner shall ever pray, &c.

30th of June, 1722.

Be it as is prayed, and to that End let it be referred to Mr. *Hiccocks* one of the Masters of this Court, and let the Master speed his Report: After which, such further Order will be made as shall be just; of which give Notice forthwith.

Macclesfield C.

Mr. *Lutwyche*. My Lords, I beg leave to take Notice, that in this Petition it is expressly recited, that *Dormer* was indebted to the Suitors of the Court, and that being so, we apprehend the greatest Care should have been taken for their Benefit. Your Lordships shall see in the Progress of this thing, how it was transacted. I believe any person that is concerned in the Court of *Chancery*, hath not known such a Proceeding in the most trifling Matter whatsoever. My Lords, the next thing is a second Petition, said to be with a Report annexed, but we can't find it filed; here is a paper of Mr. *Hiccocks* not stamp'd nor filed, which we do apprehend to be the Report meant, and therefore we desire that may be first read.

Clerk reads,

26th of July, 1722.

WHEREAS by an order made by the Right Honourable the Lord High Chancellor of *Great Britain*, the thirtieth of *June* last, upon the humble Petition of *Henry Edwards*, Esq; one of the Masters of this Court, I am directed to see if the Composition in the said Order mentioned, to be offered or proposed to be made by *William Wilson*, Citizen and Goldsmith of *London*, to the said Mr. *Edwards*, as Assignee of *Fleetwood Dormer*, Esq; late one of the masters of this Court, who was a creditor of the said *William Wilson*, for the Sum of 24046l. 4 s. in the said petition mention'd, be for the Benefit of the Persons entituled to receive the same. I have been attended by the said Mr. *Edwards*, and by the said *William Wilson*, and considered of the several Matters by the said Petition and Order to me referr'd: And the said *William Wilson* hath under

der his hand in Writing propos'd to assign over to the said Mr. *Edwards* (as a Composition for, and in full Discharge of the said Sum of 24046 l. 4 s.) the Sum of 10000 l. part of a larger Sum due to the said *William Wilson*, from *Edward Poulter* of *Hackney*, in the County of *Middlesex*, Gent. and to pay to the said Mr. *Edwards* in Specie the Sum of 1463 l. 2 s. 1 d. over and above the Sum of 560 l. already paid to the said Mr. *Dormer* in part of the said Composition. And upon Consideration had of the Circumstances of the said *William Wilson*, and the said several Matters, I am of Opinion that the accepting the said Composition will be for the Benefit of the Person or Persons entitled to receive the same. All which I humbly certify and submit to his Lordship.

Hiccocks.

Mr. *Lutwyche*. Now read the Petition of Mr. *Edwards*, and the Order thereupon.

Clerk reads.

To the Right Honourable Thomas Earl of Macclesfield, Lord High Chancellor of Great Britain.

The humble Petition of Henry Edwards, Esq; one of the Masters of the high and honourable Court of Chancery.

Sheweth,

THAT upon your petitioner's former petition preferr'd to your Lordship relating to *William Wilson*, Citizen and Goldsmith of London, your Lordship the 30th of June last was pleased to refer it to Mr. *Hiccocks*, one of the Masters of this Court, to see if the Composition mentioned in the said petition and Order to be propos'd by the said *Wilson*, would be for the Benefit of the Persons entitled to receive the same.

That the said Mr. *Hiccocks* having been attended by your petitioner, and the said *Wilson*, hath pursuant to your Lordship's said Order, made his Report dated the 26th of July last, whereby he certifies, that he is of Opinion that the accepting of the Composition in his Report mentioned, will be for the Benefit of the Person or Persons entitled to receive the same, as by the Report annexed.

Wherefore your petitioner most humbly prays your Lordship to take into your Consideration the Matter of the said Report, and to order your petitioner to accept of the said Composition upon the terms therein mentioned, if your Lordship shall so think fit, or to make such other and further Order in the premisses, as to your Lordship shall seem most meet.

And your petitioner shall ever pray, &c.

3^d of August, 1722.

On the Report annexed be it as is prayed. Of which give Notice forthwith,

Macclesfield, C.

Mr. *Lutwyche*. My Lords, I must beg leave to make one Observation upon this, that the noble Lord may explain it, for I believe there is no precedent for it; when there is a Composition thus

to be made, and thus referr'd, and a Report hath been made, the Prayer of the Petition is, that Mr. *Edwards* may be ordered to accept of this Composition, or to make such other Order, as his lordship should think fit. The Answer to it is, Be it as is prayed, of which give Notice forthwith; by which I suppose the parties understood that it was ordering Mr. *Edwards* to accept of this Composition. Now it is wonderful to me, if he was ordered to accept of the Composition, why it is said, give Notice forthwith? What? when the thing is done? Besides, there is another thing more material, to whom should such Notice be given? surely to the suitors of the Court. But it is well known his lordship had not appointed any solicitor for the suitors of the Court, and they had no Notice, tho' here is a semblance or shew of what is done in other Cafes. We shall beg leave to shew next to your lordships, that these Orders on these Petitions, this Report, and these Proceedings, were not one of them entred or filed as Orders usually are.

Mr. *Plummer*. My lords, I beg leave to make one observation before this matter goes over. The petition is by Mr. *Edwards* only, one of the masters, and it is that my lord *Macclesfield* would be pleased to order him to accept of the Composition. None of the suitors of the Court, who were the persons entitled to receive the same, are petitioners.

Clerk reads two Certificates from, and signed by *Edward Goldsbrough*, Deputy Register, that there were no such orders entred, nor no such Report filed.

Mr. *Lutwyche*. My lords, the Composition is signed by *William Wilson*. I desire Mr. *Edwards* may be asked whether he knows Mr. *Wilson*'s Hand?

Mr. *Edwards*. This is signed by Mr. *Wilson*; it is Mr. *Wilson*'s Hand.

Clerk reads,

Whereas a suit in Chancery is now depending between Mr. *Edward Poulter* of *Hackney*, and myself, for the sum of 22060 l. 12 s. 5 d. which he agreed to pay me for and upon closing all accounts between us: And whereas *Fleetwood Dormer*, Esq; late a Master in the high Court of Chancery, being indebted to divers persons, suitors in the said Court, in several considerable sums of money, for and on account of money brought before and paid to him as one of the masters of the said Court, he the said *Fleetwood Dormer*, for the better payment thereof, did by Assignment dated the 26th of July 1721, assign over to *Henry Edwards*, Esq; one of the Masters of the said Court, a debt or sum of 24046 l. 4 s. which was and is due and owing from me to him the said *Fleetwood Dormer*: And whereas I being incapable of paying the said Debt of 24046 l. 4 s. did lately propose as a Composition for and in full Discharge of the same, to assign to the said *Henry Edwards* the sum of 10000 l. part of the sum of 22060 l. 12 s. 5 d. due to me from the said *Edward Poulter*, as aforesaid; and likewise to pay to him the said *Henry Edwards*, the sum of 1463 l. 2 s. 1 d. in specie, over and above the sum of 560 l. before paid to the said Mr. *Dormer*, in part of the said

faid Composition: And whereas on a petition prefer'd to the Right Honourable the Lord High Chancellor of *Great Britain*, by the said *Henry Edwards*, representing the matter of the said proposal; and after several subsequent proceedings had upon the said petition, his lordship was pleas'd, by Order dated the third of *August*, 1722, to order the said *Henry Edwards* to accept of the said Composition: And the said *Henry Edwards* having thereupon agreed to accept of the said Composition, accordingly I do hereby, in Consideration thereof, assign over to the said *Henry Edwards* the sum of ten thousand pounds, part of the sum of twenty two thousand and sixty pounds, twelve shillings and five pence, due to me from the said *Edward Poulter* as aforesaid, having already paid him, the said *Mr. Edwards*, the other sum of 1463 l. 2 s. 1 d. before-mentioned. And I do hereby promise to pay to the said *Henry Edwards*, Esq; or his order, the said sum of ten thousand pounds, on my recovering the sum of twenty two thousand and sixty pounds, twelve shillings and five pence aforesaid, or otherwise to pay him a like proportion of what I shall recover, more or less, from the said *Edward Poulter*. And I do hereby further promise, that I will not do any Act to incumber or discharge the Demand I now have against the said *Edward Poulter*, without the Consent of the said *Henry Edwards*. And whereas the said *Mr. Edwards* does now accept of the said Composition, I do hereby declare and agree, that if I do not on Demand pay him the before-mentioned proportion of what I shall recover from the said *Edward Poulter* as aforesaid, or do any ways discharge the Demand I now have against him, without the Consent of the said *Henry Edwards*, that then the said Composition so made by the said *Edwards*, shall be void, and of no effect, as if it had never been made. And I do hereby further promise, I will at my own Charge prosecute the said suit, and also do and execute all further and other acts that shall be necessary for the better assigning to the said *Henry Edwards*, Esq; the before-mentioned proportion of what I shall or may recover as aforesaid, from him the said *Edward Poulter*, as he the said *Henry Edwards* shall at any Time require. Witness my Hand this twenty eighth Day of *August*, 1722.

William Wilson.

31st of *October*, 1724. Paid to *Henry Edwards*, Esq; the sum of one thousand pounds, in part of this Note or Assignment.

William Wilson.

Mr. Lutwyche. My Lords, this Composition which hath been read to your Lordships, is recited to be in full Satisfaction and Discharge of *Wilson's* Debt. Now we beg leave *Mr. Edwards* may be asked, whether he made any Application to the Earl of *Macclesfield*, before the first petition was preferr'd?

Mr. Edwards. My Lords, I had received proposals from *Mr. Wilson*, he came to me and told me, he had a sum of money in his Hands, and was

willing to pay the Debt to *Mr. Dormer*, in proportion with his other Creditors, and asked me whether I would accept of a Composition, and give him a Discharge in full. I told him I had no power to make a Composition, but however I would represent it to some of the masters; and accordingly I spoke to *Mr. Hiccocks*, who was then senior master, and told him the proposal *Mr. Wilson* had made; and I believe I mentioned it to others, but especially to *Mr. Hiccocks*, he being the senior master, and more particularly concerned in *Mr. Dormer's* affairs. *Mr. Hiccocks* was of Opinion I could not safely make a Composition. I asked, What method then was the most proper to be taken? if that was really all he had to pay, I had better secure that than have nothing. He said he did not see why it might not be in this Case as in other cases; whether upon a petition to my Lord Chancellor, he might not direct an Enquiry to be made by a master, whether it was for the Benefit of the parties to make such composition or not. Upon that I waited on my Lord Chancellor, and acquainted him with *Mr. Wilson's* proposal. I told his lordship, I thought I had not power to do it. He said, I think so too; I don't see that you have power to do it. Said I, I am informed that it is usual in cases of this Nature, to apply to the Court by petition, that it may be refer'd to a master, to see whether the accepting of this composition be for the Benefit of the parties concerned or not. Yes, says my lord, I think that is very proper, that will indemnify you, I would have you prefer a petition; which accordingly I did.

Mr. Lutwyche. I would beg leave to ask in Relation to what he mentions, that it was taken Notice of that he had no power to make such composition, whether any thing was said whether my lord *Macclesfield* had such a power?

Mr. Edwards. No, there was nothing said of that.

Mr. Plummer. My lords, I desire he may be asked, whether any of the suitors were acquainted with this intended composition?

Mr. Edwards. No.

Mr. Sol. General. Did my lord *Macclesfield* give any Direction to give Notice to any of the suitors?

Mr. Edwards. No.

Mr. Plummer. My lords, I desire he may be asked if he himself attended *Mr. Hiccocks* when *Mr. Wilson* was before *Mr. Hiccocks*?

Mr. Edwards. I am not sure I was there at any time with *Mr. Wilson*.

Mr. Plummer. If he knows what methods were taken to know what *Mr. Wilson* was worth?

Mr. Edwards. I understood that *Mr. Hiccocks* and *Mr. Rogers*, the two senior masters, upon *Mr. Dormer's* absenting himself, had *Mr. Dormer's* accompts laid before them, and that they were directed to inspect those matters; and I was informed they did look into *Dormer's* Books, and had also the perusal and inspection of *Mr. Wilson's* Books, to see how *Mr. Dormer's* affairs stood in those Books.

Mr. Plummer. My lords, I desire *Mr. Edwards* may be asked if any Body was employed for the suitors on their Behalf?

Mr.

Mr. Edwards. I was before *Mr. Hiccocks*, but not present with *Mr. Wilson*.

Mr. Plummer. I ask if any Body on the suitors Behalf was before *Mr. Hiccocks*, when *Mr. Wilson* was there, to see and cross-examine him?

Mr. Edwards. I don't remember there was.

Mr. Serj. Pengelly. My lords, I desire *Mr. Edwards* may be asked whether this petition is of his own Hand-writing?

Mr. Edwards. No, my lords.

Mr. Serj. Pengelly. Do you know whose it is?

Mr. Edwards. It is my Clerk's Hand.

Mr. Serj. Pengelly. Whether the two last lines were struck out before the answer to the petition, and by what Hand?

Mr. Edwards. I don't know when they were struck out.

Mr. Serj. Pengelly. My Lords, we will beg leave to mention what it is. At the End of the first petition, the master desires an indemnification by the Order of the Court: Part of the petition is, that he may be indemnified and saved harmless in making such Composition. But that is struck out before the answer, which shews, as I humbly apprehend, the very Notice that the Earl of *Macclesfield* himself took, how dangerous and hazardous that Transaction was.

Read the Words.

Clerk reads. And that your petitioner may be indemnified and saved harmless in making such Composition.

Mr. Serj. Pengelly. Do these Words stand now in the Reading?

Clerk. No, they are razed out.

Mr. Edwards. I remember this was a paper that I laid before the honourable Committee. I was a little surprized to see those Words struck out; but when they were struck out I can't say, nor by whom.

Mr. Lutwyche. I desire he may be asked, if they were struck out before he delivered the petition into the Committee?

Mr. Edwards. Yes they were.

Mr. Sol. Gen. My Lords, we desire he may be asked how much he hath received of this Composition?

Lord Lechmere. I desire him to explain himself, whether these Words were struck out after the petition delivered, and before the order made by the noble Earl?

Mr. Edwards. My Lords, I don't remember ever to have taken Notice, that those Words were struck out, till I had occasion to look for it to lay it before the Committee.

Lord Lechmere. Whether he hath any Doubt whether they were struck out before they were delivered into the Committee?

Mr. Edwards. They were struck out before I delivered them into the Committee.

Mr. Sol. Gen. In whose custody was this petition?

Mr. Edwards. I believe part of the time in *Mr. Hiccocks's*; *Mr. Hiccocks* sent it to me, and I have had it ever since.

Mr. Serj. Pengelly. Whether he struck out these Words that were inserted for his own indemnification?

Mr. Edwards. No, upon my oath I did not.

Earl of Abingdon. As I apprehend, there was no Commission of Bankruptcy against *Wilson*, therefore I would know what method was taken to inform the Court of the real Substance and Ability of *Wilson* before this Composition was made?

Mr. Edwards. I know of no other Application made to the Court by *Mr. Wilson*.

Earl of Abingdon. Was *Wilson* examined upon Oath?

Mr. Edwards. *Mr. Hiccocks* told me that *Mr. Wilson* had made an Affidavit, that this Sum of money which he proposed as a composition, was what he was able to pay in proportion with the rest of his creditors, and that he grounded his Report thereupon.

Mr. Lutwyche. Was this Affidavit ever filed?

Mr. Edwards. No, my lords.

Mr. Sol. Gen. My lords, we desire he may give an Account how much he hath received of this ten thousand pounds.

Mr. Edwards. The first Sum was fourteen hundred and odd pounds, and the Sum of one thousand pounds since.

Mr. Sol. Gen. How much of this was of the ten thousand pounds?

Mr. Edwards. Only the one thousand pounds.

Mr. Sol. Gen. What is become of *Poulter*?

Mr. Edwards. *Wilson* hath told me that he is in *Holland* or *France*.

Mr. Sol. Gen. What was his character, as to substance at the time of his composition?

Mr. Edwards. I never met any Body that could give an Account of his Character. All I heard of him was from *Mr. Wilson* himself.

Mr. Lutwyche. My lords, I desire he would acquaint your lordships when the one thousand pounds was paid?

Mr. Edwards. I can't recollect exactly the Time.

Mr. Lutwyche. As near as you can, before or since *Christmas*?

Mr. Edwards. I believe it was in *September* or *October* last; I believe in *October*.

Mr. Sol. Gen. I desire *Mr. Edwards* may inform your lordships what he thought of *Poulter*, at the Time of the composition, whether he looked upon him as a man of substance?

Mr. Edwards. I could make no Judgment of the man, I never saw him before; I know nothing of him, otherwise than as *Mr. Wilson* told me.

Mr. Sol. Gen. That is no Answer to my Question, which is what his opinion was as to his substance at the time of the composition, whether he would have trusted him with one hundred pounds?

Mr. Edwards. I can't tell what Answer to give to it; *Wilson* represented him to me as a man able to pay the Debt; and from his Representation I believed that *Poulter* was sufficient.

Mr. Sol. Gen. Whether he enquired into *Poulter's* Character?

Mr. Edwards. There was no Body I knew to enquire of.

Mr. Sol. Gen. Did he enquire, or did he not?

Mr. Edwards. I asked *Mr. Wilson* as many questions as I could, and what his opinion was about him. He told me he believed he was able to pay his Debts, and he told me one *Helbut* a *Jew*, who

was

was his Bail, could tell his Substance. I happen'd to meet *Helbut* at the *Rainbow Coffee-House*, and I ask'd him if he knew *Poulter*. He said Yes. Says I, Is he a man of any Substance, What is he? No, says he, I believe he is in very mean Circumstances. This is all I ever ask'd.

Mr. *Sol. Gen.* What was your Opinion of this Man's Abilities?

Mr. *Edwards.* My Lords, I told you that as to the account I had of him, Mr. *Wilson* gave me a great assurance that he was a Man of Ability.

Mr. *Plummer.* I desire he may be ask'd, whether Mr. *Wilson* hath not paid his whole Debt to several other Creditors?

Mr. *Edwards.* I am inform'd he hath paid his full Debt to some Creditors.

Mr. *Plummer.* My Lords, I desire he may be ask'd, what Directions he receiv'd from my Lord *Macclesfield* to inquire into this Man's Circumstances?

Mr. *Edwards.* I had no Directions.

Mr. *Plummer.* Whether any inquiry was made by the Earl of *Macclesfield*?

Mr. *Edwards.* Not as I know of.

Mr. *Lutwyche.* I think he mentioned one *Helbut* as his Bail: I desire to know whether there was a Suit commenced for this Debt assign'd?

Mr. *Edwards.* I understood it was for this Debt assign'd, which *Wilson* recovered at Law.

Mr. *Serj. Pengelly.* My Lords, I desire he may be ask'd, whether Mr. *Poulter* hath appeared here and been esteemed solvent, or a Person quite gone away?

Mr. *Edwards.* I have not seen Mr. *Poulter*, nor any that have seen him, for some considerable Time.

Mr. *Serj. Pengelly.* My Lords, I beg leave to make one Observation, and it is to save your Lordships Time; that is, That you would be pleas'd to observe in the Proceedings upon this Article, the several Acts and Orders made by the Earl of *Macclesfield* relating to this Deficiency of *Dormer's*, do take Notice of his Deficiency, and you'll find the Earl himself doing one Act which makes a Deficiency; that is, compounding a Debt due from *Wilson* to *Dormer*; and therefore those Orders having been read before your Lordships, you will please to retain them in your memory, till we come to the 6th Article, wherein it is charged that there was a Deficiency in *Dormer's* Office, and there we shall shew that this noble Lord declared that he never knew of any Deficiency; and by an Order made in Court, pronounced by himself, he then did direct that a Master should inquire if there was any Deficiency in this Office; so that those publick Acts won't be necessary to be read over again upon that Article, but as now produced, will be sufficient to prove the Notice the noble Earl had of this Deficiency, and that even he made part of the Deficiency himself.

Mr. *Lutwyche.* My Lords, we have done upon these two Articles we have opened.

Mr. *Serj. Probyn.* My Lords, if the Gentlemen have done, we desire to ask some Questions,

and first we beg leave that he may be ask'd, whether any of the masters were acquainted with this Agreement or Composition with Mr. *Wilson*.

Mr. *Edwards.* I don't remember that any were, but Mr. *Hiccocks*.

Mr. *Serj. Probyn.* My Lords, we desire he may recollect whether there was any Consultation between him and any other master, as to the manner that this Composition should be made, before it was accepted, and whether it was a reasonable Composition or not?

Mr. *Edwards.* I mentioned it to two or three other masters at the publick Office, but I can't charge my memory particularly who they were.

Mr. *Serj. Probyn.* Was that before the Time that the Composition was made?

Mr. *Edwards.* Before the Time I applied to my Lord *Macclesfield*.

Mr. *Com. Serj.* My Lords, I desire that Mr. *Edwards* may inform your Lordships from whom it was that he received this Information, that several of the Creditors of *Wilson* were paid their full Debts?

Mr. *Edwards.* The first Person that informed me was Sir *Laurence Carter*; I happened to be at his Chambers, and naming to me the Affair of *Wilson*, he told me his Brother Mr. *Thomas Carter* had received 120*l.* which Mr. *Wilson* owed him, and which was his whole Sum.

Mr. *Com. Serj.* I desire to know when it was that he received that Sum?

Mr. *Edwards.* There was no Time mentioned when that was paid him: As near as I can recollect the Time, when Sir *Laurence Carter* told me this, it was soon after the Composition.

Mr. *Com. Serj.* My Lords, I desire he may recollect, whether this Payment was made before the Composition or after; did not he say it was before the Composition?

Mr. *Edwards.* No, I don't remember that.

Mr. *Serj. Probyn.* I desire he may be asked, whether he knows any thing of this Payment to Mr. *Carter* of his own Knowledge?

Mr. *Edwards.* No, I don't know it of my own Knowledge, but I believe it to be very true.

Mr. *Serj. Probyn.* Since he had this Information of one Debt being paid intirely, tho' he had compounded with others, I desire he may be ask'd whether he ever charged Mr. *Wilson* with it?

Mr. *Edwards.* Yes, my Lords, I did: A little after I went to Mr. *Wilson*, and I told him that I was informed he had paid Mr. *Thomas Carter* his full Demand, and it was rumoured about that he had paid several others their full Debts, and that it look'd unfair. Says he, this Money was lent me by my particular Friend, to pay off some little straggling Debts to keep me up in my Business, and therefore I was unwilling he should lose it.

Mr. *Serj. Probyn.* Whether did he apprehend this to be a new Debt contracted since his Failure, or an old one due before?

Mr. *Edwards.* I don't know when the Debt was contracted.

Mr. *Com. Serj.* I apprehend he says, that this money was lent him by some Friends to set him up again?

Mr. *Lutwyche.* Really, my Lords, we would not interrupt the Gentlemen, but I take it, what they are going on with is not Evidence. We must submit it, whether what Mr. *Wilson* said is Evidence, either on the one Side or on the other?

Mr. *Com. Serj.* We must humbly be in your Lordships Judgment, whether this kind of Evidence be not as proper on our Side as on the other? most of the Evidence Mr. *Edwards* has given to affect the noble Earl, has been only Informations he has had from *Wilson* or Sir *Laurence Carter*, and yet now the learned manager objects the same Information must not be admitted as Evidence on the other Side. I apprehend if any Favour is to be shewn on either Side, it should rather go on in the support of Innocence.

Lords. Go on, go on.

Mr. *Sol. Gen.* My Lords, we don't oppose their going on, we only beg leave to set your Lordships right. We did not give a Tittle of Evidence of what Mr. *Wilson* said: We have proved the Petitions, we have proved the Orders, we have proved the Facts; we did not mention a Word of Sir *Laurence Carter*, it sprung from this Examination; but we are willing they may go on, if your Lordships think fit.

Earl of Macclesfield. My Lords, I apprehend there is no Occasion to give your Lordships any trouble. If what this Gentleman hath said, with relation to Mr. *Wilson's* Payment to his Creditors, is no Evidence, it needs no Answer.

Mr. *Com. Serj.* My Lords, we desire that Mr. *Edwards* may inform your Lordships, whether or no there was any Consultation among the Masters relating to this matter, and what their Opinion was?

Mr. *Edwards.* I don't know of any Consultation about it.

Mr. *Com. Serj.* We desire that he may inform your Lordships, whether he made any Acknowledgment for his being admitted into his Office, and to whom this money was paid, and to what Purpose, and how applied?

Mr. *Edwards.* My Lords, the Steps I took to be admitted into my Office, if your Lordships will give me leave to trouble your Lordships with the Narrative, were these. First, I applied to Mr. *Godfrey* one of the Masters, with whom I had most Acquaintance: I told him I heard Mr. *Dormer's* Office would be disposed of; he told me he believed it would. Says I, if I could be accepted I have some Thoughts of treating for it. What is the usual method in those Cases to be recommended to my Lord Chancellor? Says he, you must apply to my Lord's Secretary Mr. *Cottingham*; accordingly I did, and I told Mr. *Cottingham* that I had heard Mr. *Dormer's* Office was to be disposed of. Mr. *Cottingham* told me it was to be disposed of. I then talk'd to him about the Terms. Mr. *Cottingham* told me, As to the Price and the Person, my Lord *Macclesfield* had left it intirely to the other masters; for whatsoever that Place could fetch, was intended to go towards making up Mr. *Dormer's* Deficiency.

Upon that, my Lords, I went again to Mr. *Godfrey*, and after a meeting or two, I concluded to give five thousand Pounds if I could be admitted. Whether Mr. *Godfrey*, or Mr. *Cottingham*, or who went to my Lord I can't tell. I had not the Honour to see my Lord till I was admitted: But upon these Terms I was approved. I had Directions, I can't say whether Mr. *Godfrey* or Mr. *Cottingham* gave me the Directions, that I should pay my money into the Hands of Mr. *Rogers* the then senior master; accordingly I did pay five thousand Pounds, and in three or four Days after I had the Honour to be admitted and sworn in.

Mr. *Strange.* My Lords, I desire he may be asked, whether at the time of his Admission any Presents were made by him to the Earl of *Macclesfield* or to his Secretary?

Mr. *Edwards.* None at all, but the Secretary's Fees as usual in those Cases.

Mr. *Strange.* Whether at the Time he agreed to pay the Sum of five thousand Pounds for the Office, he knew how the money was to be apply'd?

Mr. *Edwards.* Yes, Mr. *Godfrey* told it me when I went back to him from Mr. *Cottingham*; I remember to have asked him several Questions, and made him several Proposals relating to the Office, for we differed a great deal about its Value; I think I first proposed three thousand Pounds for it; but he disliking that and some other Offers I made him, I desired to know how much it was that my Lord *Macclesfield* insisted upon? to which he answered, that it was not my Lord's Intention to take any thing for the Admittance, but that he had left it to the Disposal of the Masters, to make the most of it for the Benefit of the Office.

Mr. *Com. Serj.* Whether he knows how this money was disposed of, and to what Use employed?

Mr. *Edwards.* I can't remember the Time, but some short Time before Mr. *Rogers* surrendred his Office, he paid me back this five thousand Pounds which I in a little Time paid to the Suitors of the Court.

Mr. *Strange.* Whether before he surrendred his Office, he had any Discourse with the masters how Mr. *Dormer's* Debts were secured?

Mr. *Edwards.* No otherwise than upon this Treaty. I told Mr. *Cottingham*, I hear there is a Discourse of a Deficiency in Mr. *Dormer's* Office; says he, I believe there is, but how much I can't tell; but that can be no Objection to you, because you are to answer for no more than you receive. Matters are all settled and taken Care of, that what Deficiency soever there is shall be made good.

Mr. *Serj. Probyn.* By whom?

Mr. *Edwards.* He did not say by whom, or in what manner.

Mr. *Serj. Probyn.* Had you any Discourse with any other master?

Mr. *Plummer.* My Lords, I beg leave to make one Observation. The Counsel says with any other master, and the Gentleman at the Bar says it was Mr. *Cottingham* told him so.

Mr. *Serj. Probyn.* This Gentleman I am examining

amining is one of the Masters, therefore it is not improper to ask whether he had any Discourse with any other of the Masters?

Mr. *Edwards*. I made the same Objection to Mr. *Godfrey*, and he answered me much the same. Mr. *Godfrey* said he could not tell what the Deficiency was, but whatsoever it was, that would be all settled and made good.

Mr. *Serj. Probyn*. As he had this Discourse with Mr. *Godfrey*, I desire he may be ask'd, whether he hath not likewise had some Discourse with Mr. *Rogers* how this Deficiency was to be made good?

Mr. *Edwards*. No, I don't remember I had any Discourse with Mr. *Rogers*.

Mr. *Com. Serj.* My Lords, I desire he may inform your Lordships, whether at any other time he had any Discourse with any of the masters about this matter?

Mr. *Edwards*. My Lords, I often talk'd upon this Subject with the masters, as a matter which very much concern'd my Office. This I mention'd at the time I came in. They were then all of Opinion that this Deficiency was to be made good. I don't remember that any Body told me in what method or particular way it was to be made good.

Mr. *Com. Serj.* I desire he would inform your Lordships, as near as he can remember, whether it was said that it would be made good, or that it was to be made good?

Mr. *Edwards*. I can't remember the distinct Words, I took it to have the same tendency and meaning.

Mr. *Serj. Probyn*. I desire he may be ask'd, whether he hath not several times and on many Occasions heard the masters declare, that this Deficiency was to be made good, and by the masters?

Mr. *Edwards*. I have heard them several times declare, that they did not doubt but it would be made good; but I never heard them say that it would be made good by the masters. I have often heard the masters say they would not make it good.

Mr. *Serj. Probyn*. I desire he may be ask'd, whether about the time that the masters advanced the five hundred Pounds apiece, he did not hear them declare how this Deficiency of *Dormer* was to be made up?

Mr. *Edwards*. My Lords, when I came into the Office, I think the very Day that I was admitted, Mr. *Rogers* paid five hundred Pounds; eight more paid five hundred Pounds apiece, some at one time, some at another; they did not all pay at the same time. That I heard was to go towards making up this Deficiency; but how far the masters intended to contribute further, I can't say.

Mr. *Com. Serj.* I desire he may inform your Lordships, whether he did not apprehend that the making up of this Deficiency was a great Concern to him?

Mr. *Edwards*. Yes, I think it hath been of a great Concern to me.

Mr. *Com. Serj.* I desire to know then how it comes to pass that he inquired no more into it?

Mr. *Edwards*. My Lords, I remember I was

once asking some Questions relating to that Account, and it was told me, that the State of this Deficiency had been laid before my Lord Chancellor before I was admitted. Upon that I did conclude, that this contribution of the masters, of five hundred pounds apiece, had been in Concert with my Lord Chancellor. I understood it to be so; I don't know whether my Lord gave Orders that it should be so.

Mr. *Com. Serj.* I desire he may be asked who it was that told him so?

Mr. *Edwards*. I think Mr. *Hiccocks* told me so.

Mr. *Serj. Probyn*. My Lords, we have done.

Mr. *Robins*. I desire to know what Answer Mr. *Hiccocks* gave to the Questions he asked?

Mr. *Edwards*. Only that my Lord was acquainted with it, and had the State of Mr. *Dormer's* Office laid before him.

Mr. *Serj. Pengelly*. My Lords, if they have done, we only beg leave to observe, that they have been establishing the Notice of this whole Deficiency on the Earl, upon the first Vacancy in the Office, even before Mr. *Edwards* came in; so that the whole Transaction afterwards proceeded upon a full Notice of the Circumstances and State of the Office. The Evidence of the Contribution of the masters, and of the Earl of *Macclesfield*, towards making good this Deficiency, prevents, in a great measure, our bringing any Proof to the fifteenth Article, which is now going to be opened.

Mr. *Plummer*. My Lords, if they have done, I only beg leave to observe, that the very letting Mr. *Edwards* pay his five thousand Pounds to the Deficiency of the Office, and my Lord *Macclesfield's* not taking it to his own Use, is a sufficient Proof of his Knowledge of the Deficiency. And as to this Composition, I have one Question more to ask. I think he says he mention'd it to two or three masters; I desire to know if he did so, and whether they approved it?

Mr. *Edwards*. I think one of the two or three masters was Mr. *Lighboun*. He was there, and he did say, as I remember, that he thought we might as well lose the whole, as take so small a part of such a Debt.

Mr. *Plummer*. I desire another Question, and that is, if he consulted any of Mr. *Wilson's* Creditors before he made this Composition?

Mr. *Edwards*. No, my Lords, I did not know any of them.

Mr. *Serj. Pengelly*. How much did he receive in the whole from the masters?

Mr. *Edwards*. I received five hundred Pounds from nine of them.

Mr. *Serj. Pengelly*. Did any of the masters, and which, refuse?

Mr. *Edwards*. Yes, Mr. *Lighboun* refused.

Mr. *Serj. Pengelly*. For what Reason?

Mr. *Edwards*. That I can't tell; he did not give any particular Reason.

Mr. *Com. Serj.* My Lords, I believe it may be necessary to trouble your Lordships with asking another Question: Whether this Discourse in relation to this Composition, was before or after the Composition was made?

Mr. *Edwards*. I believe it was before.

Mr.

Mr. *Com. Serj.* Then I desire to know whether Mr. *Edwards*, upon that or any other Occasion, acquainted the noble Earl of it?

Mr. *Edwards*, No, I don't remember I did.

Mr. *Sol. Gen.* My Lords, I believe we have done with these two Articles.

Sir John Rusbout. My Lords, the Commons proceed to the fifteenth Article against *Thomas Earl of Macclesfield*, and they have entrusted me to lay open to your Lordships the Subject matter of this, and the two ensuing Articles, and the Nature of the Evidence they think proper to produce to make good the Charge in these Articles; by which it will appear to your Lordships very fully, that the Crimes charged upon the Person at your Bar, which have already been manifested in so many Instances, did not proceed from mistake, or mere Negligence; altho' these would have been Faults not excuseable in a Person placed in so high a Station, but that they were the Effects of Art and Contrivance, formed to carry on and promote a corrupt and illegal Gain and Advantage to himself.

It may seem at first sight very surprizing, and may not readily obtain Belief with your Lordships, that a Person raised by his Majesty's abundant Goodness, to Stations of so great Honour and Profit, who had received large Additions to a plentiful Income by successive and repeated Grants from the royal Bounty, that such a Person should condescend to receive, much more that he should use Arts and Stratagems to obtain further Supplies to his insatiable Thirst of lucre.

But this your Lordships will plainly see to be the Case, when we have given our Proofs to the fifteenth, sixteenth, and seventeenth Articles. Your Lordships have already heard that there was a very great deficiency and loss of the Suitors money in the Office of Mr. *Dormer*, a late master in the Court of *Chancery*; that the Earl at your Bar then presiding in that Court, well knew that there was such a Deficiency; that instead of applying Remedies to redress the Evil, he made use of several Methods to cover and conceal it; it being very obvious for him to reflect, that, if such a Deficiency was publicly known, and not effectually remedied, none would ever after purchase a master in *Chancery's* Place, at least not at such exorbitant Prices to which the Purchase had lately been raised.

What then must be done? here was like to be an entire Stop put to this Branch of Revenue which had yielded so plentifully, and proved so beneficial to his Lordship.

The Contrivance therefore is to oblige the masters, who had already paid for their Places, to pay again towards making good this Deficiency, and by an artful drawing them to a Compliance in this Point, to conceal and continue the mischief.

This is what the Commons charge in the fifteenth Article, that the Earl of *Macclesfield*, to conceal the Deficiency in Mr. *Dormer's* Office, did order several masters of the Court to bring in their Accounts of the Cash, Effects, and Securities belonging to the Suitors which were in their Hands, with Intent to terrify the masters thereby, so far, as to oblige them to contribute

large Sums to answer the Demands of that Office: And further to engage them to a Compliance in that Respect, he represented to them, that unless they would do it, the money and effects of the Suitors would be taken out of their Hands: That by this means he did induce nine of the masters to contribute five hundred Pounds apiece, which several of them did, out of the Suitors money in their Hands; and this being done, they were never obliged to bring in their Accounts.

What Answer is given to this Charge? The Answer hath been read, and I need not trouble your Lordships with a Recital of it. But the Earl admits that he gave such Orders that the masters should bring in their Accounts:

That several masters did afterwards pay and contribute as is charged:

That they were not afterwards obliged to bring in their Accounts:

But then in Excuse he alledges, That this was not done to terrify the Masters to make any Contribution to the Demands on *Dormer's* Office:

That what they did contribute, he believes they paid freely, and out of their own money:

That he believes he follow'd therein a Precedent of the like Nature in the Failure of Dr. *Eddisbury*:

That he continued to call for the Accounts, but was convinced how tedious a Work it would be, what Obstruction it would give to the Business of the Court; so he laid it aside: And observes, that what is lately done with respect to the Accounts of the Masters, shews the insuperable Difficulties of such an Undertaking.

From this Answer your Lordships may reflect, how just the Observation is, that the Commons have made in their Replication, when they say, the Earl of *Macclesfield* hath industriously avoided giving a direct and particular Answer to several matters positively and certainly alledged against him, which from the Nature of the Facts themselves must necessarily lie in his own Knowledge.

For he admits the Fact charged upon him by the Article; but to that part of it which charges that this was done to conceal the Deficiency in *Dormer's* Office, he makes no Answer at all.

And where the Article charges, that in order to obtain what is own'd to be done, he did represent to the masters, that unless they would comply, the money and effects of the Suitors should be taken out of their Hands; to this likewise he makes no Answer.

My Lords, It may be difficult for me who am little conversant in Law Proceedings, to lay this matter in its strongest light before your Lordships. But I take the Case to be this.

The Commons charge, that the Earl of *Macclesfield*, to conceal the Deficiency in *Dormer's* Office, order'd the masters to bring before him their Accounts of the Suitors Effects, and threatened that unless they would contribute towards that Deficiency, those Effects should be taken out of their Hands: They contribute, the matter is dropt, and no Accounts are ever brought before him.

The Earl acknowledges that he ordered those Accounts to be brought before him; that upon his giving that Order several masters contributed 500*l.* apiece, and that afterwards the bringing the Accounts was dropt; that this was done to conceal *Dormer's* Deficiency, and procured by the menace of taking the Effects of the Suitors out of the Hands of the masters cannot be denied: What part of the Charge then remains unadmitted? I must submit it to your Lordships, whether, upon what the Earl hath allowed in exprefs terms by his Answer, as well as what he hath admitted by not answering at all, the whole Charge of this Article doth not stand confessed, and the Commons might demand Judgment against the Earl, upon this Article, on his own Confession.

But the Earl adds some things by way of Excuse, I suppose, or Extenuation of the Offence; how immaterially and how evasively your Lordships will soon observe.

He denies, that the ordering the masters to bring in their Accounts, was done to terrify them to make any Contribution towards *Dormer's* Deficiency, and yet there is not the least Appearance of any other End or Design, for which it could be done; nor does he mention, or so much as pretend to any other End which with the least Colour of Reason could be intended by it; he says, indeed, he had a mind to know the State and Condition of the several Offices, that he might be able to make proper Regulations concerning them; but the thing was dropt before he had this Knowledge given him, and before he made any one Regulation in the matter; and yet he solemnly declares that this was his real and whole Intention: If it was his Intention, how came he to alter it so soon? Could it not last till one Regulation was made in a matter which wanted it so much?

Your Lordships will from hence judge, That the Crime which the Commons charge upon the Person at your Bar was not a Sin of Ignorance; he was informed of the miscarriage of the Officers of his Court, he was conscious that it needed Regulation, he had sometime a Thought and Intention to make such Regulation; but, alas, it soon proved abortive, and the intended Reformation, however necessary for the Honour of the Court, as well as the Safety and Advantage of the Subject, was soon laid aside: A Conduct so weak and so greatly inconsistent, as not to be accounted for in any Person, who had not been capable of pleading Innocence and Pardon to the same Fact.

However his Lordship having found it necessary to excuse this proceeding with the masters, by pretending an Intention to make some Regulations concerning them; it became as necessary, in the next Place, to make some Apology for not proceeding to such Regulations.

And for this he says, that it would be a difficult and tedious Work:

That it would be an Obstruction to the business of the Court:

That what has been lately done shews the insuperable Difficulties of the Undertaking.

I may reasonably fear I should grow tedious to your Lordships if I should attempt to take notice of all the Inconsistencies, Inconsequences and Evasions in the Answer to this single Article.

Upon what account was the Person now at your

Bar advanced to the highest Station of the Law; intrusted with the Distribution of Justice and Equity in his Majesty's supreme Court in *Westminster-Hall*, if it was not to secure the Property of the Subject to those to whom it did in Conscience belong? And upon what Account were the moneys brought into Court deposited with the masters, but only for safe Custody, till it appeared to whom Equity would determine the Right?

But when it was once manifest that those, who were employed in this trust, had shamefully broken it, and by notorious mismanagement were likely to bring Ruin to all the Suitors of the court, was it fit to cherish and cover up the Evil because it was a difficult and tedious Work to redress it? Was it likely to be less difficult by the Delay, or rather did not every Day propagate and increase the mischief, and make it less capable of Remedy? Or could any thing be more proper for the Business of the court?

Your Lordships have too great Sagacity not to discern the Weakness of such an Excuse, nor will you easily be persuaded to believe, That the Earl of *Macclesfield* was only going on in a Path his Predecessors trod before him, or that he is to be sheltered, because what hath been since done hath met with Difficulties in the Undertaking.

It is known, how upon the first Failure, in the Time of his Predecessors, an effectual Remedy was immediately applied; and that those, who have since attempted to give an helping hand, have prevented any new Eruption of the Evil complained of; and if the undertaking was attended with Difficulties, their care and commendable Zeal for the publick Service have already been able to surmount them in some measure; altho' the gross encouragements given by the Earl of *Macclesfield* had laid such a strong Foundation for those Difficulties, as if he had designed really to make them insuperable, that they might serve for such a Sort of Excuse as he now endeavours to draw from them.

But the Earl alleges further, that he believes the masters, who contributed towards *Dormer's* Deficiency, did it freely and out of their own money; and that in bringing them to contribute he followed the Precedent in *Dr. Eddisbury's* Case.

I need not trouble your Lordships long upon this Branch of the Article, since no one besides his Lordship can well believe the masters contributed freely; and the Proof we shall lay before your Lordships upon this Head will give full Satisfaction, that none of them did it freely, nor all of them out of their own money; nor is it the crime the Commons charge, that the masters were prevailed on to contribute towards the Deficiency; but that the Earl, whose high Station made it his Duty, when he was informed of the Deficiency, to take care to redress it, did not, as in the case of *Dr. Eddisbury*, provide that the whole money belonging to the Suitors should be effectually answered; but instead of following that Precedent in the just and honest use of it, he turned it to answer his own corrupt purposes, and to conceal from public notice, that loss to the Suitors which it was his Duty to have wholly prevented.

The next Article we proceed to is the sixteenth, which charges, that one *Elizabeth Chitty* having obtained an Order of the 17th of *March*, in the tenth Year of his present Majesty, whereby Mr.

Edwards, who succeeded in Mr. *Dormer's* office, was order'd to pay 1000*l.* part of a very large Sum due to her, which had been paid into *Dormer's* Hands; Mr. *Edwards* complained of this as an Hardship to him, who had never received the money; upon this the Earl would have persuaded the rest of the Masters to pay the money to prevent a Parliamentary Enquiry, and they refusing, he paid it himself to one Mr. *Lochman* for the use of the said Mrs. *Chitty*; with Intimations however, that she must not expect any more of the 10,000*l.* which had been paid on her account into *Dormer's* Hands.

Your Lordships will be surprized at the Detection here made both of the Guilt and the Boldness of the Offender; that the Person, who is so sensible of his Crime, as to tell the Masters this matter would affect both himself and them, who discerns the monstrous consequences of the mischief before him, who foresees the Punishment of that crime by a Parliamentary Enquiry; that this Person, instead of applying Remedies to the Evil, should use little Artifices only to conceal it.

What Answer gives the Earl to this charge? He admits the Order made, and that Mr. *Edwards* refused to pay the 1000*l.* that he himself paid the money, and told *Lochmann* that was all they must expect from him; but he does not believe he had any Discourse with the Masters to persuade them to pay the 1000*l.* to *Lochmann*.

Your Lordships must be convinced of the Guilt, when the Offender himself hath not the assurance to deny it; he cannot deny but that he knew and represented the consequences that would ensue what was done; that it would produce a Parliamentary Enquiry; that it would affect himself as well as the masters, and that it would hazard the Forfeiture of their Offices. Your Lordships have now an Opportunity to vindicate the Honour of Parliaments, and to leave this Instruction to Posterity; that those who foresee their unwarrantable actions will give occasion for a Parliamentary Enquiry shall not be able by any contrivances, by any means whatever, to evade the Justice of it.

As to the last part of this Article, which charges, That on a motion in a cause, *Harper* against *Cafe* and others, relating to 260*l.* which having been paid into Mr. *Dormer's* Hands was in Danger of being lost, the Earl falsely and deceitfully declared he had heard there was a Deficiency in *Dormer's* office, but knew nothing of it only as public News: The Commons will give sufficient Evidence to your Lordships of the Truth of this charge.

The Earl indeed gives a large Account of this cause and the Orders made in it, and then concludes, he believes he expressed himself to this Effect, That he had indeed heard of *Dormer's* Deficiency, but that it had never come judicially before him upon complaint of any of the Suitors of the court; that several circumstances taken Notice of at large had concurred thereto, and adds, that he said he did not know how all these things would come out, and expressed himself to that effect and no other; and upon all this Circumlocution in the Answer, without any denial of the Words as they stand charged, we have reason to believe your Lordships would be very well satisfied without further Proof, that the Words mentioned in the Article were undoubtedly used by the Earl of *Macclesfield*.

It is further observed by the Earl, that this happened after such time as the Masters Accounts had been laid before the Lords of the Council, and had been under the Examination of the Judges and others to whom they had been referred by his Majesty; and there may be some reason to doubt whether the Knowledge of a Deficiency had been so soon declared by his Lordship, if the Examination under which his Majesty's abundant Goodness and Care for his People had put those Accounts, had not already laid open and made a public Discovery of it.

The 17th Article charges, That tho' the Earl of *Macclesfield* knew of the great Deficiency in *Dormer's* office, yet to conceal it, in order to carry on his corrupt and unjust Designs, he made Orders upon Mr. *Edwards* for the payment of several sums, which were paid without Regard to the Proportion the rest of the Suitors were justly entitled to out of *Dormer's* effects, and consequently to their great loss and Prejudice: To this the Earl answers with his usual Candour, That he never endeavoured to conceal the Deficiency, but as he was under a full Persuasion it would in due time be made good; that he did not think it incumbent on him *ex officio* to make a Declaration of an Average; that he doth not know any Order was made by him for Mr. *Edwards* to pay Money lodged with Mr. *Dormer*, but believes several Orders were made by the Court for that Purpose.

Your Lordships upon the bare reciting the Words of the Answer, will perceive the Art and Fallacy of the Answerer; he doth not know any Order was made by him, but believes several were made by the Court; as if he could hope to make your Lordships believe, he was a Stranger to, and unconcerned in the Orders made by the Court, of which he was the only Judge.

He admits he did endeavour to conceal the Deficiency, but was persuaded it would be made good in due time, without acquainting your Lordships with any Grounds for that Persuasion, or even mentioning when he thought that due time would come.

He intimates it was incumbent to make a Declaration of an Average, but thought it not incumbent upon him to make it *ex officio*: He could not deny it to be the most equal rule, that if a loss was inevitable, an Average ought to be made; that the loss might be born equally and in proportion among all: He could not deny the making Orders to pay some was inconsistent with, and destructive to this Equality; and he could not however think it incumbent on him to do this *ex officio*: and yet it belonged to no body's Office but his own to effect it.

Thus your Lordships may observe how, to every Article, the Answer either admits the charge or uses loose, general, or foreign Circumlocutions to evade it, when the Evidence of the Fact will not allow him to deny it; yet he would be thought to say something at least in excuse: But his Knowledge of your Lordships superiour Understanding, ought to have deterr'd him from all Expectations of imposing upon your Lordships by any little Shifts and Artifices of this kind; nor should he hope to pass here the Answer as sufficient which must have been reported contrary, If I am rightly informed of the Practice, by any of the Masters of his Court.

But

But I shall not longer detain your Lordships with Observations in matters in themselves so evident; what is admitted to every one of these three Articles is sufficient to justify the Charge of the Commons, and whatever remains but imperfectly admitted, we doubt not, by Witnesses and other Proofs, to make out to your Lordships entire Satisfaction.

My Lords, It is a Province enjoined me likewise, to maintain the Charge exhibited by the Commons of *Great Britain*, in the fifteenth, sixteenth, and seventeenth Articles of their Impeachment against *Thomas Earl of Macclesfield*. And it is with the greater Chearfulness I undertake that Province, since I come to demand that Justice, which your Lordships are always disposed to administer, to every Subject of *Great Britain*; and therefore I cannot but be fully assured of your just Inclinations, to do equal Right where it is demanded by the House of Commons, the Representative Body of the whole united Kingdom.

It is very strange, that the Earl now under Prosecution; who hath been so many Years within the Walls of this House; who hath so long been Witness of your Lordships great Integrity and Wisdom, should not thereby be deterred from attempting what might subject him to your Censure. But it is still more unaccountable, that a Person, who hath had so long Experience of that Judgment and Sagacity, whereby you skilfully distinguish between right and wrong, should hope, by the Artifice of Words, and loose, general, evasive Expressions; that he should ever hope, I say, my Lords, by such Fig-leaves as these, to hide himself from the Eyes of your Lordships impartial Justice.

The worthy Gentleman, who hath preceded me upon this Head, hath so fully open'd the several Articles now under Consideration, and hath so clearly detected the Sophistry and Insufficiency of the Answers that are given to them, that I shall not need to be long upon that Head; it would indeed be difficult to add any thing new to what hath already been observed, did not the innumerable Fallacies and Inconsistencies with which his Answer abounds, continually supply fresh Materials for Observation.

But I shall content myself only to take Notice upon the Answer to the fifteenth Article, that the Earl stands in a manner convicted by his own Confession: He admits the Fact, but would avoid the Consequence by saying, that he really intended to make the Masters bring in their Accounts, altho' he did not do it: If it was intended, why was it not done? It was a difficult and a tedious Work.

I am surprized, my Lords, to find that any Person should expect to satisfy your Lordships, by so weak, and frivolous an excuse.

A Person who presides in the highest Court in *Westminster-Hall*, is informed of some unwarrantable Practices of the Officers to whom the money of the Suitors is intrusted, which for want of due Care hath already proved very pernicious, and must in Time prove destructive to the Property of all the Suitors of that Court, unless some speedy Check be put to this growing Evil: is convinced the matter needs Regulation; but he lets it go on, because it would be a difficult and tedious Work to redress it.

In moral Evil, my Lords, the Continuation of the Practice of an ill Habit, because it is difficult to break it, is so far from extenuating, that it is justly esteem'd to aggravate the Fault; and I don't doubt but that your Lordships will have the same Sentiments in this Case; for since it was necessary to apply a Remedy, the sooner it was done the better, and the Difficulty of the Work should have been a Spur, rather than a Check to a vigorous Endeavour for redressing it.

In his Answer to the sixteenth Article, your Lordships will observe the same Prevarication spread through the whole: The Widow *Chitty* having a considerable Sum of Money, to which she was intitled, brought into Court, and deposited in Mr. *Dormer's* Hands for the safe Custody of it only, petitions for 1000 *l.* part of her own money; such a petition could not be denied entirely, without bringing on a speedy Enquiry of the Causes and Occasions of the Embezzlement which had happen'd in that Office; and the Discovery must have brought on a Necessity of remedying the Evil, that would thereby have been made so publick, and so notorious.

An Order therefore is granted, that the 1000 *l.* should be paid; but then the Difficulty is renew'd, how to make that Payment without discovering to the Publick the Mismanagement; which must have put a Stop to the Sale of the Masters Places, which were disposed of at exorbitant Prices, and brought in an immense, tho' illegal Gain. Mr. *Edwards* would not pay it; he had no money of Mr. *Dormer's* in his Hands; the next Application was made to the Masters of the Court, to see if they could be prevailed on once more to raise a Sum by Contribution amongst them; to this End they were told, that if they did not comply, *Dormer's* Deficiency would be discovered; and that might occasion a Parliamentary Inquiry, the Consequence of which might be, the Forfeiture of their Offices, bought contrary to the Statute of *Edward* the sixth: that this might affect himself a little, but them much more; all this my Lords, is charged in this Article, and not denied by the Earl, but in such a lamentable, evasive manner, as betrays more Guilt than an open, and ingenious Confession.

It passes my Observation, in that little View I have been able to make of past Times, that any Judge of a Court in *Westminster-Hall*, should own the Knowledge of so great a Crime in the Officers of his Court, as that they came into their Places contrary to Law, without any Censure, or Blame for it.

But that a Person raised by the unmerited Bounty of his Majesty, to preside in the highest Court there, to conduct the Administration of Justice agreeable to the Rules of Equity and good Conscience, as his Majesty's Vicegerent in that great Station; that such a Person should not only be conscious of the Illegality of the Masters obtaining their Places, and a Party to such Illegality, but should have the Assurance to make use of that as an Argument, to extort money from them, in order to prevent the Discovery, and the Punishment consequent thereto, will, I persuade myself, stir up in your Lordships the greatest Indignation.

It seems he apprehended the Terror of a Prosecution by Parliament might have some Effect upon them, and engage them to comply with his Demands,

mands, altho' it had not the least Effect upon himself. It was a proper Expedient to bring them into a Contribution of 1000*l.* but it was not sufficient to deter him from those Practices, which justly merited such a Prosecution.

Our Ancestors thought it became them to keep in Awe the greatest Subjects in the Realm, and none were too big to be call'd to Account for the Wrongs and Injuries they did the Publick; the Case of *Michael de la Pole* in *Richard* the Second's Time, and *Card. Woolsey* in *Henry* the Eighth's, with many others, some of which have been already mention'd to your Lordships, are flagrant Instances of it. And we have now a just Opportunity of shewing, that we have the same Regard for the Honour of Parliaments, and the Good of the People; that no one ought to presume to transgress the Laws, be his Station, or his Power never so highly advanced, upon prospect of Impunity; since a *British* Parliament can reach the most lofty, and punish the most insolent, corrupt Offender: So that he, who is not restrained within the limits and boundaries of the Law out of Awe and Reverence to it, must expect to fall a Sacrifice to the Power of their Justice.

Your Lordships have here an Instance of one placed at the Head of the Law, who is conscious that his Actions are contrary to it; who makes no Scruple of avowing this, where it may serve his Interest, defies a Parliamentary Inquiry, and goes on in Practices which he knows, and professes to be illegal. Your Lordships will observe how he endeavours to shelter himself from Danger, and by an infamous Degree of Dissimulation; what he openly avows, to raise a Contribution from the Masters of the Court, he more publickly denies, with Design to carry a plausible appearance in this Affair to the People.

The Deficiency of *Dormer* at last became a publick Clamour; it was not *Mrs. Chitty* only, but many others wanted their Money deposited and entrusted in the Hands of the Court, and by the Court entrusted to the Custody of the Masters; and the Suitors then made open Complaint upon this Subject. In the Cause therefore of *Harper* and *Case*, a motion being made, that 260*l.* lodged in *Dormer's* Hands might be paid before the Execution of the Conveyance, directed by the Court; he who had been so long inform'd of the shameful Embezzlement of the Money of the Suitors in *Dormer's* Office, who had invented so many artful Contrivances to conceal the Knowledge of it from the Publick, in order to serve his own private, unjust, corrupt Designs, the matter being now declared in open Court, he could no longer deny the Knowledge of what he was so plainly inform'd of; that therefore all By-standers might imagine his Care and Concern for the publick Good was so extraordinary, that he could not have forbore to have remedied the mischief if he had been before apprized of it; he then publickly and falsely declared that he had heard there was a Deficiency in *Dormer's* Office, but that he knew nothing of it but as publick News. In the Earl's Answer, my Lords, he explains this Expression, by saying, that it never came judicially before him upon the Complaint of any of the Suitors of the Court: This I am persuaded your Lordships will think a very poor Excuse, that he who was the

Protector of all the Fortunes of the Fatherless and Lunatics, should not upon the first Intimation, or even Suspicion that they were like to be Losers, cause a strict Examination to be made into it.

It can scarce be believed a Person who has so great a Capacity to judge in what manner he ought to act, should ever descend to so low a Degree, so unworthy the Station in which he was placed, so unworthy the Dignity and Honour to which he had been advanced, as to deny the Knowledge (otherwise than as News and accidental Discourse) of what he had been so frequently inform'd of, and what he had taken Pains so long, and so deliberately to conceal.

I need not use any Words to represent to your Lordships the Indignity of such Prevarication, who will upon the first Intimation be sensible of every thing that may seem in the least Degree to depart from the Rules of Honour: It is indeed almost inconceivable, that a Person advanced to be a part of your noble Body, should so far forget himself and you; it is what, if he could have expressly denied by his Answer, we must have despair'd to have gain'd Credit in, tho' we could have proved it by inferior Witnesses; but his Answer will sufficiently convince your Lordships of the Truth of the Allegation; for he who could not directly deny a Charge of so gross a Crime, must by his own Silence, in a matter of so heavy a Nature, be concluded to be guilty of it.

I have already detain'd your Lordships so long upon this sixteenth Article, that I shall not take the liberty of trying your Patience by making any Observations upon the Seventeenth, but shall leave it to the Gentleman that is appointed to assist in it.

It contains only repeated Instances of a corrupt Endeavour, still to conceal the Knowledge of that Deficiency from the Publick, which it was his Duty to have prevented; or at least to have supplied, and rather to have made it good, than have conceal'd it. What Ground or Reason could there possibly be, why a mischief of this Kind, if it did happen by Accident, should with so much Industry be covered and continued? When that Concealment could answer no good or honest Purpose, but must by the Delay increase and grow more desperate, and tend to bring Destruction and Ruin on the Suitors of the Court?

But as your Lordships, by the Proofs upon the former Articles, had an Opportunity to take notice what large Sums of Money had been paid for the Purchase or Exchange of the Places of the Masters of the Court of *Chancery*; it is natural to conclude from thence, that the Masters were necessarily to be indulged in making use of the Suitors Money in their Hands, in order to make up the vast Sums they had given for their Offices; and if there had been miscarriages in Attempts of that Kind (which in bold Adventurers for such Ends could hardly be avoided) the Discovery of such a mischief would have made it absolutely necessary to have removed the Money from those who had proved such unfaithful Stewards, or at least to have obliged them to have given proper Securities to indemnify those, whose Fortunes were intrusted to their Care, from any loss which might happen by their mismanagement; the Consequence of which Caution must unavoidably have drawn on a Retrenchment

trenchment of the exorbitant Prices which of late have been given for those Places.

But I need not give your lordships any further Trouble, by enlarging more upon this Topick, who ought rather to make Apology for having been already so long upon it; the Gentleman who went before me, and he that will follow me upon this Head, will be sufficient to give your lordships more ample Satisfaction; and the Certainty of the Facts (which the Earl himself seldom hath the Assurance to deny, but only attempts by false Colours to avoid the Inferences from them) will, where-ever there is need or occasion, be supported, and made good by full Evidence.

Mr. *Thompson*. My Lords, I am commanded by the Commons to assist in maintaining the fifteenth, sixteenth, and seventeenth Articles of their Impeachment. The Gentlemen who have gone before me, have acquitted me from giving your lordships any Trouble upon two of these Articles; and I count it my good Fortune that the third is fallen to my Lot, since the Evidence to prove the Charge contain'd in it, is so very clear and direct, that little need be said, either to shew the Necessity of the Accusation, or the Truth of the Facts alledg'd by the Commons.

Mr Lords, I will avoid, as much as I can, recapitulating any Evidence which has been opened before; but the Crimes of the unfortunate Earl of *Macclesfield* are so interwoven, that it may be sometimes necessary for me to look back upon Circumstances that have been spoken to upon other Articles.

The Commons in the seventeenth Article set forth, 'That the Earl very well knew there was a Deficiency in Mr. *Dormer's* Office, and that Mr. *Edwards* (his Successor) had not sufficient in his Hands to pay the whole money due to the Suitors.' My Lords, as to the Earl's Knowledge of this Deficiency, he admits it in his Answer, by saying, 'He never endeavour'd to conceal it:' and Mr. *Edwards* has not only declared upon Oath this Day at your Bar, there was a Deficiency, but also, 'That it was laid before my Lord before he was admitted.'

Yet 'Notwithstanding he very well knew it,' the Commons aver, 'That he did from time to time make Orders for the Payment of several Sums out of this Office,' and in support of this Charge, we shall produce divers of his Lordship's original Orders.

And, my Lords, I appeal to the Testimony of every master in *Chancery*, who has been, or may be examined before you; I appeal to your Lordships Observations upon the Evidence you have already heard, whether or no such Proceedings were not calculated, 'to carry on his unjust Designs, and to prevent a Parliamentary Enquiry.'

As to the latter part of the Article, 'That Sums were paid without any regard to, or consideration of the Proportion the rest of the Suitors were entitled to,' we shall not only prove the Fact, but shew likewise that this Partiality was not carried on inadvertently, but deliberately; that this unequal Distribution of Right did not flow from a supine Neglect, or careless Oversight, but sprung from a deprav'd Intention, and determin'd Corruption,

Mr. *Edwards* will acquaint your Lordships, that

he forewarn'd the Earl of the Consequences that must follow from his Payments, who still bid him 'continue paying,' and Mr. *Lightboun* (reasoning with him as became a Person associated to the Chancellor) urg'd, 'that he did not think any measures justifiable in a Court of Equity, where- by any undue Preference might be given, and some have their whole money and others be left in the Lurch.'

So that this Misdemeanor, this Fraud, was in 'manifest and wilful Violation of the Trust re- pos'd in him,' a Trust, my Lords, (when faithfully executed) wherein consists the Glory and Happiness of this Kingdom. It is the Security of all our Properties, a Refuge for distressed Widows, and a Protection to helpless Orphans; and when the Commons saw that Oppression had possess'd the Seat of Justice, that Partiality had usurped the Throne of Equity, that the Guarantee for our Fortunes was become the Invader of them, they beheld it with Indignation and Horror, and have applied to your Lordships to demand Redress and Vengeance.

Now, my Lords, I beg your Attention, whilst I take a view of the Earl's Answer.

He says, 'He never endeavour'd to conceal *Dormer's* Deficiency.' You will hear that he did, and alledg'd, 'It would be for the Honour of the Court to conceal it.'

The accus'd Earl proceeds, 'As he was under a full Persuasion the same wou'd be made good.' I dare say the Earl of *Macclesfield* will at a proper time acquaint you what were the Grounds of this 'Persuasion.' The Commons observe, with the deepest Concern for the miserable Suitors, that they have met with no Foundation, no Colour of Reason to induce 'Them' to entertain such Hopes. On the contrary, the Master who succeeded to Mr. *Dormer's* Office frequently represented to the Lord Chancellor, 'The Hazards the Suitors were in from this Deficiency.'

Yet the Earl boldly asserts, that this very Master 'Mr. *Edwards* was under a firm Persuasion the whole would be made good.' We shall convince your Lordships he never had the least Prospect, the least Glimpse of it; and I'm afraid the Earl and he had just the 'same full and firm Persuasion of the State of this Office.'

The noble Lord goes on: 'And as no Application was made to him by Persons concern'd to stop Payment.' I suppose he means before that remarkable Motion which produc'd his extraordinary Declaration in open Court.

Perhaps the learned Lord will here make another notable Distinction, and explain by the Words 'Persons concern'd,' the 'Suitors only;' and have recourse to his old Subterfuge, 'That it never came judicially before him.' We think, and no doubt your Lordships will think so too, that 'Mr. *Edwards* was a Person concern'd;' that his pressing Applications ought to have been sufficient, and that our Evidence is not to be defeated by so weak an Evasion.

But admitting, my Lords, 'That the Earl had this full Persuasion, and that no Application was made to him to stop payment:' What Justification does he draw from thence? 'That he did not think it a Duty incumbent upon him, *ex officio*, to make a Declaration of an Average.'

How contradictory, my Lords, how inconsistent is this with his Answer to the fifteenth Article! There he pleads the Case of *Dr. Eddisbury*, and in that Case an Average was declar'd. The Precedent was follow'd to encourage Contribution, but was laid aside when it directed him to secure the Suitors their Proportions. Here I can't help observing, that, as the Earl has thro' the whole Series of his Actions copied Precedents from the worst Views, so he has now quoted them in the most disadvantageous manner. When his Predecessors took small Sums, he ventur'd by their Examples to swell his Demands to exorbitant Prices; but when their Patterns shou'd have led him to a nice and scrupulous Caution in the Choice of his Officers, he disdain'd to tread in their Footsteps. And, my lords, this Precedent was good for the corrupt Purpose of concealing a Deficiency, but ceas'd to be so, when it was to do Justice to the injur'd Suitors. He has turn'd his Weapons upon himself, and if *Dr. Eddisbury* guards him in one Article, he must of necessity wound him in another.

What I shall next take notice of in his Answer is, "That he does not know any Orders were made by him except in the Case of *Chitty*." That Case is attended with such Circumstances, and may be follow'd by such Consequences, that he has not yet, nor will, I dare say, soon forget it: However, I presume he will recollect others, when we produce his own original Orders for three several Payments, one of 400 *l.* another of 642 *l.* and a third of 2000 *l.*

This Evidence alone, my lords, would support this Article, but the Earl has thoroughly confirm'd the Charge in his next Sentence. "He believes Orders have been made by the Court."

Tho' his own Orders were criminal, Orders from the Court were innocent, till they received his Stamp of Guilt, who knowing the Condition of the Office, commanded "Payments to be made as Orders came in." The impeach'd lord (and were this his only Offence, therefore justly impeach'd) commanded these Payments.

His Defence is again become his Accusation. Orders from the Court wou'd have ended, had he suffer'd the Master to stop Payment, but that would have discover'd what he took such unwarrantable Pains to conceal; and from that Concealment arose the Injuries to the Suitors: that was the malignant Ground-work of his infamous Designs, and is now the Subject of our just Charge.

Certainly the Earl did not mean here obliquely to insinuate that he had a Sharer in his wicked Administration, or to bring another great Name in question with his: That were not for his Service. Characters, my Lords, receive their Lustre from their Foils.

My Lords, I have open'd to you, that we shall prove the Accusation contain'd in the Article, and enforce it from the Earl's Answer. If your Lordships find we have made good our Charge, I submit it to your Lordships what Judgment you will pass upon such "manifest and wilful Violations of the Rights of the Subject."

Far be it from me to add load to the Guilty; here indeed it is impossible. Crimes committed by a Lord Chancellor, are capable of no Aggravations; his Station enhances his Guilt. Such Crimes are now become a parliamentary Enquiry,

as the Chancellor's conscious Heart long since pre-fag'd; and the Commons think they have shewn good Reason why your Lordships should convince the Earl of *Macclesfield* that he flatter'd himself with vain Hopes, when he menac'd the Masters, "That this Enquiry would affect him, but them much more."

The Commons are sensible, that he who has so long been a Stranger to Justice, will at last meet with it here; and that your Lordships providential Wisdom will never suffer such Reproaches to be cast upon this, as have been thrown out upon another Nation. "That a Judge is an Evening Wolf; that Justice standeth afar off, and Equity cannot enter."

Mr. Serj. Pengelly. My Lords, we beg leave to call our Witnesses in support of these Articles. We desire *Mr. Conway* may be call'd.

Mr. Conway call'd and sworn.

Mr. Serj. Pengelly. My lords, we beg leave that *Mr. Conway* may be ask'd, whether he paid any money in the Nature of a Contribution, and when? We have the Receipt here (shewing it to *Mr. Conway*.)

Mr. Conway. My Lords, this is a Receipt given me by *Mr. Edwards*, Aug. 11, 1721. for the Sum of 500 *l.* contributed by me.

He reads the Receipt.

Aug. 11, 1721.

Receiv'd then of master *Edward Conway*, Esq; the Sum of 500 *l.* voluntarily contributed by him in Aid of the Deficiency of my Predecessor *Fleetwood Dormer*, Esq; in the Cash of his Office, which I promise to repay in case the same shall at any time hereafter be otherwise made good,

H. Edwards.

Mr. Serj. Pengelly. We desire he may be ask'd in what manner he paid it, whether it was out of his own money or stop'd out of any other money paid into Court?

Mr. Conway. Soon after, (my Lords) I was admitted a master, *Mr. Dormer's* Deficiency broke out; and the Contribution of the masters being then spoken of, I was among the rest applied to, to contribute: I was sworn in in *January* 1720, and this Receipt is in *August* 1721, when *Mr. Edwards* came to me to bring me some junior masters money, which he was to deliver to me, out of which he stop'd this 500 *l.* upon account of the Contribution which I had promis'd to come into.

Mr. Serj. Pengelly. We beg leave that *Mr. Conway* may be ask'd, whether the 500 *l.* was allowed or deducted at that time out of the Suitors money?

Mr. Conway. Yes, my Lords, it was stop'd by him at that time.

Mr. Serj. Pengelly. What Persuasions were made use of to induce the masters to contribute to pay this money?

Mr. Conway. When the Affair of *Mr. Dormer* came out, what I can remember is, That letter that came from him from *Holland* was sent to *Mr. Hol-*

ford to be read before the Masters in the publick Office, and there the Masters spoke of it what they thought proper.

Mr. *Serj. Pengelly*. What Intimation was there from him, or from any other Person, of any Direction from my Lord *Macclesfield* relating to the Payment of this 500 *l.* Contribution?

Mr. *Conway*. I think my lord *Macclesfield's* Secretary was there at the time Mr. *Dormer's* letter was read. I think he had spoken what he had principally to say before I came in, but I think he said the Consequence might be fatal to the Masters, if we did not take care of this Deficiency.

Mr. *Serj. Probyn*. We would not presume to interrupt the learned Managers; but I think the particular time when this was done, and the particular Sums that were paid by each Master should be stated. I remember Mr. *Edwards* was pleas'd to say the first 500 *l.* that was contributed was paid upon the Day he was sworn in, which I think was in *May* 1721. We desire therefore that he would please to express the Day, when every other Sum was paid in.

Mr. *Sol. Gen.* We only desire this Gentleman to speak to his own Payment.

Mr. *Conway*. The Receipt is dated *August* 11, 1721. Then Mr. *Edwards* stopt so much Money.

Mr. *Serj. Pengelly*. We desire he may be asked how he paid that Money, whether voluntarily, or freely, or upon what Ground?

Mr. *Com. Serj.* I beg Pardon, but I must beg leave that the Witness may declare at what time this Transaction was.

Mr. *Conway*. It was the Day the Receipt bears Date, the Transaction happen'd *Aug.* 11, 1721.

Mr. *Sol. Gen.* We desire he may be ask'd what induced him to pay in this Sum?

Mr. *Conway*. It was stopt as a Contribution towards making up Mr. *Dormer's* Deficiency.

Mr. *Serj. Probyn*. My lords, we desire that this Witness may be ask'd, whether there was any preceding Promise or Agreement to pay this money?

Mr. *Conway*. My Receipt mentions a Promise.

Mr. *Serj. Probyn*. Then I desire to know how long before this Promise was made?

Mr. *Conway*. Soon after the Deficiency was spoken of in Mr. *Dormer's* Office, in *February* 1720. about three Weeks after I was admitted.

Mr. *Edwards* called.

Mr. *Serj. Pengelly*. My Lords, we only call Mr. *Edwards* to ascertain the time when he received the Money of Mr. *Conway* for his Contribution.

Mr. *Edwards*. My Lords, according as I have taken it out of my Book, it was the 11th of *August* 1721.

Mr. *Serj. Pengelly*. Now, my Lords, we shall shew the manner how this Payment was made.

Then Mr. *Lightboun* was called and appeared.

Mr. *Plummer*. I desire Mr. *Lightboun* may be ask'd if he was ever press'd to pay 500 *l.* by whom, and for what?

Mr. *Lightboun*. Not long after Mr. *Dormer's* Failure, Mr. *Cottingham*—

Mr. *Com. Serj.* My Lords, I hope Mr. *Lightboun* shall mention the time as he goes along.

Mr. *Lightboun*. Not long after the Failure of Mr. *Dormer*, I met Mr. *Cottingham* by accident at

my Lord Chancellor's Room at *Westminster*, and he ask'd me, whether there had been mentioned to me a Proposal of paying or advancing 500 *l.* a piece towards making up the Deficiency of Mr. *Dormer's* Office, for carrying on the Business there? I said I had heard it; he said it was proposed that it should be immediately raised, that the Business of the Office might be carried on, till Mr. *Dormer's* Effects could be disposed of and sold; and some Intimation was given, that possibly we might have our money again as *Dormer's* Effects came in. I have heard such a Thing talk'd of, says I, but I will never come into it; I thought it attended with dangerous Circumstances, and a dangerous Precedent, and therefore I was resolv'd I would not contribute.

Mr. *Plummer*. Can you recollect what passed afterwards?

Mr. *Lightboun*. He said all the rest would. I said I would not, and I continued the same Resolution when I talked with the masters about it.

Mr. *Plummer*. I desire he may be asked if my Lord *Macclesfield* ever press'd him to pay this money, and when?

Mr. *Lightboun*. It was often mention'd to me by the masters, why I did not contribute as the others did, and I was made not a little uneasy for not having done it. I think in the beginning of the Summer 1722, as near as I can remember the time, my Lord Chancellor coming out of Court at his own House, (where I had the Honour to have been sitting with him) said, Mr. *Lightboun*, I would speak with you. I followed his Lordship into his House up into his Study, where my lord was pleas'd to say, Mr. *Lightboun*, I am very sorry to hear that you have not contributed your 500 *l.* towards making up Mr. *Dormer's* Deficiency; for, says he, it must be considered, that it will be attended with ill Consequences, if that matter is not taken care of. I asked him, was it your Lordship's Proposal? He said it came from the two senior masters, but he approved of it. I answered, that if it had come from his lordship, it might have had a different Consideration, but as it was theirs, and to serve their own Purposes, I hop'd his lordship would not insist upon my coming into it. The two senior masters had been long in their Offices, were grown in Years, and were willing to get out, and fell at high Prices; one of them had slipt out, and the other was about it; that I was but lately come into the Office, and intended to continue in it, and said, I will not concern my self in this Affair, unless the Office can be put upon such a Foot that the Suitors may be made safe and easy.

Mr. *Serj. Pengelly*. My lords, I desire he may be ask'd, whether at this time my lord *Macclesfield* made use of any Reasons, Arguments or Promises towards prevailing upon him to pay this money?

Mr. *Lightboun*. I can't say my lord press'd me; he left me to my own Inclination, but advis'd me to pay it, and not to stand out; to do as the rest did, and not to stand alone in it.

Mr. *Serj. Pengelly*. Whether did he mention of what Consequence or Advantage it would be to the Masters?

Mr. *Lightboun*. His lordship said, if there were not some measures taken it might be of ill Consequence, and that this was the only Expedient he thought

thought of. I told his Lordship, I thought there were many others, but this was one I would not come into; but that it was not for me to presume to dictate to his Lordship, I thought it did not become me.

Mr. *Serj. Pengelly*. My Lords, I desire he may be ask'd, if after these Discouragements my lord *Macclesfield* did not again demand money of him, and when?

Mr. *Lightboun*. My Lords, in the Year 1724, about the latter end of *July*, I met Mr. *Cottingham* by accident at the Tavern. He came in and desired me to go into a Room, for he had something to say to me. He told me, that my Lord *Macclesfield* had sent him to tell me, that he wonder'd that I had not paid my 500 *l*; that there was 1000 *l*. to be paid to Mrs. *Chitty*, or to Mr. *Lockman*, that must be immediately paid; that my lord had been apply'd to, and much press'd, and it must be forthwith paid, and he expected that I would advance the 500 *l*. and the rest of the masters 50 *l*. apiece, which would make up the Sum. I said to Mr. *Cottingham*, I cannot think my lord *Macclesfield* would send you on such an Errand to me; I told my Lord formerly I would not pay it, I was with his Lordship this morning and he said nothing of it, and shall have the Honour of waiting upon him in a Day or two, and if he then think fit to talk to me about it, I shall give him a proper Answer; but I don't care to send my Message to him by you, because messages are liable to be mistaken and misrepresented, and I will give my Answer myself. Upon that Mr. *Cottingham* began to be angry at my distrusting him and thinking that he came of his own Accord, and averr'd to me that he came with my lord Chancellor's Privy. I repeated the same Answer again to him, that I would give my own Answer to his Lordship, and would return none by him. In a Day or two after there was an Intimation given that my lord Chancellor expected all the masters to attend him at six a Clock in the Evening: we imagined that it was a call upon the other masters for more money, and for my five hundred Pounds. They had all declared to me they would never contribute any thing more, and therefore I desired them that in case that were the Business, they would freely declare their Thoughts before my Lord himself. I believe it was the senior master I pressed to do it, saying to him, it best becomes you to give the Answer; says he, if the Question be put, I shall propose that we may have time to consider of it. I desired he would not do that, it would encourage my lord, and he might think that if he importuned it farther we would comply, and for my part I am determined not to do it; so we went on to my lord, and were carried up Stairs, when we came there, my lord said, there hath been an Application made to me on the behalf of Mr. *Chitty* or Mr. *Lockman*, I think he was the Person expressly named, and that he had been much pressed by Persons of Distinction; and then he turned to me, and said, Mr. *Lightboun*, I am extremely surprized you have not paid the 500 *l*. as the rest have done. After he had us'd a good many Persuasions and Arguments, I told his Lordship it was with great Concern that I refus'd to do any thing

that his Lordship could desire of me; but this was a Thing of such a dangerous Consequence, that I would not contribute one Farthing, and that I had given his Lordship my Reasons before; if he would hear them again, I would repeat them again; but this one was of most Weight with me, that it might be a Precedent, and look'd upon as an Undertaking for one another, if ever there should be a national Inquiry into these matters; and that I would be answerable only for my own Debts: That as I had not contributed towards the misfortunes of others, I would not contribute towards Payment of their Debts; that I did not know but the paying Contributions to make good the Demands on other Offices might make Deficiencies in our own; I had always refus'd it, and never repented it, and I had the pleasure of hearing every master repent the doing it. I called upon the rest of the masters to deal ingeniously with my lord, to tell him what they had said when they had talk'd over the matter among themselves, that they would not contribute any more; upon that Mr. *Holford* got up and said, he would never do it. Then my lord said, he either would pay it himself, or take care it should be paid.

Mr. *Plummer*. I desire he may be ask'd, if my lord *Macclesfield* used any insinuations with respect to the Parliament?

Mr. *Lightboun*. I forgot that my lord *Macclesfield* was pleased to say, that the Consequences of not contributing to raise a Sum of money to pay the Debt of Mr. *Dormer*, might be that the money and Securities would be taken out of our Hands. I told him I was ready to deliver both the money and Securities the next Day, if his Lordship made the proper Orders, and I was properly indemnified. I think his Lordship said further, this may produce a Parliamentary Enquiry, and should it be resolved that purchasing a master's Place is contrary to the Statute of the fifth and sixth of *Edward VI*. you might lose your Places; to that I replied, I would quit my Office rather than hold it upon those Terms of paying other masters Debts. He went on further about a Parliamentary inquiry; I said, let the Consequence be what it will, I would not pay it. Then I called upon the other masters, who said they would not pay it.

Mr. *Serj. Probyn*. My lords, As to the paying of the 1000 *l*. to Mrs. *Chitty* or Mr. *Lockman*, I desire Mr. *Lightboun* may be ask'd whether the late lord Chancellor was pleased to say that he had or would take care to pay the 1000 *l*. himself, or what the particular Expression was that he then made use of, that he had taken care or would take care?

Mr. *Lightboun*. I can't remember at this distance of time, whether he said he had, or would take care to pay it. There is so little Difference, that I cannot say which. I do not pretend to say those were the very Expressions my Lord used to me, or I to him. I speak as to the Tenor or Purport of our Conversation, I would neither aggravate nor soften matters.

Mr. *Serj. Pengelly*. The next Witness we call is Mr. *Holford*, who was present at this Conversation.

Mr. *Holford* sworn.

Mr. *Serj. Pengelly*. We desire Mr. *Holford* may be asked, whether he was present at this time, as is mentioned, when the Masters were required by the Earl of *Macclesfield* to raise this 1000 *l.* for Mrs. *Cbitty* or Mr. *Lockman*.

Mr. *Holford*. My Lords, I was present at that Meeting. It was desired, as I apprehended, by my Lord *Macclesfield*, for us to attend him at Six o'Clock. When we came up there, I think, the first thing that my Lord *Macclesfield* said was, he asked Mr. *Lighboun* why he would not pay his 500 *l.* as others had done. Mr. *Lighboun* did give this Answer: That he had told him several times before, that he would not do it; he had given his Reasons, and it was in vain to repeat those Reasons again, he was of the same Mind still. My Lord then spoke of a Demand there was of 1000 *l.* on Mr. *Dormer's* Office for one Mrs. *Cbitty*, and Mr. *Lockman*, and I apprehended, my Lord mentioned it as if he intended that the Masters should contribute towards making it up; but he after said he would take Care of it. After that my Lord did not mention the 1000 *l.* but, in general, spoke of the Deficiency in Mr. *Dormer's* Office, and it ought to be made up; and he proposed, as I did apprehend, that the Masters should make it up. Mr. *Lighboun* did call upon me to declare; upon that I told my Lord, it was very unadvisable to contribute towards a Deficiency which no Body knew what it was; and the doing so would only be ruining one's self, for fear of being undone; and, for my Part, I was unwilling to do it; any Body else might do as they thought fit.

Mr. *Plummer*. In what Manner did my Lord address himself to Mr. *Lighboun*, did he do it in gentle Terms, or how?

Mr. *Holford*. He spoke pretty sharply to him.

Mr. *Serj. Pengelly*. What was said by the Earl of *Macclesfield*, to persuade the Masters to come into this Contribution?

Mr. *Holford*. My Lord said it was a grievous thing, there had not been that due Care taken there ought to have been; that those who came first had all their Money, and those that came after would have none; which would make a great Clamour upon the Masters.

Mr. *Serj. Pengelly*. What was said upon that?

Mr. *Holford*. I don't remember what in particular.

Mr. *Serj. Pengelly*. What was said, as to a Parliamentary Enquiry?

Mr. *Holford*. I remember my Lord did say, it might perhaps occasion a Parliamentary Enquiry. Suppose, said he, the Parliament should resolve, that the Office of a Master in Chancery is a Place relating to the Execution of Justice, and resolve that every Body that hath purchased those Offices is within the Statute of the 5th and 6th of *Edward VI.* It may affect me in some Degree, in the loss of the Disposition of the Offices; but it will affect you in the loss of the places themselves.

Mr. *Serj. Pengelly*. Whether any Person then asked my Lord, in what Manner it might come before the Parliament?

Mr. *Holford*. I asked my Lord myself, and said

it would be a Favour if he would give us his Opinion, in what Manner it might come before the Parliament, and in what way. He said, it might come in by the Committee for Courts of Justice, appointed by the House of Commons at the Beginning of every Session. But when I came out of the Room, I said, it was more likely to come by Way of Complaint than that Way.

Mr. *Serj. Pengelly*. I desire he may be asked, whether, at this time, the Masters agreed to come to a Contribution to pay this 1000 *l.* and what was said about it.

Mr. *Holford*. It was disagreed to; and when it was so, my Lord did say, that he himself would pay the 1000 *l.*

Mr. *Serj. Pengelly*. We leave that as a Circumstance of my Lord's endeavouring to prevent a Parliamentary Enquiry.

Mr. *Serj. Probyn*. My Lords, we desire Mr. *Holford* may be asked, whether he can be positive as to the time of this Meeting?

Mr. *Holford*. I believe it was in *July*, or *August*, 1724.

Mr. *Serj. Probyn*. You can't be positive?

Mr. *Holford*. No, I can't be positive.

Mr. *Serj. Probyn*. Whether was there, at that time, any Proposal made to raise Money, by any annual Sum or Payment out of the Offices, towards paying the Deficiencies by Degrees?

Mr. *Holford*. I do not remember any such thing.

Mr. *Serj. Probyn*. Was such Proposal made at any other Time.

Mr. *Holford*. I don't remember that it was ever proposed by my Lord. I have heard talk among the Masters of a great many Schemes and Proposals; but they never did agree in any one thing.

Mr. *Serj. Probyn*. I desire he may refresh his memory, and that he may inform your Lordships if there was not a Proposal made, that if they might be maintained in their Offices, as they then were, they would not then consent that a Contribution should be raised among the Masters.

Mr. *Holford*. No, I don't remember that; I believe it was mention'd, that supposing the Masters might be continued on the Foot they were, whether they would not think it worth their while to do it. I said it was a Matter fit to be considered, and I did not know but it might; but there was no Method proposed but what seemed difficult; and I don't remember that any thing was agreed to.

Mr. *Strange*. I desire he may be asked, whether, after they had contributed the 500 *l.* a piece, their accompts were called for by my Lord *Macclesfield*, in the Manner they were called for before?

Mr. *Holford*. I don't know but they might. The Manner of calling for those Accompts was thus: There was a Writing left in the publick Office, in which there were a great many *Items* in what Method those accompts should be brought in. I had prepared mine, and waited till they should be called for; but they were not called for, nor demanded; so I laid mine by.

Mr. *Com. Serj.* I desire he may be asked, whether this Discourse, in relation to the raising of Money, was to pay off the whole Deficiency, or confined to pay off this Demand of 1000 *l.*

Mr. *Holford*. I don't remember any Proposal, but only a Discourse that was started. I did not apprehend the whole Deficiency was intended to

be paid; for I never knew any Body that could tell what the whole Deficiency was, till of late.

Mr. Com. Serj. I desire to know, whether he speaks this from his Memory?

Mr. Holford. I can speak from nothing but my Memory.

Mr. Com. Serj. I desire that he will inform your Lordships, whether he doth not remember, that in *November* last there was a Signification to the Masters, and to him in particular, to bring in their Accompts?

Mr. Holford. Yes, my Lords.

Mr. Com. Serj. If there was such an Intimation in *November* last, to deliver in their Accompts, how comes it that you say you have them by you still?

Mr. Holford. This is a Mistake; you misapprehend me. The Accompt, that I mentioned before, was what was immediately called for, after the Failure of Mr. *Dormer*; but the Accompt in *November* last was what was called for by the Judges, and delivered into the Council.

E. of *Macclesfield*. My Lords, I desire to know, whether Mr. *Holford* can remember what the particular Directions, as to those Accompts, were, and whether the Accompts he prepared were drawn up according to those Directions?

Mr. Holford. Those Directions were many; in drawing up my Accompt, I did not draw it up exactly according to those Directions; but I drew them up to shew the Ballance of Cash and Securities in my Hands.

E. of *Macclesfield*. I would desire to know, whether they were not the like Directions as in *November* last, and whether the Masters did not think it impracticable to draw it up accordingly?

Mr. Holford. Yes, my Lords, they did; they thought it difficult; I thought it was not practicable without a great deal of Trouble.

Sir *George Oxenden*. I desire to know, whether it was required by my Lord Chancellor to look into *Dormer's* Deficiency, to see what the true State of it was at that Time?

Mr. Holford. All I heard of it was: I heard that my Lord had ordered Mr. *Edwards* to deliver in an accompt of Mr. *Dormer's* Office to me and Mr. *Bennet*: He did deliver one; but it was an Accompt done in Hast, and did not shew what the Deficiency was. For some of the Payments said to be made, no proper Vouchers were produced; there were mistakes, and it was not a proper accompt; and without examining it we could not depend on it.

Mr. Serj. *Pengelly*. He mentions, that at this meeting it was said, supposing the Masters might be continued on the same Foot they then stood, &c. I desire Mr. *Holford* may explain what he meant by the Foot they then stood on; what liberties and privileges were meant by that Expression?

Mr. Holford. I understood it was their continuing in the Possession of the money.

Mr. Serj. *Pengelly*. Whether that was to lock the money up in a Cabinet, or to have Power of the money to make use of it?

Mr. Holford. For my own Part, I should not have lock'd it up.

Mr. *Lutwyche*. I would beg leave to ask him, as he hath mentioned the calling for the accompts, whether he delivered any accompt to the Earl of

Macclesfield, till the Order made by the Council?

Mr. *Holford*. My lords, I did deliver an accompt to my lord *Macclesfield*, or to Mr *Cottingham*, of my money, but not of the Securities.

Mr. Serj. *Pengelly*. We desire Mr. *Edwards* may be called again.

[Accordingly Mr. *Edwards* was called and appeared.]

Mr. Serj. *Pengelly*. My lords, we beg leave that Mr. *Edwards* may give your lordships an account (because he was immediately concerned in a Demand made upon this Office) what application was made to him for this Mrs. *Chitty's* money; and what application he made to the Earl of *Macclesfield* on that Occasion.

Mr. *Edwards*. My lords, there was an Order brought to me, that was made by my lord *Macclesfield*, for the Payment of 1000 l. to Mrs *Chitty*. I told the Party, I had not money in my Hands of Mr. *Dormer's*, sufficient to answer the Demand upon the Office. I then went to my lord *Macclesfield*. I told him (I had been forced to trouble him pretty often upon that Occasion) that it gave me a great deal of Uneasiness, that there was no Fund in my Hands to answer those Demands that were upon my Office. I hoped his lordship would take Care that there should be a Supply, or that he would not be pleased to make orders upon me for payment of money.

Mr. Serj. *Pengelly*. Give an account of the whole that passed, the whole Conversation.

Mr. *Edwards*. My lord *Macclesfield*, in answer to that said (at least, it was what I understood by his answer) that, if the People would but have a little Patience, he was doing every thing necessary, and making proper Regulations for that Purpose.

Mr. Serj. *Pengelly*. I desire he may be asked, whether my Lord *Macclesfield*, at that time, directed him to proceed to make any further Payments, or encouraged him to go on to make Payments?

Mr. Serj. *Probyn*. My Lords, we apprehend that is too leading a Question.

Mr. Serj. *Pengelly*. What Directions he had, in general.

Mr. *Edwards*. My Lords, I had no other Directions that I remember.

Mr. Serj. *Pengelly*. I desire he may acquaint your Lordships, whether he said any thing relating to the State and Condition of the Suitors of the Court?

Mr. *Edwards*. Several times that I had the Honour to wait on my Lord *Macclesfield*, I told him there was like to be a great Deficiency in Mr. *Dormer's* Effects: All that had been raised out of *Dormer's* Effects was exhausted and gone, and there were a great many Demands; and I hoped Provision would be made to answer them: It was not for me to do it else; and I hoped it was not expected that I should.

Mr. Serj. *Pengelly*. Was any thing represented at that time, concerning paying some of the Suitors of the Court, and not others?

Mr. *Edwards*. About that time, or rather since, as I remember, I told my Lord *Macclesfield* that I saw the masters were determined not to make any further Contributions; and if that were to be the Case, and there was to be no further Supply of money, it would be very hard for some to have

all

all their money, and others none at all. My Lord Chancellor said, I do not know what to say to it; I think it is very hard it should be so; I will take all the Care I can, and hope to make every Body easy.

Mr. *Lutwyche*. My Lords, I desire he may be asked, whether he had not paid all the Money, or near all, when this Discourse happened?

Mr. *Edwards*. Yes, My Lords.

Mr. *Lutwyche*. I desire he may be asked, whether he was present at the meeting of the masters, when this 1000*l.* was insisted upon, and on what Occasion it was?

Mr. *Edwards*. It was upon a Summons that all the masters should attend his Lordship; I am not sure, as to the Day; I think it was the latter End of *July*: We waited upon his Lordship about six of the Clock in the Evening, and my Lord mentioned it to Mr. *Lightboun*, that he was surprized that he had not contributed his 500*l.* he wonder'd that he should be so backward in doing what others thought right to do, and that there was Occasion at that Time for the Payment of 1000*l.* he mentioned, either to Mrs. *Chitty* or Mr. *Lockman*. Mr. *Lightboun* told him, that he did not expect to be asked again upon this Subject, he had so often told his Lordship he would not contribute; other People might do what they pleased, but, as for his Part, he was determined not to do it.

Mr. *Lutwyche*. We desire to know what passed, and what was said by the Earl, at that meeting?

Mr. *Edwards*. When this was refused by Mr. *Lightboun*, there was a Discourse in the Company, that if the rest of the masters would advance 50*l.* a piece, and Mr. *Lightboun* his 500*l.* it would make up the Sum. The masters, most of them, spoke their mind, and shewed an Unwillingness to contribute any more. My Lord *Macclesfield* was pleased to say, this is a Thing of Consequence, a matter that ought to be considered; here is a very pressing Occasion for a Sum of money to be immediately paid; if not paid, I don't know what the Consequence may be; Clamours begin to grow pretty strong, I don't know but it may occasion a parliamentary Enquiry; or to that Effect.

Mr. *Lutwyche*. I desire he may be ask'd, whether there was any further Discourse what the Parliament might do?

Mr. *Edwards*. My Lord *Macclesfield* was pleased to say further, I don't know, if this matter comes into the Consideration of Parliament, how far it may affect your Offices, the Sale of them is against an Act of Parliament: Suppose it should be resolved by the House, that these Places, being bought contrary to the Act of Parliament, are forfeited, I can't say how far it may affect me in some measure, but it will affect you much more.

Mr. *Serj. Pengelly*. These are the very Words of the Article, and we may rely upon the Opinion of the Earl himself, when he was in the Possession of that great Office?

E. of *Macclesfield*. My Lords, I desire Mr. *Edwards* may be asked, whether the Subject Matter of this Discourse was the Payment of this 1000*l.* or making good the Whole of *Dormer's* Deficiency?

Mr. *Edwards*. I understood the only Subject to be this 1000*l.*

E. of *Macclesfield*. You understood it so?

Mr. *Edwards*. And the Reason why I understood it so was, because if Mr. *Lightboun* would have been pleased to have paid his 500*l.* and the other masters 50*l.* a piece, it would have made up the Sum.

E. of *Macclesfield*. Was the Proposal of paying 50*l.* a piece, after Mr. *Lightboun* had refused the Payment of 500*l.*

Mr. *Edwards*. I believe it was.

E. of *Macclesfield*. What Occasion was there for the Proposal to pay 50*l.* a piece, when the Payment of 500*l.* was absolutely refused?

Mr. *Edwards*. I believe it was understood by several, that, if the other masters would have contributed 50*l.* a piece, it would have been an Inducement for Mr. *Lightboun* to have come in and paid his 500*l.*

E. of *Macclesfield*. Some body must propose this that had that Apprehension?

Mr. *Edwards*. I can't say who proposed it, nor whether it was proposed by my Lord *Macclesfield*; but 50*l.* a piece was mentioned.

E. of *Macclesfield*. My Lords; I desire to know of Mr. *Edwards*, whether the masters did not at any Time agree to make good *Dormer's* Deficiency?

Mr. *Edwards*. My Lords, I think I remember a meeting of the masters at his Lordship's House, not long before this, where they seemed inclinable to agree, that if they were continued in the Rights of their Office in all Respects, and on the same Foot as they had enjoyed them; that then they would have endeavoured to have made this Deficiency good.

E. of *Macclesfield*. I desire to know if he hath not said, that on his coming into the Office, the masters told him, they would make good the Deficiency?

Mr. *Edwards*. I can't say the masters ever told me, they would make good the Deficiency; I can't say I ever heard them say, that they would make it up.

E. of *Macclesfield*. I desire you would recollect yourself, whether, when you was with me, and I desired you to give an Account of this matter, you did not say, that the masters did promise to make it good, or else you would not have come into the Office?

Mr. *Edwards*. I don't remember I told your Lordship so; I believe it was designed by the masters to have it made up, if not the Whole, the greatest Part of the masters, were inclinable to make up the Deficiency.

E. of *Macclesfield*. I desire an Answer to the Question, whether he did not say, that the masters did promise him to make good the Deficiency?

Mr. *Edwards*. I don't remember that I said so directly; I told your Lordship, that unless I had had Assurances, that the Deficiency of the Office would have been made up, I never would have meddled with it. These Assurances I had from Mr. *Cottingham* and Mr. *Godfrey*.

E. of *Macclesfield*. I think you say, the masters did seem to agree, that if they were kept in Possession of the Rights of their Offices, they would contribute. Had you two meetings with me in *July*, or *August*?

Mr.

Mr. *Edwards*. I think there were two in the same month of *July*: Within a Month the two meetings were.

E. of *Macclesfield*. Whether the masters have not made several Complaints to me, of the Invasion of their Right in their Offices, and desired me to make an Order to redress them?

Mr. *Edwards*. Not only Complaints of that Sort were made, but I believe those Complaints were reduced into Writing, and laid before your Lordship; there were frequent Complaints by Concurrence of all the masters.

E. of *Macclesfield*. How long before that Time were Complaints made to me, of the masters being injured in the Profits of their Office?

Mr. *Edwards*. I believe near a Twelvemonth.

E. of *Macclesfield*. Was it not more?

Mr. *Edwards*. It was a full Year.

Earl of Macclesfield shews Mr. Edwards a Paper.

Mr. *Edwards*. This is what I mentioned, a Representation in Writing laid before your Lordship.

E. of *Macclesfield*. Pray look upon that.

[*Shews another Paper, which Mr. Edwards looks upon.*]

E. of *Macclesfield*. Are those two Papers signed by you, and the other masters whose Names are at the End of them?

Mr. *Edwards*. Yes.

E. of *Macclesfield*. I desire to know in the next Place, whether I was not much pressed by the masters to have made some Alterations in the Proceedings of the Court? And what Answer did I give?

Mr. *Edwards*. Upon this Representation there were a great many Applications made to my Lord *Macclesfield*. I went several Times myself. Sometimes two or three would make Application to him, that he would be pleased, if he thought the matters represented to be Grievances, that he would redress them. My Lord did say, that he thought, that the matter of our Complaint was just, and that those matters were proper to be rectified, and he would take all proper measures to do it.

E. of *Macclesfield*. And why were not all these Things set right?

Mr. *Edwards*. I remember one Circumstance that I believe will be an Answer to the noble Lord's Question. Those matters were not laid together all at once before my Lord Chancellor, but some at one Time, and others at another Time; and my Lord *Macclesfield* did say, I would have you draw up a State of all these Grievances you complain of, and then I shall see them better under one View, and take them together.

E. of *Macclesfield*. Was there any Order made in Favour of the masters, and to redress these Grievances?

Mr. *Edwards*. I remember we were a little impatient that there was no Order made; we often solicited on several Accounts before they were made.

E. of *Macclesfield*. For what particular Reasons were you so impatient?

Mr. *Edwards*. It is impossible to recollect the particular Reasons; they were, in many Instances, relating to the Proceedings at the Rolls, and the Innovations there to the Prejudice of the masters Offices.

Mr. *Plummer*. My Lord *Macclesfield* hath ask'd several Questions, and I would make an Observation upon this Evidence, That these Gentlemen applied to Lord *Macclesfield* to redress Grievances, but he would not promise them a Redress till they paid this Debt.

Sir *George Oxenden*. I desire to know what he means by the Profits of the Office?

Mr. *Edwards*. The principal Thing that I mean is the keeping of the money; but there were several other Things in which we thought our Offices lessened, by taking away the customary Fees which usually belonged to the masters.

Sir *George Oxenden*. If the Profits of the Office was the keeping of the money, I suppose they made use of it?

Mr. *Edwards*. Yes, my Lords, I believe it was not understood by any Body, that the money was designed to be lock'd up. By the Profits of the money is meant the putting out the money at Interest for ourselves. But that is not all, the placing the same out at Interest for the Suitors occasions several Perquisites, as Reports and other Things, which would be lost by taking away the money.

Mr. *John Bennet* called again.

Mr. *Sol. Gen.* My Lords, we desire Mr. *John Bennet* may be ask'd, whether he was present at the meeting at the Lord Chancellor's, when Proposals were made for the raising this 1000*l.*

Mr. *Bennet*. My Lords, I was there, and my Lord *Macclesfield* was earnest in persuading Mr. *Lighboun* to pay his 500*l.* Mr. *Lighboun* said he had much rather bring in all the money and Securities he had in his Hands, and deliver them up, than pay this 500*l.* Upon which my Lord *Macclesfield* said, delivering up the money and Securities too might be the Consequence, but that was not the worst; there might be Votes of the House of Commons, that the Office of a Master in Chancery did concern the Execution of Justice, and that the masters in Chancery, by purchasing their Offices, had incurred the Penalty of the Statute of *Edward* the VIth, and thereby forfeited their Places, and that a new Set of masters might be put in; it might redound to some Loss to his Lordship in disposing of those Offices, but it would redound much more to their Loss, the Loss of their Places.

Mr. *Lutwyche*. When the masters refused to contribute to this of *Chitty*, what said my Lord?

Mr. *Bennet*. My Lord said, he would take Care of it himself, or that he would pay it himself, I can't say which.

Mr. *Lutwyche*. Whether any thing was said concerning the Consequence of not paying this 1000*l.* and whether any mention was made of *Dormer's* Deficiency?

Mr. *Bennet*. There was mention made of Mr. *Dormer's* Deficiency, and one master mentioned, that it was a bottomless Pit; and as my Lord had desired me and Mr. *Holford* to take some Account of it, we both declared, we had not received such a satisfactory Account from Mr. *Edwards*, as could be depended upon, and that the Deficiency appeared to us to be very uncertain.

Mr.

Mr. *Lutwyche*. I desire he may be asked, whether any mention was made of any Fear of the Discovery of that Deficiency?

Mr. *Bennet*. I can't say by whom it was said, but it was said in Discourse, If this 1000*l.* was not now paid, the Deficiency of Mr. *Dormer's* Office would be discovered.

Mr. *Lutwyche*. Pray recollect who was that said by?

Mr. *Bennet*. I can't take upon me to say whom it was said by, but it was said in the Conversation that passed at that time.

Mr. *Lutwyche*. And who were then present?

Mr. *Bennet*. I believe, all the masters.

Mr. *Lutwyche*. And who besides?

Mr. *Bennet*. My Lord *Macclesfield*.

Mr. *Lutwyche*. Were not all the masters against making up the Deficiency?

Mr. *Bennet*. Yes, all of them.

E. of *Macclesfield*. Was *Dormer's* Deficiency then known?

Mr. *Bennet*. It was known abroad, but it was not known how much.

E. of *Macclesfield*. Were there two meetings between me and the masters in *July*, or the Beginning of *August*?

Mr. *Bennet*. I believe within a month there were two meetings.

E. of *Macclesfield*. What was the subject matter of the other meeting?

Mr. *Bennet*. The first meeting was to put us all in mind of our Duty, and to admonish us to avoid any Complaint?

E. of *Macclesfield*. That was the first meeting. Was there any thing said about *Dormer's* Deficiency?

Mr. *Bennet*. I don't remember there was.

E. of *Macclesfield*. What Admonition was it that was given to the masters, and what was said to them, if they did fail in their Duty?

Mr. *Bennet*. The Admonition was generally to take Care to perform our Duty, not to give any Cause of Complaint, and, in particular, not to go out of town, till a Week after the last Seal.

E. of *Macclesfield*. Do you not remember, that I said in my admonition, that if any master failed in his Duty, I owed it to the rest to punish him, and to make him an Example?

Mr. *Bennet*. I believe you did say so.

Mr. *Lutwyche*. At the time when this Admonition was given, was any thing then said about your Accompts?

Mr. *Bennet*. No, I don't remember that any thing was then said on that Subject.

E. of *Macclesfield*. In Point of Regularity, when these Gentlemen speak of this 1000*l.* they should produce the Order?

Mr. *Serj. Pengelly*. It is here, and it is admitted in the Answer.

[The Order produced, proved by Mr. Ralph Paxton, who swore it to be a true Copy of the Order taken from the Report-Office.

Mr. *Paxton* begins to read.

Martis decimo septimo Die Martii Anno Regni Georgii Regis decimo, inter Prideaux Sutton Cler. & Annam Uxorem ejus, Mercy Shelden Spinster & Egidium Laurence Executor. Winifred Shelden Spinster Defunct. Quer. Elisam Chitty, Johannem Russel & alios Defendentes.

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Whereas the Defendant, *Elizabeth Chitty*, —

E. of *Macclesfield*. It is not necessary to trouble my Lords in hearing the whole Order, only the ordering Part?

Mr. *Paxton* reads again,

His Lordship doth order, that the said master do, out of the said money in his Hands, pay unto the Defendant Eliz. Chitty the Sum of one thousand pounds, and to the Plaintiffs the Sum of five hundred pounds, subject to the further Order of this Court.

Mr. *Lovibond* sworn.

Mr. *Lutwyche*. My Lords, we desire that Mr. *Lovibond* may be asked, whether he was at the meeting, when the masters attended my Lord *Macclesfield* about *July* last, and what passed at that meeting?

Mr. *Lovibond*. I was at that meeting with several of the other masters, I think most of them: As to what passed then, according to the best of my Recollection, the first thing was, my Lord *Macclesfield* turned to Mr. *Lightboun* and asked him, why he had not paid the 500*l.* as well as the rest of the masters; to which he replied, he never would, and gave my Lord some Reasons why he would not. Then my Lord *Macclesfield* was pleased to say, there was a matter that required Expedition, a further Demand was made of a Sum of money, by one Mr. *Lochman*, who belonged to the Prince's Court, and it did behoove us to find out some Way to make him easy. He proposed that the masters should raise that money among them. The masters in general said, that they could not do it.

Mr. *Lutwyche*. What Arguments were made use of by my Lord *Macclesfield*, to persuade them to it?

Mr. *Lovibond*. I remember that Mr. *Lightboun* said, rather than pay it, he would deliver up all the money and effects in his Hands, and my Lord *Macclesfield* did reply; Perhaps that is not the worst of the matter, it may be worse than that; suppose there should be a Parliamentary Enquiry, and the Parliament should come to a Resolution, that you have forfeited your Offices, by having bought them against the Statute of *Edward* the VIth.

Mr. *Lutwyche*. I desire he may be asked, whether any Encouragement was given, in case they would pay this money?

Mr. *Lovibond*. I don't remember there was any thing spoke by way of Encouragement to the masters, for Payment of that Sum of money.

Mr. *Lutwyche*. I desire to know what was the Result of this matter, as to this Sum of Money being to be paid, and who it was that said it should be paid?

Mr. *Lovibond*. Upon the Refusal of the masters, my Lord *Macclesfield* said, Well, I will take Care of that Part myself.

Mr. *Lutwyche*. I desire he may be asked, whether any thing was then said in relation to the Deficiency of *Dormer's* Office?

Mr. *Lovibond*. Yes there was some Discourse about that matter, and my Lord *Macclesfield* did express himself as though it would be an unlucky Thing, and it must be made up one Way or other. and he desired the masters to think of a Way to make it up. My Lord *Macclesfield* said, if you can

have the Enjoyment of your Places, as you have had them these Forty Years, will you come into some Terms to make up that Debt? Some said they could not come into it; some said there might be a means of paying it by Annual Installments out of their several Offices, some seemed to agree to it; others said we may as well make good the Bankers Debts, as make good this Debt.

E. of *Macclesfield*. I desire he may be asked, whether he did not agree, that this Deficiency should be made good by Annual Payments?

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

E. of *Macclesfield*. I desire to know, whether the rest of the masters did not?

Mr. *Lovibond*. I believe some of the masters did.

E. of *Macclesfield*. I desire to know, whether they did all agree?

Mr. *Lovibond*. I believe the major Part did. I did not.

E. of *Macclesfield*. Do you believe any besides yourself disagreed?

Mr. *Lovibond*. Indeed I can't tell. The greatest Part did agree. I can't say I heard any Body refuse.

E. of *Macclesfield*. Some, he says, did agree to it, the major Part, and none that he heard refused. I desire to know, if it was not endeavoured to find out a Way to make up whatever Deficiency there was; and whether this was the subject matter, the making good the 1000 *l.* or the whole of the Debt?

Mr. *Lovibond*. The making good the whole of the Debt, as I understood it.

E. of *Macclesfield*. I think he said, that I said then, I would take Care of the 1000 *l.* Whether was that after they had agreed that the Deficiency should be made good, or before?

Mr. *Lovibond*. No, I think it was before.

Mr. *Plummer*. I desire to know, if my Lord *Macclesfield* did say, he would take Care of it, when the masters refused to contribute?

Mr. *Lovibond*. To the best of my Remembrance, it was upon their Refusal, that he said so.

Mr. *Thomas Bennet* called again.

Mr. *Tho. Bennet*. My Lords, before the managers propose a question, I beg the Favour to mention a Thing that my memory slipped me in Yesterday. My Lord *Macclesfield* then asked me, what Estate I had purchased? I said 68 *l.* a Year in *Kent*, and 40 *l.* per Annum in *Suffolk*. I forgot a House I bought for 700 *l.* which is mortgaged for the same Sum. The Accompt lies upon the table, I forgot it then, and I did then refer to my Accompt that lies upon the table, that I might not be mistaken.

Mr. *Sol. Gen.* I desire he may be asked, whether he was present at this meeting at my Lord *Macclesfield's*.

Mr. *Tho. Bennet*. Yes, I was summoned to attend my Lord *Macclesfield* on this Occasion. I dined that day with my Brother and Mr. *Lovibond* and one more; and my Brother told me, that there was a proposal come from my Lord *Macclesfield* by Mr. *Cottingham*. He said it was, that the masters should advance 50 *l.* a piece, towards a Demand in the Court of *Chancery*; and in case we

would do it, my Lord *Macclesfield* would make Mr. *Lightboun* pay his 500 *l.* We, who were then present, seemed to agree, that if my Lord would make Mr. *Lightboun* pay his 500 *l.* we would pay our 50 *l.* a piece. In the Evening, when we attended my Lord *Macclesfield*, his first Application was to Mr. *Lightboun*, and as soon as we came, he said to him, Mr. *Lightboun*, I am surprized you have not paid your 500 *l.* as the rest have done, I wonder at it; and he used some hard Expressions, that I wonder he could stand it, I could hardly have done it; but Mr. *Lightboun* did stand it, and refused to pay it, and gave his Reasons for it, and said he had given them over and over again.

Mr. *Sol. Gen.* What Reasons were laid before you to pay it?

Mr. *Tho. Bennet*. The Reasons laid before us by my Lord *Macclesfield* were, that there was a Deficiency in *Dormer's* Office, which he was afraid would break out; for here was a Demand of a Sum of Money by one, for whom he had been spoken to, by a Person of very great Distinction. I did not know who it was then, but I afterwards understood it was Mr. *Lockman*, that was the Person that was to have the money; and he asked, if we did not think it for our Interest to make such a Person our Friend?

Mr. *Sol. Gen.* Was there any thing more said?

Mr. *Tho. Bennet*. My Lord *Macclesfield* said, that in case this money was not paid, and some method found to make up the Deficiency of Mr. *Dormer*, he believed it might occasion a Parliamentary Enquiry, which might hurt him very much, but, said he, I believe it will hurt you, Gentlemen, much more.

Mr. *Lutwyche*. Were there any of the masters that asked him any questions, how he apprehended it would come into Parliament?

Mr. *Tho. Bennet*. Yes, Mr. *Holford* asked him the question, Can your Lordship imagine, in what method this may come into Parliament? My Lord answered, Upon the meeting of every Parliament, Committees were chosen by the House of Commons, and among the rest there was a Committee of the Courts of Justice, and he thought it very likely, that That Committee might take this under Consideration.

Mr. *Sol. Gen.* What was said upon the masters refusal to raise the 1000 *l.*?

Mr. *Tho. Bennet*. After Mr. *Lightboun* refused to pay towards the 1000 *l.* my Lord then said he would make up that.

Mr. *Sol. Gen.* Was there any Talk of *Dormer's* Deficiency?

Mr. *Tho. Bennet*. There was some Discourse about making up Mr. *Dormer's* deficiency. Several of the masters were against it. No Scheme could be found that would make it up. I said upon that Occasion, that it was a bottomless pit, and Mr. *Edwards* had not given Satisfaction to any of the masters what the deficiency was.

Sir *George Oxendon*. Was there any mention made at this meeting of the Statute of *Edward VI.*

Mr. *Tho. Bennet*. My Lord Chancellor said, He did not know but our Offices might come within the Statute of *Edward VI.*: And, if that should be so resolved by Parliament, we must forfeit our Offices; and therefore had we not better do something than forfeit our Offices?

Mr. *Serj. Pengelly*. My Lords, we beg leave to call Mr. *Lockman*, to whom this 1000 *l.* was paid,

paid, and to shew your Lordships the Declaration that was made by the Earl of *Macclesfield* at that Time.

Mr. *Lutwyche*. We beg Leave first to read the Order in the Cause of *Harper and Cate*.

[*The Order is proved.*]

Mr. *Ralph Paxton* reads.

Sabbati quinto Die Decembris, Anno Regni Georgii Regis undecimo, inter Jana' Harper vidua' Quer' Thoma' Case Clericu' & Sara' Maria' uxor' ejus, Henricu' Halsey, & alios Defendentes.

UPON opening of the matter this present Day unto the Right Honourable the Lord High Chancellor of *Great Britain*, by Mr. *Solicitor General* and Mr. *Williams*, being of Counsel for the Plaintiff; and Mr. *Benjamin Jackman*, in the Presence of Mr. *Talbot*, of Counsel for the Defendants: The Cases. It was alledged, That it being, by the Order made on the hearing of this Cause (*inter alia*) ordered and decreed, that the Sum of 500 *l.* Pounds, part of the Marriage Portion of the Plaintiff, receiv'd by *Thomas Harper* Clerk, her late Husband, should be made good to her with Interest from his Death, at the Rate of 5 *l. per Cent. per Annum*, together with her Cofts of this Suit, to be taxed by *Dormer*, then one of the Masters of this Court, out of the said *Thomas Harper's* Estate (for which, and other Purposes, in the said Order, so much as should be necessary of the said *Thomas Harper's* Estate was to be sold to the best Purchaser that could be got for the same, with the Approbation of the said Master:) And the said Master having, by his Report, (made pursuant to the said Order, and) dated the 12th of *December*, 1716, certified the Sum of 557 *l.* 16 *s.* 5 *d.* to be due to the Plaintiff for Principal and Interest, besides Cofts. And the said Defendants having been served with a Writ of Execution of the said Decree, the said Master, by his Report dated the 9th of *November*, 1717. allowed the said *Jackman* the Purchase of three Houses at *Kensington* (Part of the Premises directed to be sold) at the Sum of 260 *l.* And the said Master's Report being afterwards absolutely confirmed, the said *Jackman* obtained an Order of the 19th of *December*, 1717. whereby it was ordered, That the Writings belonging to the said Estate, purchased by the said *Jackman*, should be deliver'd to his Counsel, and that the Tenants of the said Estate should attorn to him, on bringing his Purchase money before the said master. And the said *Jackman* did accordingly, on the 24th of the same *December*, bring his said Purchase money before the said master, as by his Certificate of that Date, now read, appears, and the Tenants attorned to the said *Jackman*: But the Defendants have ever since, by trifling Pretences and Excuses, put off the executing proper Conveyances to the said *Jackman*, although the same have been long since settled and allowed by Mr. *Edwards*, one of the masters of this Court, the said Mr. *Dormer's* Successor, as by the Affidavits of *Joseph Herring* and *Thomas Atwood* appears. It was therefore prayed, that all Parties may forthwith execute Conveyances of the said Houses to the said Mr. *Jackman*, or as he shall appoint: And it was on the Plaintiff's Behalf prayed, that the

said Purchase Money may be paid to her, towards Satisfaction of what is due to her, by vertue of the said Decree: Whereto the Counsel for the Defendants had Cases alledged, that they are intitled to the Residue of the said *Tho' Harper's* Estate, after such Payments, as are directed by the said Decree to be made out of the same, are made, and the Defendants *Case* and his Wife were always ready to join in executing the said Conveyances, upon an Application being made of the said *Jackman's* purchase Money towards what is due to the Plaintiff; but being apprehensive of a Deficiency of Mr. *Dormer's* Estate, to answer the Monies brought before him, pursuant to the Orders of this Court; and conceiving they ought not to be Sufferers, though such Deficiency might appear, and the Delay being occasioned by the Purchaser, and not by the Plaintiff, and the said Master not having settled the said Conveyances, they did therefore scruple to execute the said Conveyances, until the said *Jackman's* Purchase Money should be applied to the Purposes in the said Decree; but are willing, if the Court should so think proper, on Payment of the said 260 *l.* Purchase Money to the Plaintiff, and the said *Tho. Harper's* Estate being discharged of so much, to execute the said Conveyances. Whereupon, and upon hearing of the said Affidavits of the said *Joseph Herring* and *Thomas Atwood*, and an Affidavit of Notice to the Defendant *Halsey* read, and what was alledged on both Sides; His Lordship doth order, that it be referred to the said Mr. *Edwards*, to examine, whether the said 260 *l.* was deposited with the said Mr. *Dormer*, for the Benefit of any particular Person, and whom, and what was the Occasion of the Delay, that the said Conveyances were not executed, and the said 260 *l.* Purchase Money paid out before the Year 1720. and whether there is likely to be a Loss of any Monies deposited with the said Mr. *Dormer*: And, upon the said Master's Report, such further Orders shall be made, as shall be just.

Mr. *Serj. Pengelly*. My Lords, this Order was made in *December* last: It is a Direction to Mr. *Edwards* to see, whether there was likely to be any Loss of any Monies deposited with Mr. *Dormer*: We pray that Mr. *Lockman* may be sworn.

Mr. *Lockman* sworn.

Mr. *Serj. Pengelly*. We beg Leave that Mr. *Lockman* may be asked, whether he attended upon the Earl of *Macclesfield* at any Time relating to a Sum of Money, and where.

Mr. *Lockman*. I received an Order from the Earl of *Macclesfield* upon Mr. *Edwards* for 1000 *l.* but not being able to receive it of Mr. *Edwards*, I went to *Kensington* to wait upon the Earl of *Macclesfield*, and told his Lordship the Necessity I had for this 1000 *l.* which belonged to Mrs. *Chitty*, but the Benefit of it was made over to me; that I had the Misfortune to be backwards in my Affairs, and had some *South-Sea* Contracts to make up, and had made a Composition of my Debts, for which I had about three Weeks to pay it in, and therefore I desired the Favour of his Lordship to order me the Payment of this 1000 *l.* His Lordship was pleased to tell me, that if I attended him in Town, and applied to him there, I should have the Money paid. Upon which I waited upon his Lordship in Town; and when I had the Honour

to see his Lordship, he told me, that he had enquired into the Affair relating to that Money upon which the Order was made, that it was in Mr. *Dormer's* Office, where there was a Deficiency, that he could not yet bring all the Masters to settle that Matter; but if I would come a few Days after, he would see what he could do for me. Thereupon I attended several Days, and went to *Westminster-Hall*, and spoke to Mr. *Cottingham*, and he said great Pains had been taken by my Lord, but he had not yet been able to bring any thing to bear, but he did not doubt but in a little Time he could bring it to bear to his Satisfaction; there had been some Motions made by Serjeant *Chefshire*, &c. which had frightened the Masters from raising Money; but if I attended in a few Days, he would do what he could for me. I waited some Days, and at last I took the Freedom to wait upon my Lord *Macclesfield* at his own House in *Lincoln's-Inn-Fields*, and I told his Lordship I had attended many Days in Town, and had neglected my Duty and Service; that the next Day was the last Day appointed to pay my Composition, and having depended upon this Money, I had made no other Provision. Whereupon his Lordship said, he had taken a great deal of Pains, and had spoken to the Masters, and that I should attend his Lordship next Day at *Westminster* at Ten, and he would see what he could do for me, but that there was none of the Estate of Mr. *Dormer* left. I waited upon his Lordship accordingly the next Day at *Westminster*. His Lordship called me into his Room, and told me that Mr. *Cottingham* should pay me the 1000*l.* but he believed there would come no more, that this would be the last of the Money, or the last Sum that Mrs. *Chitty* would receive; and that if she had nothing else, I might, by marrying her, in Expectation of a Fortune, make myself worse than I was.

Mr. *Dodington*. I desire Mr. *Lockman* may be asked, what the whole Sum was that was paid in?

Mr. *Lockman*. I took it to be about 10,000*l.*

Mr. *Serj. Pengelly*. I desire he may be asked, if the Earl of *Macclesfield* gave any further Reasons, why it was like to be the last Sum?

Mr. *Lockman*. The Earl of *Macclesfield* did not, at that Time, give me any Reason; but the Day before, when I had the Honour of seeing his Lordship, at his House in *Lincoln's-Inn-Fields*, and once before that, his Lordship told me that the Masters in Chancery were apprehensive of losing a great deal of their Privileges and Profits of their Places; and therefore some of them were not willing to advance any money.

Mr. *West*. My Lords, I beg Leave to ask Mr. *Lockman*, whether he received any Direction or Intimation, as to the keeping of this private, the telling, or not telling it?

Mr. *Lockman*. I did receive no Intimation at that Time; afterwards, when the Solicitor met me, he ask'd me, Pray, says he, Mr. *Lockman*, have you received the 1000*l.* you solicited for? Yes, I have received it. Pray, who then paid it you? I told him Mr. *Cottingham*; says he, Mr. *Cottingham* denied it to me. Upon that I met Mr. *Cottingham* some Time afterwards in the Court of Requests. He told me I should say nothing of it: Besides this, I received no Intimation to keep it secret.

Mr. *West*. What did he say to you then?

Mr. *Lockman*. He said at first meeting me,

You can't fare well, but you must cry out Roast-meat. I, being not well acquainted with that Phrase, did not know what he meant. I did not know that I had ever eat Roast-meat or boil'd meat with him either; so I told him, if that was in relation to his paying me the 1000*l.* it was only what was due, and I hoped there would be Care taken to answer the Remainder. He answered, he could not tell what the Consequence would be, whether ever it would be made up, or not, he could not tell, he was very uncertain.

E. of *Macclesfield*. Sir, I desire to know of you, whether you did not represent yourself to me to be in the utmost Distress, if this money was not paid to you, that in such Case you must be ruined?

Mr. *Lockman*. I remember I told his Lordship, that this money, I had borrowed of Mrs. *Chitty*, that I had settled a Composition with my Creditors and wanted this money to satisfy them; that it must be paid the next Day; and if I did not then pay it, it would be a great Damage to me; but I pressed his Lordship more, as I depended upon his Lordship's Promise, and that was the Reason I press'd it the more.

E. of *Macclesfield*. I desire he may be asked, whether I ever promised to pay him at any Time before that?

Mr. *Lockman*. When I went to wait upon your Lordship at *Kensington*, your Lordship promised me it should be paid; that, as soon as you came to Town I should apply to your Lordship, and you would give Orders, and it should be done.

E. of *Macclesfield*. Whether he did not look upon it, that I did this out of Compassion to him?

Mr. *Lockman*. I took it as Part of a Sum of money due, and I did not look upon it as Charity, or out of Compassion.

E. of *Macclesfield*. I desire to know, whether he did not intreat it of me as an Act of Compassion to him?

Mr. *Lockman*. I don't understand the *English* Terms, I did not use the Word Compassion; I beg'd that your Lordship would be so good as to order me the money.

E. of *Macclesfield*. I desire to know, whether the first Time he applied to me I promised to pay the money?

Mr. *Lockman*. Your Lordship promised the Order should be given to the master, and that I should be paid.

E. of *Macclesfield*. When was that Promise?

Mr. *Lockman*. When you promised to order the master, and I should have the money.

E. of *Macclesfield*. How long before?

Mr. *Lockman*. I can't very well remember; because the Solicitor waited several Times upon the master, and the master told him there was nothing. I went to the master's House, and then to the Rolls, and there I saw him; and he told me there were no Assits in his Hands of Mr. *Dormer's*.

E. of *Macclesfield*. I desire to know, whether he did not desire a further Sum, after this 1000*l.* was paid by Mr. *Cottingham*, and how much?

Mr. *Lockman*. My Lord, I ask your Lordship's Pardon, I don't remember I then ask'd any other Sum. When I saw your Lordship afterwards, I asked your Lordship, if it was not possible to have another 1000*l.* You was pleased to tell me, there could be no more paid.

E. of

E. of *Macclesfield*. Did not you sollicit for a further Sum, till Mr. *Cottingham* chid you?

Mr. *Lockman*. Mr. *Cottingham* was a little angry, when I pres'd him. I went out of Doors, Mr. *Cottingham* followed me. I stood in the Yard, Mr. *Cottingham* came out, and told me he had an Order from my Lord Chancellor to call the masters to a meeting, and see what could be done. I said, still this is uncertain, how shall I do if I have not this money? it will be a great Prejudice to me.

E. of *Macclesfield*. I desire to know whether he did not ask a further Sum of 500 *l.* or 570 *l.*

Mr. *Lockman*. There was an Order, on a letter of Attorney from Mrs. *Chitty*, for that Sum. But never, after I was at your lordship's House at *Kensington*, did I ask if I could have a thousand Pounds more.

E. of *Macclesfield*. When was that 500 *l.* paid?

Mr. *Lockman*. I don't know.

E. of *Macclesfield*. I desire to know, whether between the Time you say you was promised the 1000 *l.* and the Time of paying it, you did not desire to have the Sum of 574 *l.* advanced for Mrs. *Chitty*'s Use.

Mr. *Lockman*. When your lordship had told me that 1000 *l.* was all that could possibly be obtained, I made no further Sollicitations.

E. of *Macclesfield*. How long was it that you came to *Kensington*, to ask me for that 1000 *l.* before the other 1000 *l.* was paid?

Mr. *Lockman*. Three Weeks before.

E. of *Macclesfield*. Then after that Time you never demanded any more?

Mr. *Lockman*. After your lordship had told me that was all that could be obtained, then I desisted from asking any more.

E. of *Macclesfield*. And that was about three Weeks before the Time you received the money?

Mr. *Lockman*. I believe, between a Fortnight and three Weeks, or thereabouts.

Mr. *Com. Serj.* I desire he may be asked, whether he can be certain as to the Expression, whether this was the last money that was like to be paid, or that my lord would pay.

Mr. *Lockman*. It was, as I remember, in these Words: If the lady hath no other Fortune than what is in *Chancery*, in the master's Hand, this will be the last of it.

Mr. *Sol. Gen.* We desire Mr. *Atwood* may be called.

Mr. *Atwood* sworn.

Mr. *Serj. Pengelly*. My Lords, we desire Mr. *Atwood* may be asked, whether he was in Court at the Time a Motion was made upon an Order in a Cause between *Harper* and *Cate*.

Mr. *Atwood*. My Lords, I was at the late Lord Chancellor's House, where, about the 5th of *December* last, the motion was made. I was Solicitor for Mrs. *Harper* in the Cause. The Occasion of it was, There was an Estate decreed to be sold, and the money was to be paid into the master's Hands, who was Mr. *Dormer*: The money was accordingly paid, and the Conveyances approved of by the Counsel, and a Fine agreed upon; but at last the Parties would not execute, unless the money was paid them; objecting there would be a Deficiency in *Dormer*'s Office: Therefore they mov'd that they might

not be obliged to execute the Conveyance, till the money was applied and paid to the Plaintiff. My Lord Chancellor was pleased to declare thereon, that he had heard there would be a Deficiency of Mr. *Dormer*'s Effects; but it had never judicially come before him; and what Knowledge he had of it was only as publick News, and referred it to Mr. *Edwards* to examine, whether there was likely to be a Deficiency, or not. I was near two months before I could get this Order passed; and then the Impeachment came on. The Register told me, he was afraid this Order would do some mischief. When I had got the Order, I was told by several People about the Town, that Mr. *Dormer*'s Effects were very defective; and that my Lord Chancellor had directed a Composition to be made with one *Wilson* who was a Banker; and had directed Mr. *Hiccocks* to compound for Half a Crown in the Pound, and that others had twenty Shillings. Lord Chancellor had directed an Enquiry to be made whether any Deficiency. I was advised to put in these Words: *By what Means*; because I was told then it was, by reason of compounding that Debt with *Wilson*; but the Register would not let them stand.

Mr. *Serj. Pengelly*. The making of the Order, in this Case, confirms the Evidence of Mr. *Atwood*, that his Lordship declared he had heard of it no otherwise than as publick News; because by this Order he directs Mr. *Edwards* to enquire, whether there was likely to be a Deficiency, or not, although it had been so well known to his Lordship some Years before.

Mr. *Serj. Probyn*. He says there are Words struck out of the Order; I desire to know, whether those Words were not added by himself to the Order?

Mr. *Atwood*. Yes, they were added by me before it passed.

Mr. *Serj. Probyn*. When?

Mr. *Atwood*. After I had the Order from the Register.

Mr. *Serj. Pengelly*. When was that?

Mr. *Atwood*. It was near two months before I could get the Order passed.

E. of *Macclesfield*. Had you the Order passed before the Impeachment?

Mr. *Atwood*. Yes, I believe I had.

E. of *Macclesfield*. Had you it passed before this matter came into Parliament?

Mr. *Atwood*. I don't particularly know; I believe it was before your Lordship was impeached.

E. of *Macclesfield*. Whether was it after I had parted with the Seals?

Mr. *Atwood*. I believe after.

E. of *Macclesfield*. How long was it before you added those Words?

Mr. *Atwood*. Two or three Days after I had got the Order.

E. of *Macclesfield*. When was it the Register struck out those Words?

Mr. *Atwood*. I can't say, I believe it was before the Impeachment. The other Side had let those Words be in; but yet the Register struck them out.

E. of *Macclesfield*. Was it after I had ceased to be Chancellor?

Mr. *Atwood*. I believe it was.

E. of *Macclesfield*. Was any thing said, at that Time, of the Accident of *Wilson's* breaking and *Poulter's* going off?

Mr. *Atwood*. I do remember your Lordship said *Wilson* was become Bankrupt, and that he had Money of Mr. *Dormer's*; and you said something of a Person that was sued by *Wilson*, and of a Recovery against him, and of an Action brought for an Escape; and you concluded, upon the Whole, that all you knew of the Matter was only as publick News. This was after you had given an Account of the matter of *Wilson* and of the Marshal.

Dr. *Sayer*. I desire he may be asked, whether my Lord did not express a Doubt, how these matters might come out?

Mr. *Atwood*. I don't know what his Lordship was pleased to doubt of.

Mr. Serj. *Probyn*. I desire Mr. *Atwood* would recollect himself whether there was any Notice taken, how this might come out, when the Report of the masters should be made?

Mr. *Atwood*. I don't remember any thing tending to that.

Mr. *Com. Serj.* Whether he took any *Memo-randa* of these Words, and when?

Mr. *Atwood*. No, I took no *Memoranda* of them, till I was summoned to attend the Committee.

Mr. *Com. Serj.* I desire Mr. *Atwood* may give a Reason, how he comes to forget Facts, and remember a Form of Words?

Mr. *Atwood*. I don't remember all the Facts that have been asked.

Mr. *Robins*. Whether my Lord did not mention a particular Sum that was owing from *Wilson* to *Dormer*?

Mr. *Atwood*. I believe my Lord did mention a Sum, and I believe it was 18000*l.*

Mr. *Robins*. Whether he did not mention that *Wilson* had brought an Action of Escape against the Marshal?

Mr. *Atwood*. Yes, that *Wilson* had brought an Action of Escape against the Marshal.

Mr. *Robins*. Whether he did not mention, that *Wilson* had recovered a Judgment against the Marshal?

Mr. *Atwood*. Yes, that *Wilson* had recovered a Judgment.

Mr. *Robins*. Whether was there any thing said of the Escape of *Poulter*?

Mr. *Atwood*. Yes, my Lord did mention, that there was an Action brought against the Marshal, for that very Escape.

Mr. *Com. Serj.* Whether my Lord having mentioned these Particulars, he did not from thence infer, he could not then tell, how matters might come out?

Mr. *Atwood*. I do not remember any thing of that.

Mr. *Lutwyche*. My Lords, I shall only make one short Observation. The lord *Macclesfield* saith in his Answer, that he doth not believe that he had any Discourse with the Masters about the Payment of this 1000*l.* I submit it to your Lordships, whether there are not four or five Witnesses to it. We have now done with the Sixteenth Article.

Mr. *Sol. Gen.* We shall proceed to our Proofs on the Seventeenth Article. And it will be necessary to lay before your lordships three or four Orders, for the Proof of this Article.

Mr. *Ralph Paxton*, being called, appeared, and proved the several Orders following, which were then all read.

An Order, dated 18 *January*, 8^o *Georgii Regis.*

Another, dated 8 *March*, 8^o *Georgii Regis.*

Another, dated 5 *July*, 8^o *Georgii Regis.*

Another, dated 22 *December*, 9^o *Georgii Regis.*

Jovis decimo octavo Die Januarii Anno Regni D'ni Georgii Regis octavo, inter Jonathan' Jones Infant' per Eliza' Jones Vidua' prox' Amit' & dicta' Eliza' Jones Quer', Thoma' Jett Arm' & Petru' Wise, Defendentes.

UPON opening of the matter, this present Day, unto this Court, by Mr. Serjeant *Cbeshire*, of Counsel with the Plaintiff *Jonathan Jones*, in the Presence of Mr. *Kettleby*, of Counsel with the Plaintiff *Elizabeth Jones*; and the Defendant *Wise*, and Mr. *Horsely*, of Counsel with the Defendant *Jett*. The Counsel for the Plaintiff *Jonathan Jones* alledged, that *Jonathan Jones* deceased, Father of the Plaintiff *Jonathan Jones*, and Husband of the Plaintiff *Elizabeth*, by his Will, devised one Moiety of his Estate, which was wholly personal, after Payment of his Debts and Funeral Expences, to the Plaintiff *Elizabeth*, and the other Moiety to the Plaintiff *Jonathan Jones*, when he should attain his Age of One and Twenty Years; together with the Produce thereof, and made the Defendants, *Jett* and *Wise*, Executors in Trust for the said Plaintiffs, who duly proved the said Will. That the Plaintiffs having brought their Bill in this Court, to have an Account of the said Testator's Estate, for a maintenance for the Plaintiff *Jonathan*, during his Infancy, and a Performance of the said Will: Upon the Hearing of this Cause, it was referred to Mr. *Dormer*, then one of the Masters of this Court, to take an Account of the said Testator's Estate; and the Surplus thereof, after the Deductions therein mentioned, was to be divided into Moieties; and the Plaintiff *Elizabeth's* Moiety was to be forthwith assigned to her; and the other Moiety was to be placed out at Interest, by the said Master, for the said Infant's Benefit. And the said master was to assign a Maintenance for the said Plaintiff, for the Time past; and was also to consider what was proper to be allowed for his Maintenance, for the future. That the said Master, having proceeded to take an Account of the said Testator's Estate, it appeared, that so much thereof was raised by the Sale of *Bank* and *South-Sea* Stock, and brought before the Master, as amounted to Five Thousand, Nine Hundred, and Eighty-five Pounds, Three Shillings, and Four Pence, one Moiety whereof, after Payment of her Share of the Costs of this Suit, belongs to the Plaintiff *Elizabeth Jones*, and has been accordingly paid to her. And the other Moiety belongs to the Plaintiff *Jonathan Jones*, and is now in the Hands of Mr. *Edwards*, one of the Masters of this Court, who succeeded the said Mr. *Dormer*, and to whom the Reference in this Cause, hath been transferred. That the Plaintiff,

Jonathan

Jonathan Jones, hath now attained his Age of One and Twenty Years, as by Affidavit and Certificate appears, and is intitled to receive his Moiety of the said Monies, after Deduction of his Share of the said Costs. And having contracted some considerable Debts, for his Maintenance, and otherwise, during his Infancy, for which he is threatened to be arrested, in case the said Debts are not speedily paid: It was therefore pray'd, that the said Master may, out of the Monies in his Hands, pay to the Plaintiff, *Jonathan Jones*, the Sum of Four Hundred Pounds, which, upon reading the said Affidavit and Certificate, and upon hearing the Counsel for the Plaintiff, *Elizabeth Jones*, and the Defendant, *Wife*, who consented thereto, and the Counsel for the Defendant, *Jett*, who did not oppose the Payment thereof, is ordered accordingly.

Jovis octavo Die Martii Anno Regni D'ni Georgii Regis octavo, inter Jonathan Jones & Eliza Jones Quer', Thoma Jett Arm' & Petru Wife, Defendentes.

UPON opening of the Matter, this present Day, unto the Right Honourable the Lord High Chancellor of *Great Britain*, by Mr. Serjeant *Cheshire*, being of Counsel for the Plaintiff, *Jonathan Jones*, in the Presence of Mr. *Kettleby*, of Counsel for the Plaintiff, *Elizabeth Jones*, and for the Defendant, *Wife*: It was alledged, that *Jonathan Jones* deceased, Father of the Plaintiff *Jonathan Jones*, and Husband of the Plaintiff *Elizabeth Jones*, by his Will, devised one Moiety of his Estate (which was wholly personal) after Payment of his Debts and Funeral Expences, to the Plaintiff *Elizabeth*, and the other Moiety to the Plaintiff *Jonathan Jones*, when he should attain his Age of One and Twenty Years, together with the Produce thereof; and made the Defendants, *Jett* and *Wife*, Executors in Trust for the said Plaintiffs; and the said Defendants duly proved the said Will. That the Plaintiffs exhibited their Bill into this Court against the Defendants, to have an Account of the said Testator's Estate, and a Performance of his Will. And upon the hearing of the Cause, it was referred to Mr. *Dormer*, then one of the Masters of this Court, to take an Account of the said Testator's Estate; and the Surplus thereof, after the Deductions therein mentioned, was to be divided into Moieties; and the Plaintiff *Elizabeth's* Moiety was to be forthwith assigned to her. And the other Moiety was to be placed out at Interest, by the said Master, for the said Infant's Benefit. That the said Master having proceeded to take an Account of the said Testator's Estate, it appeared, that so much was raised by the Sale of the *Bank* and *South-Sea* Stocks, and brought before the said Master, as amounted to Five Thousand, Nine Hundred, and Eighty-Five Pounds, Three Shillings and Four Pence, one Moiety whereof, after Payment of the Plaintiff *Elizabeth Jones's* Share of the Costs of this Suit, belonged to her, and had been accordingly paid to her. And the other Moiety belonged to the Plaintiff *Jonathan Jones*, and was in the Hands of Mr. *Edwards*, one of the Masters of this Court (who succeeded the said Mr. *Dormer*.) That the Plaintiff, *Jonathan Jones*, has attained his Age of One and Twenty Years, as by Certificate and Affidavit appears, and is intitled to receive his

Moiety of the said Money, after Deduction of his Share of the said Costs: And he had contracted, for a Post in the Army, which, with his Equipage, will amount to Two Thousand Pounds, which he is advised will be very advantageous for him to purchase; and therefore it was pray'd, that the said Master may pay to the Plaintiff, *Jonathan Jones*, out of the Money in his Hands, a Sum not exceeding Two Thousand Pounds, to be laid out in the Purchase of a Commission, and for other Purposes. Whereupon, and upon hearing of the Plaintiff, *Elizabeth Jones*, and Defendant *Wife's* Counsel; and hearing an Affidavit of Notice of this Motion to the Defendant, *Jett*, read, and what was alledged by the Counsel on both Sides: It is ordered, that the said Master do, out of the Money in his Hands, pay unto the Plaintiff, *Jonathan Jones*, the Sum of Two Thousand Pounds; the Plaintiff, *Elizabeth Jones*, and the Defendant, *Wife*, having subscribed the Register's Book, signifying their Consent thereto.

Jovis quinto Die Julii Anno Regni D'ni Georgii Regis octavo, inter Jonathan Jones & Eliza Jones Quer' Thoma Jett Arm' & Petru Wife, Defendentes.

UPON opening of the matter this present Day, unto the Right Honourable the Lord High Chancellor of *Great Britain*, by Mr. Serj. *Cheshire*, being of Counsel for the Plaintiff, it was alledged, That *Jonathan Jones* deceased, Father of the Plaintiff *Jonathan Jones*, and Husband of the Plaintiff *Elizabeth Jones*, by his Will devised one moiety of his Estate (which was wholly personal) after Payment of his Debts and Funeral Expences, to the Plaintiff *Elizabeth*, and the other moiety to the Plaintiff *Jonathan Jones*, when he should attain his Age of One and Twenty Years, together with the Produce thereof, and made the Defendants, *Jett* and *Wife*, Executors in Trust for the said Plaintiffs, and the said Defendants duly proved the said Will. That the Plaintiffs exhibited their Bill into this Court against the Defendants, to have an Account of the said Testator's Estate, and a Performance of his Will, and upon the hearing of the Cause, it was referred to Mr. *Dormer*, then one of the masters of this Court, to take an Account of the said Testator's Estate; and the Surplus thereof, after the Deductions therein mentioned, was to be divided into moieties, and the Plaintiff *Elizabeth's* moiety was to be forthwith assigned to her, and the other moiety was to be placed out at Interest, by the said master, for the said Infant's Benefit. That the said master having proceeded to take an Account of the said Testator's Estate, it appeared by several Certificates from the said master, that so much thereof was raised by the Sale of the *Bank* and *South Sea* Stocks, and brought before him, as amounted to Five Thousand nine Hundred and eighty five Pounds three Shilling, and four Pence, that one moiety thereof, after Payment of the Plaintiff *Elizabeth Jones's* Share of the Costs of this Suit, hath been in pursuance of several Orders of this Court paid to her, and the other moiety, which belonged to the Plaintiff *Jonathan Jones*, was paid over to Mr. *Edwards*, one of the masters of this Court (who succeeded the said Mr. *Dormer*.) That the Plaintiff *Jonathan Jones*, having attained his Age of One and Twenty Years, and being intitled to receive his moiety of the said money, after Deduction

Deduction of his Share of the said Costs, and he having contracted for a Post, in the Army, which, with his Equipage, will amount to two Thousand Pounds, he did, on the eighth Day of *March* last, apply to the Court for that money, and it was then ordered, that the said master should, out of the money in his Hands, pay unto the Plaintiff *Jonathan Jones* the Sum of two Thousand Pounds, the Plaintiff *Elizabeth Jones*, and Defendant *Wife*, having subscribed the Register's Book, signifying their Consent thereto; that pursuant to the said Order, the said master paid the said two Thousand Pounds, and there now remaining in his Hands of the Plaintiff *Jonathan Jones's* Share of the said money, about the Sum of six Hundred and forty two Pounds. That the said Plaintiff *Jonathan Jones*, having present Occasion for the said money, hath executed a letter of Attorney to the Plaintiff *Elizabeth Jones*, his mother, dated the Five and Twentieth of *May* last, empowering her to receive all monies due to him from the said master, and the Interest thereof, for the purposes therein mentioned. It was therefore prayed, that the said Master may pay to the said Plaintiff, *Elizabeth Jones*, the Remainder of the Money which is in his Hands, belonging to the said *Jonathan's* Share, pursuant to the Letter of Attorney, executed for that Purpose, which, upon hearing of Mr. *Horseley*, of Counsel for the Defendant *Jett*, and what was alledged on both Sides, his Lordship held reasonable, and doth order the same accordingly.

Sab'ti vicesimo secundo Die Decembr' Anno Regni D'ni Georgii Regis nono, inter Prideaux Sutton Cler' & Anna' Uxor' ejus Mercy Sheldon Spinstr' & Egidiu' Lawrence gen' Extor' Winifred Sheldon Spinstr' Defunct' Quer', Elizam Chitty & Job'em Russell & al' per Billa' ad revivend' & Supplement' Defend',

WHEREAS the Defendant *Elizabeth Chitty*, on the Eleventh of this Instant *December*, preferred her petition to the Right Honourable the Lord High Chancellor of *Great Britain*, shewing, That the Plaintiff and *Winifred Sheldon*, since deceased, having executed their Bill for an Account of the Estate of *Ralph Sheldon*, who died in the *East-Indies*; and to have their Shares and Proportions thereof, pursuant to his Will: It was on the hearing of this Cause, the eight and twentieth of *May*, One Thousand Seven Hundred and Fifteen, declared, That the Defendant *Elizabeth Chitty* was intitled to one Third of the said Estate, under the Will of the Testator *Sheldon*, her second Husband, in her own Right, and to a Moiety of the other two Thirds, in right of, or, as surviving the Children she had by the said *Sheldon*, who were dead, and that the other Moiety of the said two Thirds belonged to the Plaintiffs, or those whom they represented and decreed the same, after just Allowances to be paid and distributed accordingly; and Sir *Robert Nightingale*, Bart. since dead, having by his Answer, admitted to have in his Hands Ten Thousand Four Hundred and Seventy Pounds, three Shillings and Six-pence, part of the Testator's Estate: It was ordered, That he should carry Ten Thousand Pounds thereof, before Mr *Dorner*, then one of the Masters, to be by him placed

out at Interest, on Government, or such other Security as he should approve of, for the Benefit of the Parties to whom the said should belong. In pursuance whereof, the said Sir *Robert Nightingale* carried the said Ten Thousand Pounds before the said Master, who placed the same out at Interest, and on the nine and Twentieth of *July*, One Thousand Seven Hundred and Nineteen, though the said Ten Thousand Pounds, with the Interest, which had been received by the said Master, amounting to Eleven Thousand three Hundred and fifty-nine Pounds, seven Shillings, and three Pence, the said Master, by his Report, certify'd, That he had placed eleven Thousand three Hundred Pounds, Part thereof, out on the Land Tax, for the Year One Thousand Seven Hundred and Nineteen, at four Pounds *per Cent.* and that the Nine and Fifty Pounds seven Shillings and three Pence remained in his Hands; that on the third of *August*, one Thousand Seven Hundred and Twenty, the Plaintiffs, by Petition, applied to his Lordship, That the Master might pay them some money to carry on this Cause, and for their other Occasions; upon hearing whereof, they were ordered Six Hundred Pounds out of the money in the Master's Hands, which they have received accordingly. That the Defendant, *Elizabeth Chitty*, had, ever since the Death of her late Husband, *Josiah Chitty*, wanted money, not only to defend the said Cause, but also for her Support, and other necessary Occasions, and that neither she, nor her late Husband, had received any Part of the Principal or Interest before the Master, nor any other Part of the Testator's Estate, except some Jewels which were delivered up by the Trustees of the Testator's Will in *India*, to her and her late Husband, which, or the greatest Part thereof, she claimed as her *Paraphernalia*, but that she had no Benefit or Advantage thereof, her Husband having sold and disposed of them in his Life-time. Therefore, and for that the Money in the Hands of Mr. *Edwards*, one of the Masters of this Court, who succeeded the said Mr. *Dorner* in his Office, were considerably increased by the Interest which had been received by him, and for that the said Mrs. *Chitty* was, as aforesaid, intitled to two Thirds of the said Testator's Estate, except what should be decreed thereout to her Children, by her first Husband, who were intitled to one moiety of their Father's Estate, which was possessed by the said *Ralph Sheldon*, and for that she was obliged to maintain them, it was prayed, That the said Mr. *Edwards* might, out of the money in his Hands, and which should be paid in, upon the coming in of any of the Securities taken for the same, pay unto the Defendant Mrs. *Chitty* such Sum of money as his Lordship should think fit, to enable her to carry on the said Cause, and for her immediate Support, and other Occasions. Whereupon all Parties were ordered to attend his Lordship, on the then next Day of Petitions. And whereas the said Plaintiffs, on the eighteenth Day of this Instant *December*, also preferred their Petition to his Lordship, shewing, *inter al'* That they were, thro' their great Occasion for money, forced to apply the greatest part of the money, ordered them as aforesaid, towards their Support; and that the said Cause had been long depending, and very expensive, and was likely to undergo greater Travail before the said Master, before the said Account could be taken, so that they

They had great Occasion for more money, not only to carry on the said Cause, but also for their Support, and other necessary Occasions; and therefore praying that the said Master might also out of the monies in his Hands, and which should be paid in, upon coming in of any of the Securities taken for the same, pay unto the Plaintiffs, or their Solicitors, such Sums of money as his Lordship should think fit, to enable them to carry on the said Cause, and for their immediate Support and other Occasions; and the matter of the said Petition, being ordered to come on with the Defendant *Chitty's* Petition; and Counsel on both Sides this Day attending accordingly. Whereupon, and upon hearing both the said Petitions read, and what was alledged by the Counsel on both Sides: His Lordship doth order, That the said *Mr. Edwards* do, out of the money in his Hands, pay unto the Defendant, *Mrs. Chitty*, the Sum of Six Hundred Pounds, and also unto the Plaintiffs One Hundred Pounds a-piece, and it being now alledged, that *John Wyvill*, Esq; having exhibited his Bill against the said *Giles Lawrence*, for Payment of a legacy of two Hundred Pounds, bequeathed to him by the Will of the said *Winifred Sheldon*. It was on the hearing the said Cause, the first Day of *December*, One Thousand Seven Hundred and Twenty One, decreed, That the said *Mr. Wyvill* should be paid the said Legacy and Interest, together with the Costs of that Suit, out of the Assets of the said *Ralph Sheldon*. It is further ordered, that the said Master, do, out of the money in his Hands, pay the Plaintiff, *Lawrence*, the further Sum of Three Hundred Pounds, to enable him to satisfy the said Decree.

Mr. Lutwyche. Pray shew *Mr. Edwards* those Orders.

[*The Orders shewn to Mr. Edwards.*]

Mr. Lutwyche. My Lords, we desire that *Mr. Edwards* may be asked, whether he hath paid any money in that Cause?

Mr. Edwards. Here are two Causes, which is it you mean, that of *Jones* and *Jett*?

Mr. Lutwyche. Yes, that of *Jones* and *Jett*.

Mr. Edwards. The money ordered, by those several Orders, hath been paid by me.

Mr. Lutwyche. I desire to know, whether *Mr. Edwards* can inform your Lordships, whether it is the whole money, or but in part?

Mr. Edwards. It is the whole money in the Cause.

Mr. Lutwyche. I desire he may be asked, whether the money was paid out of *Mr. Dormer's* Effects, or out of his own?

Mr. Edwards. Out of *Mr. Dormer's* Effects.

E. of Macclesfield. My Lords, *Mr. Edwards* is a little mistaken, please to put the Orders in; here are three Orders in one Cause, and one in another; I desire to know, whether in both Causes the whole money was paid out?

Mr. Edwards. In that between *Jones* and *Jett*, the whole money was paid out, in the other between *Sutton* and *Sheldon*, the whole was not paid, but only Part.

Mr. Serj. Pengelly. We beg leave to ask *Mr. Edwards*, whether he did not pay the whole that was ordered by those several Orders?

Mr. Edwards. Yes, my Lords.

Mr. Lutwyche. *Mr. Edwards* did tell your Lordships before, that all the money, arising by *Mr. Dormer's* Effects, was paid out and gone.

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Mr. Serj. Pengelly. My Lords, we have gone through these three articles that have been opened, and we shall call no more Proof to them.

Then the House adjourned to Monday next at Ten o' Clock in the Forenoon.

The FOURTH DAY.

MONDAY, May 10.

The Lords being seated in their House, and the Managers being come, and the Earl sitting on a Stool, as before, and his Counsel and Solicitors at the Bar, the Sergeant at Arms made Proclamation for Silence, as also another Proclamation, That all Persons concerned were to take notice, that Thomas, Earl of Macclesfield, now stood upon his Trial, and they might come forth in order to make good the Charge.

L. Ch. J. King. GENTLEMEN of the House of Commons, you may proceed.

Mr. Plummer. My Lords, I am commanded by the Commons, to assist in maintaining their Impeachment against *Thomas*, Earl of *Macclesfield*; and when I consider how necessary it is for the Honour of his Majesty's Government, that an impartial Examination should be made into the Behaviour of this Earl, while he enjoyed the High Office of Chancellor; I am persuaded, that every good Subject must with Pleasure observe in what manner this Prosecution is carried on; it must be a Satisfaction to them, to see the Commons placing a Confidence in your Lordships Justice, and proceeding in the Legal Parliamentary method by Impeachments, and your Lordships meriting that Confidence, by laying aside all useless Ceremonies, and making the Prosecution practicable and easy. A harmony between the two Houses of Parliament always to be wished for, and which alone can bring impeachments to a happy issue, and deter great Offenders from oppressing their Fellow Subjects.

My Lords, In former Reigns, Prosecutions of this kind, have met with other Obstructions, and the Crown has often interposed its Authority to save a Favourite Minister; but, his Majesty, who has no other Views, but the Welfare and Happiness of his People, and who is always attentive to their interest, was the first who took notice, that the Earl of *Macclesfield* had abused the Trust and Confidence reposed in him. And who can (without the deepest Sense of Gratitude) consider the Conduct of his Majesty in this Affair, who immediately dismissed him his Service, and left him to the Justice of an injured Nation? And the Earl of *Macclesfield* himself will have this Advantage by it, that his Name will be delivered down to Posterity, as a monument of his Majesty's Paternal Goodness to his People. The immense Liberalities, the great Honours, the high Dignities conferr'd on him by his Majesty, will be so many marks of his Royal Munificence to the Earl, while he appeared to be his Worthy and Faithful Servant. And Posterity will with due Veneration observe, that neither the greatest

Favour, the nearest Access to his Sacred Person, nor any former merits towards Himself, and his Royal Family, could in his Majesty's Reign, shelter the Highest Officer of the Crown from Justice, who, presuming on those Advantages, would venture to oppress his Majesty's Loyal and Faithful People.

My Lords, The particular province, assigned me in this Prosecution, is to make good the 18th Article, wherein I shall have the Assistance of a Gentleman, who will amply supply all the Defects or Omissions I shall be guilty of.

As this Article has been read by your Lordships Clerk, I shall not mispend your Time in a needless Repetition of it; but will observe, that the Substance of the Charge contained in it, Is a wilful Neglect of the high Trust reposed in the Earl of *Macclesfield*, as Chancellor, That he did not restrain the masters of the High Court of *Chancery*, from trafficking with the Suitors money and Effects, but did permit and encourage that Practice, tho' he was advised to put a Stop to it, and fully informed of the Dangers, which were then likely to ensue, and which have since actually ensued, to the great loss and Injury of the Suitors of the said Court.

My Lords, As this wilful Neglect is highly criminal in itself, so it is greatly aggravated by the unjust and corrupt Views which induced him to be guilty of it, and the pernicious Consequences which have necessarily attended it; and, my Lords, since you have heard the Evidence that has been given on the former Articles, of the exorbitant Sums of money which he exacted for the Disposal of the Offices of masters in *Chancery*, even after *Dormer's* Failure, we don't doubt but your Lordships are convinced that he left the masters that unreasonable unlimited power, over the Effects of the Suitors of the Court, with no other View, but as a bait and incitement to others, to purchase those Offices (when Vacancies should happen) at the same, or greater Prices.

As I have stated the Charge contained in this Article, in as clear a manner as I am able; I beg leave, my Lords, to make some Observations on the Earl's Answer. He begins with an absolute Denial of his knowing, how the masters kept or disposed of the money and Effects belonging to the Suitors of the Court. This Answer, my Lords, was a Surprize to the Commons, as well because such an Ignorance would have been criminal in the Person, who ordered such prodigious Sums of money into their Hands, and who should be supposed to have had some Care of the Suitors; as also because We have the clearest Proofs imaginable, that he did know it, and it has already been proved by the Examination of several of the masters before your Lordships. But what Want can we have of Proofs? when the Earl of *Macclesfield* himself in his farther Answer to this Article confesseth it, by saying, that after *Mr. Dormer's* misfortune, he thought of several methods, and several Proposals were made to him by Persons he consulted on that Occasion, to prevent any Inconvenience on the like Accident, for the future. Pray let us consider, What was *Mr. Dormer's* misfortune? What was this Accident? Why truly, *Mr. Dormer* had trafficked with the Suitors Money and Effects, and had lost near 30,000*l.* And this the Earl of *Macclesfield* knew, and this made him think how to prevent such Inconveniencies, for the

future. My Lords, here is one of those Inconveniencies the Commons take Notice of in their Reply, and on which (without any farther Proofs) they might safely demand your Lordships Judgment.

But to consider his Answer farther: He says, he believes it will not be held criminal in him, not to have established any of the Proposals that were made to him by the Persons he consulted on that Occasion: Some Things were proposed that he thought impracticable, some insufficient, and some inconsistent with that compleat Regulation he hoped to make: The Objects, he proposed to himself, were, to make good *Mr. Dormer's* Deficiency, to secure the Suitors from any future Loss, and to make several Regulations relating to the Offices of the masters: And he thought these would be best done together; nor had he perfected the Scheme of any of them to his own Satisfaction.

My Lords, I am unwilling to make any Observations on this Part of his Answer; it is in itself so gross, I am afraid, if I took it in Pieces, I should appear ludicrous, which I shall take great Care to avoid on so solemn an Occasion.

But I appeal to your Lordships, if a Person was to read this Answer, who was not acquainted with the Times of these Occurrences, whether he must not imagine that the Earl of *Macclesfield* had quitted the Great Seal within some very short Time after *Mr. Dormer's* Failure. Whereas it has appeared to your Lordships, that *Mr. Dormer* went away from that Office in the Year 1720. and that the Earl of *Macclesfield* continued Chancellor till *January* last, which is more than four Years after, during all which Time (by his own Confession) he knew the Affairs of the masters of the Court of *Chancery* to have been in great Disorder, and to have wanted several Regulations: But, because he could not think of a Scheme perfectly to his Mind to answer all his Designs, he therefore has done nothing. This Answer must be left to your Lordships Judgment, but I am afraid, my Lords, the letting the masters go on, without any Check, was the Scheme the most to his Satisfaction, and most effectually obtain'd the Ends he really propos'd to himself, which were the making an exorbitant Gain by the Sale of their Offices, which must have fallen in their Price, if a Stop had been put to their trading with the Suitors money.

My Lords, he farther answers, That he remembers no Proposal that he thought would take it totally out of the Power of the masters to dispose of the Securities or Effects, or effectually secure the Cash. I can't omit taking Notice of the wording this Paragraph; and I believe your Lordships will agree with me, that the Words HE THOUGHT, TOTALLY, and EFFECTUALLY, are thrown in with great Caution. My Lords, We think we can prove to You that a Proposal was made to him, that would have taken it out of the Power of the masters to have disposed of the Securities and Effects, and would have secured, in great measure, the Cash; and this Evidence the Earl of *Macclesfield* must be well aware of, for He has it in his Hands as well as We; and I foresee the Strength of his Defence, in this Point, lies in the Caution of his Answer: But, my Lords, if any Proposal was made to him, which would have cured the greatest Part of the Evils the Court laboured under, I am sure your

Lordships

Lordships will hold it criminal in him not to have made use of it, and the rather, because he substituted no other in its room.

My Lords, He admits he took no Security of the masters, and says, he was never asked so to do. My Lords, We will prove that he was asked so to do, and that taking Security was part of the Proposal I have mentioned. In this Place he takes Notice of his Predecessors, who (as he says) were wiser Men than himself, and who took no Security of the masters. My Lords, We don't accuse his Predecessors, nor are we obliged to justify them; but, if I may be permitted to give my own private Opinion, It is, that if such misfortunes had happened in his Predecessors Days, and such Application had been made to them, they were so wise, they would have applied a proper Remedy: His not doing so, under these Circumstances, We look on as a plain Permission, and a strong Encouragement to the masters to traffick with, and employ the Suitors money for their own Gain and Profit. And it must appear so in a stronger Light, when your Lordships are acquainted that Mr. *Lighboun*, who is himself a master in *Chancery*, was the Person who made the Proposal, and who must (by my Lord's not using it) plainly see, that my Lord was resolved to lay no Restraint on them, which might have tempted Mr. *Lighboun* himself to have made an ill Use of that Power: But as he professed to my Lord Chancellor his Abhorrence of the masters abusing their Trust, by alienating the Suitors Effects, and desired my Lord to put a Stop to that Practice; so it appeared by his Accounts given in before the Judges, that he had appropriated the specifick Securities of the Suitors to every particular Cause. And, my Lords, we look on it as a great Aggravation of the Crimes contained in this Article, which I have now gone through, That my Lord *Macclesfield* should continue to act with such mean, low Views, as were unbecoming a master in *Chancery*, when he had the Assistance of a master, who behaved himself with a Prudence, Integrity, and Resolution, which would have been becoming the Lord Chancellor.

Mr. *Cary*. My Lords, It is my Province to assist the Gentleman, that spoke before me, in supporting the Charge of the Commons in the 18th Article, which he has open'd with so great Force and Perspicuity, that it is unnecessary for me to give your Lordships more Trouble upon it, than by making an Observation or two on the most material parts. The Beginning of this Article sets forth, *That the Earl of Macclesfield very well knew, or was inform'd, that the Masters did, or that it was in their Power to dispose of, and employ the Suitors Money and Effects.* To which, he is pleased evasively to answer, "That he never knew how the Masters kept, or disposed of the money and Effects belonging to the Suitors of the Court." The contrary of this will be abundantly prov'd; in the manner the Gentleman has already stated it.

But were it not, my Lords, so strong in Proof, the Guilt to me appears self-evident; 'tis much the same, whether he knew it, or knew it not; his Lordship may take the Alternative. What! did He, Lord Chancellor, supreme Director of the Court, the great Trustee of *England* (who order'd the money into the master's Hands, who order'd it out of their Hands) did He know nothing of

their Power over it? Was he the only man in *England* that knew *nothing* of their Deficiency? And if he was, my Lords, Is that Ignorance an Excuse, or Aggravation? But we shall prove to your Lordships, that he not only was told of this Traffick with the Suitors money, but was foretold the Consequences of it, the Danger of future losses was pointed out to him, and proposals for preventing 'em were given him in Writing.

And who was it, my Lords, that made these proposals? Who gave him this Warning? One of the masters of the Court, One interested in the Traffick of the Suitors money, a Gamester at the same Table with the impeach'd Earl. Advice from such a Hand must be sincere and unsuspected; nothing but Justice, or a strong Apprehension of their common Danger, could have extorted it; nothing but the blindest Avarice could have prevented the Compliance with it. But what still renders this Conduct more amazing is, that the impeach'd Lord had not the Advantage of a single proposal only, and from a single master, but of several proposals; and from several of 'em. Mr. *Knayston* will inform your Lordships, *That he and other Masters waited on the Lord Chancellor, and propos'd to give Security in Land, or Money, for their Cash, and to make their Trust less by putting the Securities in two Masters Names, or in the Names of the Parties and one of the Masters;* with which he then appeared pleas'd, tho' he afterwards did nothing in it, and expres'd his dislike of the proposal. Yes, my Lords, the proposal was too reasonable to be refus'd, and too self-denying to be follow'd. So far was the unfortunate Lord from following it, or acting in any manner consistent with it, that soon after the Failure of Mr. *Dormer*, after these proposals were made to him, he sells the Offices of several masters at most exorbitant Prices. And was this what my noble Lord sets forth in his Answer, *as one of the Expedients he thought of, after Dormer's Misfortune, for preventing any Inconvenience, on the like Accident, for the future?* Was this the only Method of Cure the noble Earl brought to such Perfection, as to venture to put it in Practice?

My Lords, the Gentlemen, embark'd in the same Bottom with this unhappy Lord, saw the Ship sinking, and propos'd throwing over-board part of their unjustifiable Gains, to prevent their general Wreck; but the impeach'd Earl does not only boldly steer on the same Course, but takes in lading, more Weight of Guilt, if not in defiance of the danger, certainly in the Neglect of it.

And how, my lords, does his Answer excuse this Conduct? He admits that several proposals were made on that Occasion, but *some he thought impracticable, some insufficient, some inconsistent with that compleat Regulation he hoped to make.* And because some were insufficient, some inconsistent, and not answering the full Idea of Perfection propos'd by his lordship, must therefore nothing be attempted? Must we have no Relief, because we despair of an absolute Cure? Must no Remedy be apply'd to a dying Person, because it is not certain it will restore him to his perfect Strength? Thus far indeed is certain, It is much better to do nothing, than to continue such methods, as first brought the Distemper upon him. We must therefore leave it with your Lordships to judge, whether the Inconsistency of the proposals with the Earl's private Views was not the true Reason of their being thought impracticable and insufficient. And what those Views really were, the whole
Tenor

Tenor of our Evidence has, and will shew. Views beneath the Dignity of his high Office, and far below a Member of this August Assembly.

My Lords, the Commons farther charge this unhappy Earl, *that he not only knew, but conniv'd at, and encourag'd this destructive Traffick*: And in answer to this, He says: "That he gave no Permission nor Encouragement to the Masters of the Court, to employ or traffick with the Suitors Money." We have shewed your Lordships, he knew it, and knew it in the most affecting manner, by the Ruin it had produced. We need not shew you that He had power to prevent it. And surely, my Lords, to know it and not prevent it, in his Situation, was to permit it. And as his not preventing it was a Permission, so his Example was an Encouragement: And when the Masters saw him (the greatest Object in the Compass of their View) taking every indirect method to make the most of *his High Office*; sure, they must think that Example (join'd to the Necessity he *Himself* laid them under by the exorbitant Prices he exacted) a sufficient Encouragement to authorize them in the like Practices *in theirs*. The Examples of great Men, my Lords, are Encouragements, and the Assembly I see before me is an illustrious Proof, they ought to be so, and will do Honour to those who follow them: And from the Influence those Examples have, and ought to have over the rest of mankind, it has been suppos'd, that the only Passage to Honour was through the Temple of Virtue; but, my Lords, tho' there be but one Passage to it, there are many from it; and so many are the Frailties of human Nature, that the Building would be imperfect, without a Back-door to let out, whatsoever fullies or pollutes it: A Door, my Lords, your Ancestors have opened to former Lord Chancellors.

But we shall call our Evidence, and submit the whole with the greatest Security and Satisfaction to your Lordship's Judgment.

Mr. *Plummer*. I desire Mr. *Lightboun* may be called.

[*Mr. Lightboun being called appeared.*]

Mr. *Plummer*. I desire Mr. *Lightboun* may inform your Lordships, whether he had any Discourse with my Lord Chancellor, about putting the Offices of Masters of *Chancery* into a better Regulation?

Mr. *Lightboun*. My Lords, in order to answer this question it will be necessary for me to repeat some part of the Account I gave when I was last at your Lordship's Bar. I then acquainted your Lordships, that in the Beginning of the Summer, in the Year 1722, the Lord *Macclesfield*, having directed me to attend him, told me that he had heard I had not contributed my 500 *l.* towards making up Mr. *Dormer's* Deficiency, as the other masters had done; that he did not expect I would have stood out, and was sorry to hear of it, as he had a more particular Regard to my Conduct than any of the rest, because I was the only master of his immediate Choice; and on his Lordship's telling me that it was first propos'd by the masters, and not by his Lordship, I told him I was not willing to comply with it, and thought it a dangerous Expedient; that it might be hereafter looked upon as an Undertaking one for another, and therefore I would not come into it; and that as this Accident had happened to Mr. *Dormer*, the like might happen again to others,

and might be the Ruin of us all, if such a Construction were put upon it. My Lord was pleas'd to say, it was the only Expedient he could think of for making good the deficiency. I told him I had as much at Heart the doing of that as any Body; and that if a proper Expedient could be found out to pay Mr. *Dormer's* deficiency, and prevent the like Accident among us for the future, by putting the Offices on such a Foot, that the masters might execute them with Honour to the Court and themselves, and with Safety to the Suitors, I should be glad to contribute to such Regulations. His Lordship said he should be glad if any such Thing could be thought of, and asked me, if I could think of any method by which that might be done. I told him I believed I had, at which he expressed great Satisfaction; and we being then standing, his Lordship desired I would sit down. He then asked me, in what manner it was that I propos'd the Suitors should be made safe: I told his Lordship that I apprehended it was impossible to expect, that the masters could give a Security adequate to such a Trust; that there were many Instances of great Officers, whose Trust was so great as to be above giving ample Security, particularly the Tellers of the *Exchequer*, and the Treasurers of the *South-Sea* and *East-India* Companies: But if a competent Security were taken, and such I apprehended might be given, I hoped it would answer the Intent, and give Satisfaction, since ample Security for so great Trust could not be expected. I then told his Lordship, that if the Causes of Mr. *Dormer's* misfortunes were considered, they would be found not only to proceed from squandering or misapplication of the Cash, but from Power over the Securities in his Hands; for that the money could not be so much, but the Securities amount'd to a greater Sum. He said it might be so, but how to prevent it he would be glad to know. I told his Lordship, that if the Securities, for the future, were to be taken in the Names of the master, and one or more of the Parties, the Suitors would be safe. It was then observed, but whether by my Lord, or me, I do not remember, that an objection might arise to this method, for that if either the master or the party should die, the Trust would survive; and thereby either the Court lose its Power over the Security, or the master's sole Power over it be restored; but, to prevent that, I propos'd that they might be taken in the Name of two or three, or more of the masters, with or without the Persons interested, as the Court should think proper; and that it was hardly to be imagin'd that all the masters would betray their Trust, and risque their Fortunes to oblige any one, by suffering him to traffick with the Securities of the Court, taken in their joint Names; especially, if Care was taken, that such master, as was to be joined, or be a Check upon another master, should have a Third to be a Check upon him. My Lord *Macclesfield* objected, That there was a great Number of *South-Sea* and *India* Bonds, and other Securities, payable to the Bearer, that could not be in the Names of any particular persons, and so could not be secured in that manner; and that it would be troublesome to lock them up. To which I replied, I knew no occasion for putting out money on *South-Sea* or *India* Bonds, or such securities, since there were other Securities sufficient,

sufficient, which might be under a proper Restriction, and which were not partable, but are transferrable in Books at the *Bank*, or elsewhere, viz. *Stocks, Bank-Annuities, Civil-List Annuities, Four per Cent Annuities, Land and Malt Tallies, and Lottery Orders*, which were assignable by Indorsement; and that, if these Securities were taken in the Names of several Persons, it would be impossible for any one Person to dispose of them, without the Knowledge and Consent of all. My Lord expressed great Satisfaction at this Proposal; and then asked me, in what manner Mr. *Dormer's* Deficiency would be provided for? I then acquainted his Lordship, that there was always a considerable Cash in each master's Hands; and that if some part of that was placed out at Interest, in the Name of all the masters, it would be no Injury to the Owners, if it was ready, when called for; and the produce would raise a Fund to pay Mr. *Dormer's* Debt; and that it was very likely the Lords of the Treasury might, on such an occasion, give us the Preference, and let us choose a proper Part of the loans on the Land and Malt-Tax, to lend the money upon; that if any master wanted any Part of the money he had placed out on that Occasion, to answer the Suitors Demands, such Securities were easily converted into money. I was unwilling to fix any Sum for each master to advance; but believe I did mention 3, 4, or 5000 *l.* for his Lordship's Consideration; and took Notice that would amount to 40 or 50,000 *l.* and would, in due Time, raise a Sum of money sufficient to answer the Deficiency of Mr. *Dormer*. My lord made some Doubts; but said he would be exceeding glad to give his Assistance; but was afraid he could not properly order the Suitors money to be laid out, but for their Benefit whose money it was. I said, I thought that might be done without any Order, if his lordship approved it, and the masters all came into it, and placed it out in all their Names; and that at any Time, by disposing of the Security taken for it, the money might be raised, when wanted. My lord made some Doubt, whether it could well be done; but was pleased with the Proposal: And many other Things were said, which I cannot, at this Distance of Time, recollect. I had, my lords, two Views in it, but won't be positive that I mentioned them to my lord. I apprehended it would not only raise a Fund to pay Mr. *Dormer's* debt; but that it would divest each master of the power over 5000 *l.* of the Suitors money, which he had in his Hands. I also took Notice, that if some small Security was taken from the masters, but am not certain that I mentioned any Sum; but believe I might say 5000 *l.* and that such a Security, with our Offices, valued at about 5000 *l.* a-piece, would, with the money placed out for the Payment of Mr. *Dormer's* Debt, be a Security for the money in our Hands, were we but divested of the power over the Securities, which was four parts in five of the Trust: And tho' 15,000 *l.* will not answer the money which a master may sometimes have in his Hands; yet, where a man gives a Security for 14 or 15,000 *l.* he'll scarce run away for 20,000 *l.* This I thought, might be of Service to the publick, and desired my Lord to consider of it: And his Lordship said, that something might be grafted on this Plan; and

desired me to put it in Writing. I told his Lordship I did not know, whether this Scheme might be agreeable to every Body; that I came into the Office but very lately; and that it was necessary for me to have a good Correspondence with my Brethren; and that I was afraid, if it should be known that I proposed any thing without their privacy, I should be used more unkindly among them than I had already been; and therefore hoped his lordship would not let them know, that it was my Proposal, nor shew them any thing of mine in writing; and took my Leave of my lord at that Time. The other masters knew I had been with my lord; but I did not communicate the Occasion of my going to him, or the Proposal; but I sounded the rest of the Masters, how any proposal of this Kind was agreeable to them: Most of them were averse to it, particularly that of divesting them of the Securities; because that shew'd a Distrust of them, and, they said, would diminish the Reputation of the Office. They were against placing out any such Sum as 5000 *l.* some were rather willing to contribute annually, than to pay such a Sum of money down: And finding them averse to it, I was a little cautious how I put this Proposal into Writing. It was near a month before I set about it; and then did it by way of letter, in which I took Notice in the Beginning, that it was in Obedience to his Lordship's Command.

Mr. *Plummer*. I beg pardon for interrupting the Witness; I desire he may be asked, if he did not send that Letter to my Lord *Macclesfield*?

Mr. *Lightboun*. I wrote a Letter, to the same Purport or Effect with what I had proposed, except in some Instances which I found other masters averse to, and was cautious of carrying it too far; and believe, instead of 5000 *l.* to be placed out, I only mentioned 2000 *l.* or such other Sum as should be agreed on. And though I mentioned a larger Sum, when I was with my Lord, and a smaller by Letter, I left that to my Lord's Direction, as his Lordship should think necessary. I don't remember, or believe, that I took notice in my Letter of the small Security I proposed to be taken, the rather, because the masters differed much in their Thoughts about that: Some of them were for giving none; therefore I said nothing of it. I thought that was my Lord's province more than mine; but I stuck the more closely to that of placing out of the money, for payment of Mr. *Dormer's* Deficiency, and taking the Securities in several masters Names. And when I had writ the letter, I sent it to my lord about *June*, or *July*, 1722, by my Clerk, who told me he delivered it to my Lord's Servant.

Mr. *Plummer*. I desire to know, if he kept any Copy of that letter?

Mr. *Lightboun*. I kept the original Draught, which I apprehend I writ the letter from. I can't say it is an exact Copy; because in transcribing, I might alter Words which I disliked, and put in others; and therefore I am not sure it is a true Copy; it may vary in Form, but not in Substance.

Mr. *Plummer*. I desire he may be asked, whether ever he spoke to my lord about it, and that my Lord acknowledged the Receipt of this letter?

Mr. *Lightboun*. My Lords, I think I did say, in the Prefence of some of the masters, when my Lord talked of taking Security in several masters Names, that if his Lordship would look into the letter I writ to him at such a Time, he would find that Propofal made: I don't remember my Lord made any Reply, he did not deny it. But not long before *Christmas*, my Lord did mention this letter to me, upon this Occasion: When I was passing my Accompt before the Judges, and the Directors of the *Bank*, I had told them of this letter; which his Lordship, having heard of, asked me, what I had said about it? I told his Lordship, I had acquainted them with the Contents of the letter I wrote: Says He, I have that letter by me.

Mr. *Plummer*. I desire Mr. *Lightboun* may produce the letter.

Mr. *Lightboun*. My Lords, I have not the letter.

Mr. *Plummer*. The original Draught you mention.

[Mr. *Lightboun* produces the Draught.]

Mr. *Plummer*. Is that your own Hand-writing, and the Substance of the Letter you sent to the Lord Chancellor?

Mr. *Lightboun*. It is my Hand-writing, and the Substance of that Letter.

Mr. *Plummer*. I desire it may be read.

[Mr. *Baily* reads the Draught.]

My LORD,

I N Obedience to your Commands, I here lay before your Lordship my Thoughts upon the Affair you were pleased to mention, when I had last the Honour to wait upon your Lordship; and must own, that a provision, for the Demand upon Mr. *Dormer's* Office, might answer our present purpose: But, with great Submission, I think it concerns the Honour of the Court of *Chancery*, to find out some proper Expedient to prevent the like Accident for the future: And I beg leave to observe, that the great Difficulty, which this Gentleman has brought upon himself and the Court, proceeds not only from his Squandering or Misapplication of the Court Cash in his Hands (were that all, his Estate and Office would much more than have answer'd the Demand) but I am afraid it is too obvious, that his Power over the Government Securities, that had been transferr'd to, or brought before him, or upon which he had placed out the Money of the Suitors of the Court in his own Name, has been the Occasion of this great Deficiency, which I hope may be provided for, and the Credit of the Court retrieved and supported, by every Master's advancing 2000*l.* or such other Sum as shall be agreed on, out of the Cash of the Court in his Hands; which being placed out at Interest, the yearly Income thereof, together with the Produce of Mr. *Dormer's* Estate, will answer the Demands that may be expected on his Successor; and will, in due Time, make good the Debt upon the Office, provided the Money that has already, or may hereafter be raised, from his Estate, or any other Way, for that purpose, be forthwith apply'd to discharge such Demands as carry Interest, or be invested in such Securities as have been disposed of by Mr. *Dormer*, belonging to the Suitors, to answer the same and the accruing Interest, which I hope the Gentleman that succeeds him has already taken Care of, if not, the Demand will rather encrease than diminish.

And having before observed, from whence this great Deficiency has arose, I submit it to your Lordship, whether the taking all Government Securities for the future, in the Name of two or more Masters, may not prevent the like Misfortune hereafter: And the Deposit to be put out to Interest, to raise a Fund for the Payment of Mr. *Dormer's* Debt, together with our Office, wou'd in a great Measure, be a Security for the Cash with which we should then only be intrusted.

I expect it will be objected, against the Deposit, that some masters may not always have that Sum in their Hands; but I will venture to say, 'tis scarce probable that can happen, if the Money be directed as usual, to be brought before the Masters, both by Your Lordship and the Master of the Rolls, without which the Masters can't think themselves much interested in the Event of Mr. *Dormer's* Affair.

It may also be objected, that the Alteration proposed, in the future taking Government Securities, will shew a Distrust, and cause Reflections upon the masters; but I shall think it a Happiness, to be divested of a power never to be used, without the greatest Violation of the Trust reposed in us that can well be imagined; and I think it evident, that it had been a much greater, if we had never been intrusted with it; and as this Variation may be begun by ourselves, without any publick Direction or Alteration in future Orders, I think it will rather turn to our Reputation than Disadvantage, and will certainly ease the minds of the Suitors, which ought to have some Consideration in this Affair. I am unwilling to trespass longer on your Lordship's Time; but if I have the Happiness to have offered any thing thought practicable by your Lordship, when I have the Honour to be admitted to wait upon you, I hope to satisfy your Lordship, that I shall, with Pleasure, contribute, as becomes me, to facilitate any Undertaking of this Kind; and that I have as much at Heart the Reputation of the Office I had the Honour to be placed in by your Lordship, as any of my Brother masters. But as we have different Views, it is not surprizing that we think not alike; which makes me fear that nothing of this Kind will be approved of, unless recommended by your Lordship; and am,

My LORD,

Your Lordship's

Most obedient Servant,

J. LIGHTBOUN.

Mr. *Plummer*. What Date is it?

Mr. *Lightboun*. I did not expect when I wrote this letter, that I should have been called upon to give any Account of it, and did not put any Date to it; but to the best of my Knowledge, it was in *June*, *July*, or *August*, 1722; but it is from Circumstances I recollect that, rather than from any Remembrance I have of the exact Time.

Mr. *Lutwyche*. I only desire that Mr. *Lightboun* may recollect the Time, when he first mentioned this to my Lord *Macclesfield*, and this letter was taken Notice of to him?

Mr.

Mr. *Lightboun.* Indeed, my Lords, I cannot do that, I believe it was at a meeting of several of the masters, at my Lord's House. I often had the Honour to be admitted to him, with or without other masters. His Doors and Ear were always open to me; and I was often troublesome to his lordship. But I cannot recollect the Time, when this was first mentioned.

Mr. *Plummer.* I think he says the Masters might have different Views. I desire he would explain himself, what he meant by that?

Mr. *Lightboun.* I meant by that to put my Lord in mind of what I had said, when I had the Honour to be with him last, when his Lordship told me, that the proposal of a Contribution came from the two senior masters, I then said that their Design was only to skin over this Wound, till they could get out: That one of them had slipp'd his Neck out of the Collar already, and another was about getting out. I told his lordship, that, as I was but lately come into the Office, I proposed to spend my days or wear myself out in the Service of the Court. Therefore, that their Design was to get out, and mine to continue in, was what I meant by different Views.

Mr. *Plummer.* Mr. *Lightboun* hath given your Lordships an Account of his Proposals and Arguments used with my Lord Chancellor; I desire to know, whether he used any other inducements to persuade my Lord to make some Orders relating to the masters?

Mr. *Lightboun.* It was a long Time before I heard any more of this Affair. As they were quiet, without any Application to me for the 500*l.* or to come into any Contribution, which I was resolved against; so I did not think it prudent for me to make any Bustle amongst my Brethren. I thought I had done my Duty, I had given my Opinion when it was required, and I did not stir in it till the masters apprehended themselves very much aggrieved, by the Variation the master of the Rolls was pleased to make in the Practice of the Court, by directing all the money of the Suitors to be brought before his Usher, and sometimes to be put out by him without the masters Approbation; which not only deprived the masters of any Advantage from thence, but of those Fees that were due to them, on the receiving and placing out at Interest, or paying it out again; and, as I took it, it no Way answered the End, nor was for the Benefit or Security of the Suitors: Because if the Trust was too great, and the Suitors Property not safe in eleven Men's Hands, much less was it safe in the Hands of one. Therefore I apprehended there was Reason for Complaint. On this Account we had several Meetings; I was always ready to come into any Representation to my Lord, in hopes that Grievances of all Kinds might be looked into, and, I believe, often complained to my Lord of these matters. We went to my Lord Chancellor, and acquainted him of our Grievances; my Lord desired us to put them into Writing, we all readily concurred in that: Accordingly we drew up our Complaints of these, and other Incroachments on our Offices, by Way of Representation, which was delivered to my Lord Chancellor, and after my Lord had had it some Time, and nothing done, we frequently importuned my Lord, to consider the declining

State of our Offices; and, I concluded, that would bring the other matters on the Stage, without which, nothing effectual could be done. My Lord said he would have a Conference with the master of the Rolls, and the Masters, in order to debate these matters; and I did not doubt, but, upon that Occasion, the Deficiency of *Dormer's* would come out, and that something might be done for us, consistent with the Honour of the Court, and the Suitors Safety. But that Conference was delayed; the Grievances in all Respects grew greater; we grew more troublesome to my Lord Chancellor; my Lord then said, there was a Necessity of redressing all the Grievances; he mentioned the masters giving Security, that of taking Securities for the Suitors in other People's Names, and continuing the Masters in the Enjoyment of their Offices, as they had used to have them, and said it would be best to do all together. With this we were put off for some Time, but, on further Solicitation, my lord said, he was now determined to do something in this Affair, and his Lordship desired a more particular Account of the Grievances complained of by the masters, and their Reasons, and the Inconveniencies to the Suitors that accrued from the new methods, which the master of the Rolls had turned the Business of the Court into; and that the matter, both with respect to the Suitors and the masters, might be fully understood, his lordship pressed, that something of that Kind might be drawn up in Writing and laid before him, and he would make Orders proper to make a thorough Reformation in the Court: And, I remember his Expression to me was, it would save him much Trouble, if what was drawn up by the masters, not only contained the Things which they had Grounds to complain of, but was put into the Form of Orders necessary to be made, for him to consider of, and alter, and add such others as he had prepared, or thought necessary. And soon after, a second Representation was prepared and was delivered to my lord. And after his lordship had had it some short Time, there was a Meeting at my lord Chancellor's, where the master of the Rolls and the masters were present, and at that Time there was a good deal of Discourse about the money. But when the master of the Rolls began the Topick of his Jurisdiction, exclusive of the King's Commission, Heats arose, and little was done at that meeting. I think some Persons of Quality came to speak with my lord, and that broke it up. I was soon afterwards with my lord, and I asked his lordship what he intended to do: He said he was sorry Matters were got to that Height, but that he found if the Masters would give up the Judicature, they might be made easy in their Demands, and Things put upon the old Foot, and the Suitors made safe too. Upon that Occasion, I did take the liberty to say, if there was a judicial Power in the masters by Vertue of the King's Commission, as it was his Majesty's Prerogative to grant, we could not give it up; and that, for my part, I would not exchange or barter it for the Custody of the Suitors Money. I believe my lord proposed, at this meeting, to have had the Assistance of the Master of the Rolls in making these intended Orders; and I recollect, that after the Deficiency of this last Representation,

which

which I was present at, I heard that my lord had shewn it to the master of the Rolls before the meeting, which I took amiss, my lord desiring it for his own private Use: Upon which I went to him in order to withdraw it, and told him it was done in such Hast, that all the Masters had not considered it; but whether I alledged to him, or He to me, I don't remember, but it was said, that it was very proper the Masters should all sign it; and I think I carried it back to the Masters, and that we all signed it; and then it was delivered back to my Lord. And, I believe, upon the Face of that Representation it will appear, that it was drawn up at my Lord Chancellor's Request.

The first Representation was chiefly confined to such Grievances as affected our selves, the second is more at large; I don't know whether his lordship will produce it. Some Things in it may seem to bear hard upon his Honour the master of the Rolls, and may give Offence; but it will be considered, that it was written at a time when there were great Differences between the master of the Rolls and the masters. Nay, I think I may say, the whole Court of Chancery was in a State of War.

Mr. *Plummer*. I desire he may be asked, if he ever laid before my lord Chancellor the Expectations of the World; that he would reform these Abuses and Grievances?

Mr. *Lightboun*. I have often mentioned that to my Lord, and pressed it rather more and oftener than became me. I was ashamed to be so troublesome, and I was surprized that my lord did not do something in it; tho' I soon found, and have often told one or other of the masters and others, that my lord would do nothing in it. However, I continued to persevere in pressing it; and expressly mentioned the great Inconveniencies the Court would be run into, for want of a proper Regulation, and with what an ill Grace we could apply to his Successors to redress these Grievances, in Case his lordship grew weary of the fatigue of Business, and quitted the great Seal; that they would tell us, we had long acquiesced under them, and that his lordship not having so much as looked into them, they would not care to meddle or interfere in it. I pressed it home to his lordship, and thought he made Doubts and Difficulties where there were none. Indeed I thought in this his lordship wanted his usual Resolution, and almost ventured to say so. I know not whether it is very proper to mention it, but I did take the liberty to tell his Lordship, that if he did not redress these Grievances, unless my lord *Lechmere* succeeded him, I despaired of seeing them settled on any better Foot. I hope my lord will pardon my mentioning his Name.

Mr. *Serj. Pengelly*. My lords, We have done with Mr. *Lightboun*.

Mr. *Serj. Probyn*. I desire he may be asked, when the first Application was made by the masters to redress their Grievances?

Mr. *Lightboun*. I really can't tell. I went so frequently to my lord, that I cannot distinguish one Time from another; I believe other masters that went seldomer can tell better; but I believe it must be a Year and a half, or 2 Years ago, or more: I cannot tell the Time.

Mr. *Serj. Probyn*. I desire he may be asked, whether there was any second Application, before the Representation was put into Writing?

Mr. *Lightboun*. Immediately upon the master of the Rolls's varying the method of the Court, and directing the money to be paid in to the Usher, the masters went to my lord Chancellor's, which I believe must be before *Christmas*, 1722. I believe Mr. *Holford* remembers it better; and that from Time to Time, I have often told him that my lord Chancellor would do nothing in it.

Mr. *Serj. Probyn*. I desire to ask him, when that meeting was between the late lord Chancellor and the master of the Rolls?

Mr. *Lightboun*. That I believe was the beginning of last Summer.

Mr. *Serj. Probyn*. We desire he may say who was then present at that meeting with the master of the Rolls?

Mr. *Lightboun*. My lords, At that meeting with the master of the Rolls the lord Chancellor was there, had the great Seal before him; and the two Senior Registers were there, with Pen Ink and Paper before them, in proper Habits; the Master of the Rolls, and all the masters in their Gowns; and the Secretary was there, and the masters all hoped the Orders were to be then pronounced; but I can't remember that the Registers set Pen to Paper. The Usher was likewise there.

Mr. *Serj. Probyn*. I desire he may, if he can recollect it, give a particular Account of what passed at that meeting.

Mr. *Lightboun*. The masters insisted they had a Right by Custom to have the money brought before them, where there was any Reference to a master, whether it was by Orders made upon hearing, or by Interlocutory Orders, or if there was a Direction in that Order, by which the money was brought in for the Payment, or Application of it; in these Cases they alledged, that the money had, time out of mind, been brought before the master, to whom the reference was directed; and they did admit, that where money was brought in upon Bills of Interpleader or Interlocutory Orders, where there was no Reference to a master, the money had usually been directed to be brought into Court, in Order to be kept till it could be determined whose it was, or to what Use it was to be applied; and there they admitted the money was formerly kept by the Usher. This I apprehended was insisted upon by the masters as their undoubted Right, and it was expected an Order would have been then made, declaring it so.

Mr. *Serj. Probyn*. I desire to know what further passed relating to Facts only, without any Account of his own Expectations?

Mr. *Lightboun*. Some Debate arose about the master of the Rolls's Judicature, started I think first by himself.

E. of *Macclesfield*. I desire to put Mr. *Lightboun* in mind of some Things, and first to ask him, whether upon that Application they had made to me in relation to the Alteration or Variation, as he calls it, in the Practice of the Court, by the Orders made by the master of the Rolls, whether I did not require them to lay Precedents before me, that I might be satisfied how that matter stood?

Mr. *Lightboun*. Your lordship did; but it was long before that meeting, I believe a Year and more.

E. of *Macclesfield*. Whether there had not been like Directions, that the Usher should lay Precedents before me?

Mr. *Lightboun*. I don't know of any such Directions to him, but I remember my lord Chancellor called for his Precedents, and wondred he had not brought them, if he had any for his purpose.

E. of *Macclesfield*. I desire Mr. *Lightboun* may recollect whether the question was not put to the Usher, with relation to the Usage of the Court, to put the money into the masters Hands, in all Cafes where the money was brought into Court, to be disposed of, either to be put out at Interest, or paid to Creditors, or Legatees, whether he had any one Precedent to the contrary?

Mr. *Lightboun*. I remember he had none, and I apprehended the Usher did not make out any sort of Claim to keep such money.

E. of *Macclesfield*. I don't ask what the Usher made out, but what Questions were asked him about the Usage and Precedents.

Mr. *Lightboun*. I believe they were ask'd for, and I am sure he then produced none.

E. of *Macclesfield*. Pray recollect, and consider; did I speak to him, as to one that had not any Precedents to produce; or did I make mention as if he had brought Precedents, and ask him if he could say, that among those Precedents there was one to the Purpose, to make out that the Usage was not so?

Mr. *Lightboun*. I say your lordship blamed him for not bringing these Precedents. I believe your lordship asked him, if he could bring any Precedent to the Point? and, to the best of my Remembrance, he said he had none, or gave no satisfactory Answer, but such as I thought evasive; but I cannot remember particularly what your lordship and he said to each other.

E. of *Macclesfield*. This is a very indifferent Account; since Mr. *Lightboun* hath so good a memory, I desire to know whether the Usher was not told, that his Precedents had been read, and possibly I might have overlooked some that were material; and therefore desired him to shew whether there was among them any one Precedent, that related to money brought in, in these Cafes?

Mr. *Lightboun*. He produced none.

E. of *Macclesfield*. Did it not appear that he had produced Precedents before, and they had been read, and that possibly I might have overlooked some of them?

Mr. *Lightboun*. On your lordship's mentioning of it, I do recollect something did appear, that your lordship had seen his Precedents, and did expect he should have brought more.

E. of *Macclesfield*. I desire he may be asked whether he did pretend he could produce more?

Mr. *Lightboun*. My lords, I cannot be particular in that.

E. of *Macclesfield*. I desire to know whether he did not own that he had no such Precedents?

Mr. *Lightboun*. In Answer to that, my lords, I cannot say positively he did or did not; for I believe I have seen some few Orders of antient Dates, that were Precedents of money being brought into the Usher's Hands, in Order to be disposed of after hearing. But there were but few of them.

E. of *Macclesfield*. My lords, I desire Mr. *Lightboun* may be asked whether the Registers were not asked about the Practice of the Court and if in all their Observation and Experience the money in the Cafes before specified was order'd to the Usher?

Mr. *Lightboun*. They were, my lords.

E. of *Macclesfield*. And what Answer did they make?

Mr. *Lightboun*. They answered, that the money, after hearing, and on interlocutory Orders, where the Application was directed, had been usually ordered to the masters.

E. of *Macclesfield*. I desire Mr. *Lightboun* may be asked, whether it was not after this, that the master of the Rolls began to speak with relation to the Judicature, and how that was introduced?

Mr. *Lightboun*. I have forgot the Circumstances and Manner of its being introduced by the Master of the Rolls. But I remember one Expression of his Honour's, That he would have the Masters consider how proper it was for them to insist upon a Judicature, which would impower them to order Money into their own Hands. But how he introduced that Discourse I don't know; but I saw the lord Chancellor had not a Mind that Topick should be touched upon, and that the Master of the Rolls brought it in much against his Lordship's Inclination; but how I don't remember. If your Lordship puts me in mind, I may recollect.

E. of *Macclesfield*. The Usher, was not he apprized of this meeting?

Mr. *Lightboun*. Yes.

E. of *Macclesfield*. Did the Master of the Rolls give any Opinion relating to this Matter of the Money being paid to the Usher?

Mr. *Lightboun*. He insisted on his own Judicature, and both introduced and stuck to that Discourse.

E. of *Macclesfield*. Do you remember his saying that the Masters must not expect favour at the Rolls, if they contended for Jurisdiction?

Mr. *Lightboun*. My Lords, I do not.

E. of *Macclesfield*. You spoke of my irresolution: Was it not with respect to the Dispute between you and the Master of the Rolls?

Mr. *Lightboun*. I could not tell were it stuck, there was some Difficulty made of determining that Matter; but your Lordship did not communicate to me your Reasons why you did not proceed upon that or any other of the Masters Affairs.

E. of *Macclesfield*. I presume, Mr. *Lightboun*, you did not every time you came to me, speak to me of the Affairs wherein the Masters thought themselves hurt?

Mr. *Lightboun*. No, my Lord, I did not.

E. of *Macclesfield*. You sometimes spoke to me about the Money, and at other Times relating to the Master of the Rolls; I desire to know, when you applied to me with respect to the Disputes with the Master of the Rolls and the Innovations made on your Offices; if it was not upon that you found me irresolute?

Mr. *Lightboun*. Your Lordship always said it was proper to settle all at one Time, that some Security should be given by the Masters, and something done to make it reasonable to expect it from them; which was to establish the Masters in their just Rights, and upon that occasion your Lordship mentioned taking Securities in different

rent Persons Names, and upon that Score the old Proposal of mine was revived.

E. of *Macclesfield*. I have no further Question to ask.

Mr. *Serj. Pengelly*. My Lords, we desire Mr. *Holford* may be called.

Mr. *Holford* called:

Mr. *Serj. Pengelly*. My Lords, We desire Mr. *Holford* may be asked, whether at any time, and when, he heard of a Proposal made by Mr. *Lightboun*, and whether it was made publick?

Mr. *Holford*. My Lords, a good while ago; I believe two or three Years, Mr. *Lightboun* and I had a great deal of Discourse about the Condition and Circumstances the Court of Chancery was then in; and about the Confusion that was like to happen by the unfortunate Accident that had happened to Mr. *Dormer*. We did talk of a great many Things that were proper to remedy it. A great many were the same that are mentioned in the Letter that hath been read. I think I told him, it was very right, especially as to the matter of the Securities, which was the greatest power a Master was trusted with; for, as the Securities were above three Parts in four of the whole Trust, if there could be a way found out to secure that, it would be a taking away three Parts in four of our Trust; and consequently would not leave so great a Power in the Masters; but as long as they were taken in the Name of one Person, and no trust declared, he could dispose of those Things, and no body could hinder it. Therefore I thought it proper to be taken in two or three Names. I believe when it was proposed to be in two Masters, it was mentioned there might be a third, and then no harm could happen to the Suitors, unless Corruption ran through the whole Office. I remember some time after, that Mr. *Lightboun* did shew me the rough Draught of this Letter, which he said he had sent to my Lord; and we read it over together at my House: I told him, it was very right, and that he had put it upon as good a Foot as upon the first Consideration it could be put upon: That every new Method was liable to Inconveniencies, but for my Part I thought it looked fair, in that, as to the Matter of the Securities, the Money in the Masters Hands was left pretty much to the Direction of my Lord Chancellor.

Mr. *Serj. Pengelly*. I desire he may be asked, whether these Proposals that were made were agreeable to him, so far, that if they were directed by my Lord Chancellor, he would have submitted to them?

Mr. *Holford*. Yes, my Lords, I should have readily submitted to them.

Mr. *Serj. Pengelly*. I desire he may be asked, whether he remembers any Discourse of these Proposals before my Lord Chancellor in his presence?

Mr. *Holford*. I don't remember I ever had the Honour of speaking to my Lord Chancellor about any of them; nor to have been at any meeting where they were spoken of before my Lord Chancellor.

Mr. *Lutwyche*. My Lords, I desire he may be ask'd, whether he can recollect when he had this Discourse with Mr. *Lightboun*, and when this

Draught of the Letter was shewn him?

Mr. *Holford*. About two Years ago; some time after it had been written, and sent to my Lord, Mr. *Lightboun* told me, says he, I have writ to my Lord to the Effect of what we talked of; and I will shew you the letter; and he pulled out the Copy and shewed it me.

E. of *Macclesfield*. Was you at that meeting which Mr. *Lightboun* hath mentioned, when the Masters and the Master of the Rolls were there? And what passed, as near as you can remember?

Mr. *Holford*. My Lords, I think it was upon Midsummer Day, if I remember right, and the Masters, the Ushers, the Registers, and the Master of the Rolls, were all there. My Lord Chancellor declared there had been some Disputes in the Court of Chancery, and he had called them together to adjust those Disputes, especially in relation to the Money of the Court. I believe the Usher was called upon to know whether he had any Precedents to offer in Justification of his own Right, or of what he claimed as a Right; and the Usher, I think, said at that Time, he had no more than he had already delivered to his Lordship; I believe his Lordship said those Precedents were not much to the Purpose; the Usher said he had no more, and delivered no more; and after some Discourse, there were several People spoke, the Usher insisting there were some Precedents to the Purpose. Then a Dispute arose about the Jurisdiction of the Master of the Rolls; and so the Affair broke up at that time. I think nothing more was done.

Mr. *Serj. Pengelly*. My Lords, we desire that Mr. *Kynaston* may be called.

Mr. *Kynaston* called.

Mr. *Serj. Pengelly*. My Lords, We desire that Mr. *Kynaston* may give your Lordships an Account, whether he knows of any Proposal made to the Earl of *Macclesfield*, relating to the securing the Effects of the Suitors?

Mr. *Kynaston*. Yes, My Lords, I do; there were several meetings among the Masters privately before they came into an Agreement. I think they all did agree, that they would go to my Lord *Macclesfield*, and propose to him to give Security, and to settle the Matter of the Securities so, that it should not be in the Masters power to dispose of them. I remember it was agreed upon, that it should be so represented to my Lord, and I believe all, or most of the Masters, went to my Lord *Macclesfield*, and did propose it to my Lord. I am very positive some Proposals were laid before him. Some proposed to get People to be bound with them, but there might be some Difficulty in that; others proposed that they should give Land Security, but it was thought likewise that might meet with Difficulties in relation to the Title.

Mr. *Serj. Pengelly*. Was there any Proposal made as to the Securities in their Hands?

Mr. *Kynaston*. Yes.

Mr. *Serj. Pengelly*. In what manner was it proposed that the Securities should be taken?

Mr. *Kynaston*. I am not positive, but it was to this purpose; that they should be put in one or two of the Masters Names, and of the Persons concerned. I am not certain how that was, but it was something of that Kind.

Mr. *Serj. Probyn*. My Lords, I beg leave to ask this Witness when this was?

Mr. *Kynaston*. I do not remember the time exactly. I believe it was some time about *Christmas* was twelve Month.

Mr. *Serj. Pengelly*. My Lords, We shall call no further Witnesses upon this particular Article; but beg leave to refer to your Lordships recollection what passed Yesterday, from the Examination of all the Masters, relating to the Encouragement and Inducement that proceeded from my Lord *Macclesfield*, to the Masters, to persuade them to make up *Dormer's* Deficiency, if their Offices should be established on their old Foot; which sufficiently proves the Notice the Earl had of their trafficking and dealing with the Money belonging to the Suitors of the Court. In the next place we shall lay before your Lordships an Order, made by the Earl of *Macclesfield*, of the 17th of *December*, 1724. Tho' as to the several Proposals made to his Lordship by the Masters, he doubted of the power he had to make any Order, yet when it was too late, or after the losses had happened, when the Affair of this great Deficiency appeared, then doth he make an Order, that looks with some Care, but with this Introduction, that it was not usual for the Masters to give Security; tho' it appears to your Lordships that they had offered it, and were willing to do it.

Mr. *Ralph Paxton* proves the Order.

Clerk reads, *Ordo Curiae Fovis Decimo Septimo die Decembris, 1724.*

Whereas his Majesty has been pleased to appoint a Committee of several Lords and others, of his most Honourable Privy Council; to make some Inquiries concerning the Court of Chancery, and particularly concerning the Monies of the Suitors of that Court, in the Hands of the Masters or other Officers of that Court, and to consider which way the same may be best secured; and the Lord Chancellor having at their Desire ordered the several Masters to give in their respective Accompts, which they accordingly did; and Mr. Baron *Gilbert*, Mr. Justice *Denton*, and Mr. Justice *Raymond*, and likewise Sir *Nathanael Gold*, Mr. *Thompson*, and Mr. *Hanger*, three of the Directors, and one of them Deputy Governor of the Bank, having been appointed and desired by the said Committee, to inspect and examine the said Accompts, and who have proceeded so to do, and after having been several Times attended by the said Masters, have made a Report thereof to the said Committee of Counsel; whereby it appears, that, tho' all the Masters of the said Court have produced before them all the Securities and Certificates of their having the Stock and Annuities in their Names; which upon their Accompts, they appear to be chargeable with as belonging to the Suitors of the Court, and much the greater Part of the Masters have brought before the said Mr. Baron *Gilbert*, and other Persons above named, their Cash or Securities easily convertible into Money, Certificates of Stock, and Annuities sufficient to make good the Ballance of their Accompts: Yet upon the said Report it appears that there are yet considerable Deficiencies of Monies, which were in the Hands of some Ma-

sters, who are dead; and that some of the present Masters have not produced the Ballance of their Cash, nor given a satisfactory Account how the same is to be made good, and it not having been usual for the Masters of the said Court to give Security for the Money in their Hands, the said Committee thought adviseable, that till this Affair could be more maturely considered, and proper methods established for security of the Suitors of the said Court, the Effects herein after mentioned, which have upon this Occasion been produced, should be at present secured in the manner herein after mentioned, and recommended to the Right Honourable the Lord Chancellor, to take such Order therein, as should be proper; all which being communicated to all the said Masters, and the said Report now read in the presence of them all, except Mr. *Kynaston*, who is indisposed, and thereby prevented from attending; and upon hearing what was alledged by the said Masters, and the Facts of the said Report, so far as concerns their respective Securities in their Hands and Power, and the Ballance of Cash in their Hands not being controverted, his Lordship therefore doth think fit, and so order, that the said masters, Mr. *Holford*, Mr. *Lovibond*, Mr. *John Bennet*, Mr. *Godfrey*, Mr. *Lighboun*, Mr. *Conway*, Mr. *Edwards*, Mr. *Thomas Bennet*, Mr. *Elde*, and Mr. *Thurston*, all now present, and likewise Mr. *Kynaston*, do forthwith prepare and send to the Bank of *England*, every one a Chest with one Lock, and Hasps for two Padlocks; the Key of the Lock to be kept by the master, and the Key of one of the Padlocks by Mr. *Smith*, and Mr. *Malthus*, two of the Six Clerks of this Court, or one of them, and the Key of the other by the Governor, Deputy Governor or Cashier of the Bank; and that all the Bonds, Exchequer Annuities and Orders, and other Securities given in upon their said Accompts, as Securities belonging to the Suitors of this Court, or as the proper Securities of the said masters, towards making good the Ballance of their respective Cash; and likewise the Bank Notes and Cash so given in, and not since paid to, or laid out for the Suitors of the Court, be deposited in the said Chests, under the Inspection of Mr. Baron *Gilbert*, and the other persons appointed, as aforesaid, to inspect the masters Accompts, or of some of them; and that then the Chests be locked up, and left in the Custody of the Bank of *England*; but so to be kept, as that the masters may have easy Access thereto, to comply with the Orders of this Court, till further Order may be taken concerning the same; and whereas the masters have in their several Accompts given in particulars of Stock, and of Annuities, transferrable in the Books of the several Companies, standing in their Names, which belong to the several Suitors of this Court, or as their own proper Stock and Annuities, by which part of the Ballance of Cash in their Hands may be made good or secured; it is further ordered, that they do each of them forthwith deliver in to the respective Company, a Declaration in writing, wherein such Stock in each respective Company, or the Annuities there transferrable, as by their respective Accompts, appear to belong to the Suitors of the Court, and likewise the Stock and Annuities by them respectively proposed towards making

making good, or securing their Ballance of Cash, or so much thereof, as shall equal the Ballance of their said Accompt; in Case they have in their Names more than sufficient for that Purpose, it shall be declared to be upon Trust, to attend the Orders of this Court; and the said respective Companies are to take Care, that proper Entries be made thereof in their Books, so that such Stock or Annuities be not transferred, but by Order or Leave of this Court; and the said masters, upon performing the Order above, are to take proper Certificates, signed by Mr. Baron *Gilbert*, and the other Persons appointed as aforesaid, to inspect the said Accompts, or some of them; and by the Persons keeping the Keys of the said Chests, of the Particulars of the Bonds, or other Securities; Cash and Notes, deposited and locked up in such Chests, as aforesaid, and Certificates Signed by the same Persons, and by a proper Officer of the Bank, that such Chests are deposited in the Bank, and Certificates signed by the proper Officers of the respective Companies, of the Declarations made as aforesaid, by the respective masters, and of the Entries thereof; and it is further ordered that the *Goldsmiths* Notes, produced by the said masters, in giving in their Accompts, be by them turned into Bank Notes, and so deposited as aforesaid; and the said several masters are forthwith to give Mr. Baron *Gilbert* Post-Accompts of their Receipt and Payments, since the former Accompts, and a Copy hereof is to be deliver'd to Mr. *Kynaston*, he not being now present; and another Copy left at the publick Office of the masters, with their Clerk there, for their more easy Recourse thereto, in order to their exact Compliance therewith.

EDW. GOLDESBOUHL.

Deputy Register.

Mr. *Serj. Pengelly*. By this Order your Lordships will observe, that some of the insuperable Difficulties were surmounted, and some of the Evils cured; and tho' that Method will not take it totally out of the Power of the masters, yet why the noble Lord could not have proceeded so far before, is left to your lordships Determination; we shall not call any further Witnesses on these Articles, we apprehend we have fully made them out. The honourable Gentleman who opens the next Article, will proceed.

Lord *Morpeth*. My Lords, It falls to my lot, to open to your Lordships the 19th Article of this impeachment, and, it being some time since it was read at your Table, 'twill be necessary for me shortly to recollect it.

The Article charges, ' That his Majesty, having in *Novemb.* last, directed an Inquiry into ' the Accounts of the masters, to the intent, that ' proper methods should be taken, for the Security of the Suitors, the Earl of *Macclesfield*, ' being then Lord Chancellor and one of the ' Privy Council, in order to obstruct the same, ' and to prevent a parliamentary inquiry into the ' Condition of the Offices of the masters, did, in ' the first Place, advise the masters to assist each ' other with Money and Effects; and for their ' Encouragement, represented to them, that it ' wou'd be for their Honour and Service to ap-

' pear able and sufficient, and that if they made ' a bold stand now, it wou'd prevent a parliamentary Inquiry. In the next Place, That ' the Earl persuaded several of them, to make ' false Representations of their Circumstances to ' his Majesty, by adding a Subscription to their ' Accounts, that they were able and willing to ' Answer the Effects in their Hands, tho' the ' Earl then knew, or had good reason to believe the contrary; and that several of the ' masters, according to the Earl's advice, did ' supply others with Money and Effects, to make ' a false Shew, and Appearance of their Abilities.

Your Lordships take notice, that the time mentioned in the Article, is *November* last; at which time, and for some Years before, the Kingdom had rang of the Abuses and Corruptions of the Court of Chancery, with little hopes of Redress, but from the Justice of Parliament: The Earl cou'd not but foresee, that the Period was then drawing near, when the Cries of the Oppressed and the universal Dissatisfaction, rais'd against his Administration, wou'd some way or other, force its Relief.

This Cry for Justice having reach'd his Majesty's Ear, He was pleas'd to direct the Inquiry mention'd in the Article, and whilst this was depending, the impeached lord finish'd that Scheme of Iniquity, he had carried on so long without controul.

The Facts charg'd in this Article contain in themselves the vilest Deceit and Treachery; heighten'd, and aggravated by the wicked Purposes, for which they were contrived; First, to have misled the Council Board into a groundless Belief of the masters sufficiency to answer the Suitors; and on this Foundation he built a more impious, but more fatal Project, the preventing a Parliamentary Inquiry.

The Answer given by the Earl to this Article deserves a particular Notice; He says, ' That upon great Consideration of *Dormer's* Deficiency, ' and the Danger there might be of further Inconveniencies with relation to the Suitors Effects, of some Disputes in the Court, and of ' some Practices of the masters, which he thought ' ought to be reformed, he was convinced, it was ' a work of too great Consequence, for him singly ' to attempt; and being highly sensible of his ' most sacred Majesty's paternal Goodness, did ' presume humbly to beseech his Majesty, as the ' Fountain of Justice, to depute some of his ' Privy Council to take the Matters into Consideration.

My Lords, Seven Years, and more had pass'd since he was made Lord Chancellor, three Years, since *Dormer's* Deficiency, without one honest Thought, for any thing that has yet appear'd, or one sincere Step taken by him, for the Honour of the Court, or the safety of the Suitors, if the Examination order'd by his Majesty, did spring from his Lordship's Request, his real Intention, in desiring it, will be best known from his former Conduct, and from the Use, we shall prove, he intended to have made of that Inquiry; his past Behaviour has already appear'd to your Lordships, to have been a Series of Extortion and Oppression, constantly attended with the vilest and meanest Artifices to keep it secret; the King's paternal Goodness was most notoriously abused, by him, who was intrusted to dispense

Dispense it; and that Fountain of Justice polluted, which he now dares to name in his Defence.

I think my self justified in charging this Part of his Defence, as an Act of high Dissimulation before your Lordships; and a presumptuous Attempt, to cover his own Guilt under his Majesty's sacred Name, and the Orders he was pleased to give for that Inquiry. The Earl has, indeed, acknowledged one Truth, in this part of his Answer, 'That the great Deficiencies, and Danger to the Suitors, and the Practices of the Masters (which he does not name, but says) ought to be reform'd, had convinc'd him, that the Reformation of them was a Work too great for him, singly, to attempt.'

My Lords, The many Prostitutions of the Dignity of the great Office, which have been proved upon him, had doubtless greatly wounded the Honour, and Authority of the Court itself; and the Earl had bound himself so fast to those Masters, whom he had admitted, by the Bands of Corruption, which he had not Power to break through, that nothing which tended to the Honour of that high Court, or the Advantage of the Suitors, cou'd be expected from his Hands.

The next Passage of his Answer is a wretched Mixture of the most abject Flattery of such of your Lordships, as attended that Committee, to whom, I believe, his Lordship very truly Declares, he was entirely subservient; and of false Praises of himself, for the great Services he contributed to that Inquiry: However, after this Introduction, the Answer goes on and declares, 'That he is greatly surprized, to find himself charged with Obstructing the taking of those Accounts, which he had thus desired might be taken, and had promoted with all his Power.'

This is a poor Evasion and Affectation of Innocence, and the more surprizing, to come from his lordship, whose misconduct had so notoriously been the Occasion of that Inquiry. And the Charge is not, as he insinuates for obstructing the taking the Accounts, but, for procuring false Accounts, and Representations to be laid before the Council, by which means that inquiry might have been frustrated.

But he proceeds in his Answer to a Declaration, the most astonishing of all others, 'That he never thought of preventing a Parliamentary Inquiry, any otherwise, than by making it unnecessary, and procuring to the Suitors a full Redress of all their Grievances, and rectifying whatever he found amiss; and that he looked upon to be his Duty, and begs leave to say it here, once for all, in Answer to all the Insinuations of that kind contained in any of the Articles.'

By the last Words, the Earl, in a very summary manner, pronounces his own Acquittal; but your lordships will observe, that the Article charges him, in plain Words, with actual advising the masters to misrepresent their Accounts, in order to prevent a Parliamentary Inquiry, and that, if they made a bold stand now, it might prevent one; His lordship answers, that he never thought of preventing it, otherwise, than by procuring full Redress, &c.

By this he confesses, he did think of preventing the Inquiry of Parliament.

He has not dared to deny the Facts charged, from which this Design was manifest, because he knew they would be fully proved, But the Subterfuge he flies to, viz. that he did intend to prevent it, by rendring it unnecessary, is impossible to be believed, tho' the Commons shou'd offer no Proofs at all to this part of the Article; unless his Lordship imagines, that he is able to carry on the Imposition so far, as that the concealing from his Majesty the true Condition of the Suitors, by the methods he was then practising with the masters, should be taken by your Lordships to be the means of procuring them full Redress; and it is self-evident, that if his Contrivance had taken place, the immediate and full Relief of the Suitors, which was his Majesty's gracious Purpose, had thereby been wholly defeated: The Commons therefore may insist upon it, that this flagrant Circumstance is established by his own Confession, especially since your Lordships find that in the following parts of his Answer, the Earl declares, 'That Mr. *Holford* having subscribed his Accounts, with a Declaration of his Abilities, and Readiness to answer the Suitors, and some of the masters having used Expressions, as he thought, not so proper, others of them having made no Conclusions at all; he did advise them all to write the same Words under their Accounts, as Mr. *Holford* had done, and did tell them, in great Sincerity and Friendship, that at a Time when so many Mens Mouths were open against them as insolvent, it would be for their Honour and Interest to make it appear that they were able.'

Thus far the Answer is a full Confession, that he advised all the Masters to add Mr. *Holford's* Conclusion to their Accounts.

His Lordship says, he was induced to do this from their assuring him they were able; this Assertion will appear to be notoriously false; however, if it had been true, his Lordship, it seems, took their bare Words for it, at the same Time that he declared to them, that so many Mens Mouths were open against them as insolvent: But here, unhappy Man, he flies again for Sanctuary to the Integrity of his own Heart, and assures your Lordships, 'That he never thought of a Contrivance to have them deceitfully appear to be what they really were not'; tho' this Declaration of the Innocence of his Mind stands also in direct Contradiction to the Fact he had just before confessed; and in the very next Lines he again confesses, that some of the masters, pursuant to his own Directions, did withdraw to add the same Words to their Accounts, as Mr. *Holford* had done to his; which he carried to the Council without looking into them, and, when they were read there, the Masters, it seems were honest Men than the Earl expected, or would have had them to be; for, notwithstanding his Advice, all of them did not make these Subscriptions to their Accounts.

To the other Charge in the Article, of his advising them to stand by one another and appear able, his Lordship has given a particular Answer, 'That an Order being made upon the Masters, to produce their Securities and Cash, and the Masters complaining of the short Time to produce such great Sums, he confesses, he did say, that

‘ that he required them to bestir themselves, and
 ‘ might say, that some of their Brethren might
 ‘ perhaps be able to let them have Money, till
 ‘ till they could raise it another Way.’

The Excuse he offers for this Advice, is a very unjustifiable one, it is, that the masters declared to him, that they had not the Suitors Effects ready, which, by the Duty of their Offices, his Lordship knew they ought to have had, but had Effects sufficient to raise the whole, if they could have had more Time. By his own account of this Matter ’tis plain, that the Masters did at that Time disclose to him one of the Practices, which ’twas his Duty to have reformed; and yet your Lordships see what Consideration he had of it; even at this Juncture he advised them to supply one another, which they accordingly did, and the Deceit prevailed, till the Order for carrying the Securities and Cash to the Bank made the Discovery.

Perhaps, my Lords, I have dwelt too long on the Earl’s Answer; but, I think, it will appear to your Lordships to betray such a Confusion of Mind, as nothing but the heaviest Pressures of Guilt could have produced, and is a stronger Conviction of him than a thousand Witnesses.

I will, in the next Place, give some short Account of our Evidence to this Article. The Masters themselves will prove the Earl’s Directions, either given by his own Mouth, or by his Secretary’s, when they were required to make up their Accounts to be laid before the King in Council, that they should stand by one another, and give the best Account, they could, to prevent a Parliamentary Inquiry, and that they need only to produce or shew Bank or Goldsmith’s Notes; and that it was a critical Juncture, and that the Strong should assist the Weak, and that they must make a Stand, and defeat the Designs of their Enemies.

We shall farther prove his Lordship’s express Directions to the masters, to add the same Conclusion to their Accounts, as Mr. *Holford* had done to his, which was, that they were able and ready to answer their Balances: tho’ the Earl did not so much as ask any of them whether they could make it good, and some of them declared the contrary; and at that Time also he told them, that it would be for their Honour and Service, and that it would look well to the Council to appear able and willing.

We shall also prove, that this false Advice of the Earl was followed by several of the Masters, in both Respects; and that afterwards, when the Suitors Effects were to be carried into the Bank, several of them who had before appeared able, now proved deficient in great Sums, and Bank and Goldsmiths Notes, and other Effects, to a great Value, with which several of them had been accommodated, and which they had produced to the Persons appointed to examine the Accounts, and which, as appears by the Reports on your Lordships Table, they had sworn to be their own, and not lent them for the Purpose of accounting, now vanished, and a Deficiency appeared of fourscore thousand Pounds and upwards, which still continues.

This Evidence will fully maintain our Article, and, if any Proof is necessary, will sufficiently clear up the Earl’s Intentions.

My Lords, The Part which still remains to me is such, as I own my self utterly unable to perform, I mean, to aggravate this Offence in such Manner as it deserves; the amazing Scene this Article has opened, must not be judged of singly, and by it self; nor can it be accounted for but as the Offspring of a Mind thoroughly debased and flowing from the most incurable Corruption: And tho’ they have issued from that Source, as from an unexhaustible Fountain, yet it can’t be denied, but as the Earl’s thirst for Lucre grew stronger upon him, with that his Invention also has constantly improved into some new Device or Management for securing his exorbitant Advantages, by preserving the Secret. ’Twas a remarkable Law, in one of the wisest of the *Grecian* Governments, arising from their Dread and Abhorrence of a corrupt Judge, *That no Man, bred up to Merchandice, should be admitted into any Office of Judicature, till he had quitted that Employment for at least ten Years*; and the Reason was, because the Fingers of Merchants had been too much used to Traffick.

The Earl’s Administration, in the highest Seat of Justice in this Kingdom, has appeared to your Lordships to have been one continued pyritical Trade; during the Course of which, from Time to Time, as Opportunities have offer’d, he has prey’d alike upon Masters and Suitors; his craving Appetite was, in no Sort, check’d by the approach of Death itself; and the Hand of a dying Chancellor, as he express’d himself to one of the masters, was open’d to receive that unjust Gain he had so plentifully fed upon in full Health: To which, and his other Misbehaviours, your Lordships now see, that not only the Ruin of many even of the Masters, but the Dishonour, Distress and Confusion still remaining in that part of the publick Justice must be imputed; and how groundless and unaccountable soever the repeated Assertions in the Earl’s Answer, that the Masters freely and voluntarily parted with their money to him, now appear to be; yet, from the Unwillingness and other conscious Circumstances, with which he has since, at several Times, refunded some parts of his extorsive Gains, tho’ the Guilt is not lessen’d, his Lordship is thereby Self-condemn’d.

The Fund out of which he has raised his unwarrantable Profits, ought to have been held by him as sacred and inviolable, being deposited in the Sanctuary of his own Court: His Extortions therefore must be judged of, not as private Violations of Property, but as Pillage taken from the Treasure of the Publick; the Livelihood of the Widow and Fartherless under the Protection of the Law, in a Court of Justice; great part of it, perhaps, dedicated to Charities: And how far your Lordships may, in this Respect, consider it as a sacrilegious Plunder, is left to your Judgment: However, the injuries done to distressed, ship-wreckd Sufferers, have been always esteemed the highest Barbarity.

But the Methods the Earl has used from Time to Time to excuse and cover his Crimes, tho’ they were the natural Refuge of an obstinate unrelenting mind, yet are more heinous than the Crimes themselves. Your Lordships can’t forget the Oath of his Office, which he has set forth at large in his Answer; he was sworn *to do Right to all manner of People, poor and rich, according to the Laws and*

and Usages of the Realm, and not to do or suffer the Hurt of the King, if he could binder it; if not, clearly and expressly to make it known to him, with his true Advice and Counsel. 'Tis surprizing to find his Lordship to have so utterly abandon'd all Regard to this solemn Obligation, as the whole Course of his Behaviour fully demonstrates. You have also heard the Oath he caused to be administer'd to the masters, immediately after he had shared with them the Estates of the Suitors; by which Oath they were likewise sworn neither to do Hurt to the King, nor to do any Fraud to the Hurt of any of the People; and it has appear'd in what manner they have since been practis'd and tamper'd with by the Earl himself, in order to conceal and suppress the Knowledge of the Grievances of the Subject, which he had procur'd; sometimes they were threaten'd, at other Times cajoled and seduced, but always deceived; and this Artifice, disclosed by this Article, was his last Shift. When he saw the Storm began to arise, he deliberately contrived to turn the fatherly Goodness of his bountiful master to the Destruction of his People, and, by this most unparallel'd Attempt, to have render'd the Throne it self the Shelter of his Iniquities, and accessary to his Oppressions; but 'twill now appear, that this was conducted to another Point, to skreen himself from the Justice of Parliament.

My Lords, There have been Crimes so unexampled, and of so horrid a Nature, that the Malefactors have been try'd at midnight, and immediately drown'd, and the Journal Books burnt, in Compassion to mankind, that the memory of the Proceeding being destroyed, the Crime it self might not be propagated.

The Offences of the impeached Lord are ripened to a Fulness surpassing all Belief, too big indeed for the ordinary Hand of Justice; but the Commons of Great Britain, whose Inquiry he vainly flattered himself he could prevent (tho' the Terrors of it had long lain upon his Breast) have, by this Time, I presume, convinced his Lordship; and his Example will, I hope, convince the World, that no Offender, how great or subtil soever, can escape their Justice, of which this publick Proceeding will be an eternal monument, as well as of the Shame of the unfortunate Earl.

The Lord Bacon, one of his Predecessors, made a frank Submission to your Lordships Ancestors upon the Accusation of the Commons, and taking Comfort to himself from his Afflictions, uses these Words, ' That hereafter the Greatness of a Judge or magistrate shall be no Sanctuary or Protection to him against Guilt; and that, after his Example, it was like, that Judges would fly from any Thing in the Likeness of Corruption, tho' at a great Distance; which tends to purging the Courts of Justice, and reducing them to their true Honour and Splendor.' He did, indeed, urge it as no small Excuse for himself, that Bribery and Corruption, the Vices of which he stood impeached, were the Vices of the Times; but the Commons rejoyce to find, that the Earl, now before your Lordships in Judgment, has no Ground to claim the same Excuse.

The Admonitions left by that penitent great Man, and the just Punishment he underwent, have, I believe, conduced to prevent the like Evil for near an hundred Years, tho' they had not an im-

mediate Effect: For an eminent Historian of those Times has recorded, that some Time after his Sentence in Parliament, meeting the Earl of Middlesex, then Lord Treasurer (whom he had Ground to suspect to have been instrumental in his Disgrace) in Discourse with him he recommended it as a Rule to be observ'd by the Earl, and all great Officers, to

Remember a Parliament will come.

And the same Author further observes, that tho' the Lord Bacon had not the Spirit of Divination, and tho' the Treasurer despised and laughed at his Advice, yet, within two Years after, the Treasurer also was condemned in Parliament for Bribery, Extorsions, Oppressions, and other grievous misdemeanors.

I will conclude with one Observation more: It may, my Lords, be too justly apprehended, that the most dangerous Symptoms of a declining Commonwealth do then appear, when Men in the highest Stations in Government, especially those which concern the Administration of Justice, shall be so far lost to all Sense of Virtue, as to be guilty of such odious Crimes as those now charg'd upon the Earl; yet, we promise ourselves, that your Lordships Justice, in the Punishment of those Crimes, will afford us a hopeful Prospect of a reviving State; and that whenever the Crimes and Misdemeanors of this unfortunate Earl shall hereafter be mentioned, it will be remembred at the same Time, for the Honour of your Lordships, and the Benefit of the whole Nation, that he received a Condemnation suitable to his Guilt.

Mr. Snell, My Lords, I would gladly have been excused *this Service*, because I have been extreamly indispos'd, ever since I receiv'd the commands of the House of Commons, and because I am otherwise truly sensible of my Inability to execute those Commands, in the manner they ought to be executed. But these Reasons, being thought insufficient by others to prevail for my absence, it is no longer a matter of Choice, and I must comply with the duty imposed upon me. Your Lordships therefore will be pleas'd to consider (as the Truth is) that what I have to say is only the Product of a few Hours, and that it is impossible for me, in so short a Time, to offer any Observations, any Arguments, but such as will appear crude and indigested on this great and important Subject.

The Earl then at the Bar stands under an Impeachment of all the Commons of Great Britain, of high Crimes and Misdemeanors in his late Office of Lord high Chancellor, and tho' the Charge against him in the Article now under your Lordships consideration, be of a different Nature, yet in every Circumstance it is as highly criminal, as any of those that have gone before it. The Accusation hitherto has generally run upon Corruption in the sale of Offices, Extortion, and a Series of foul Practices to cover and conceal the Deficiency in Dormer's Office, which had drawn upon him an universal Cry for Redress. All the little Arts, that had been plaid over and over again upon the Masters, either by applying to their Hopes, or Fears, as opportunity offer'd, had prov'd ineffectual; and some other expedient must be found out, some new Stratagem invented, to quiet the clamours of the injur'd Suitors. These clamours had justly arisen

arisen from a Supposition of the *Masters Insolvency*, and no method could be so likely to serve his turn to appease them, as one, that would make *the Masters seem* to be solvent. He therefore ventur'd to advise them to assist one another, to represent their Circumstances in a false Light, by Subscribing their Accounts as Mr. *Holford* had done; and thus he propos'd to deceive *the Suitors*, and to make *the Masters* appear to the World able to answer the Monies and Effects in their Hands: But this last Effort was as unsuccessful as his former. For if *the Masters* were able and sufficient, what reason could he have for his Apprehensions of a *Parliamentary Enquiry*? If they were not able, he had indeed reason for such Apprehensions, which leaves your Lordships no room to doubt, but that *this Advice* was given with a View only to keep the Affair out of Parliament; and the constant Anxiety he labour'd under to secure that *main Point*, does more than *decypher* the Secret of the whole Transaction.

Now, my Lords, this extraordinary Step could not proceed from any Doubt *the Earl* could have, whether the Parliament was able and willing to redress these Grievances and Inconveniencies, or whether it would contribute its Assistance to the Relief of *the Suitors*: No, my Lords, he knew very well, that the Parliament was the proper Place for redressing *Abuses in the Courts of Justice*. He was sensible too, that it had always interpos'd with *Accusations* and *Impeachments*, and that *ill actions* had, in no Age, met with Favour there. He could have no Hopes that his Ambiguity of Expression, his Dexterity in playing upon Words, in wresting their proper Sense and Meaning, could stand him in any Stead; or that all his Subtilty could be a Match for the Wisdom of the Legislature: But, perhaps, he might imagine, that a *Committee of Council* might be wrought upon, and misled by Appearances, at least so far, as to *protract the evil Day*; and who could tell what Time or Accident might bring about? Another *Act of Grace* might come, and expunge the whole Score.

I should have congratulated your Lordships and the House of Commons, and even the *accused Earl himself*, if the *just Apprehensions* he conceiv'd of a *Parliamentary Inquiry* had rais'd in him a *compassion* equal to the *Sufferings* of *the Suitors*: If it had begot a Repentance of his former Misdeeds and Crimes, and a Resolution of future Innocence and Uprightness: But your Lordships find, it had a very different Effect; it only produced a vile Contrivance to guard himself against Punishment for what was past, and to make it more difficult hereafter, to detect him in *the same Practices*. This is a *Behaviour* my Lords, which is so far from deserving your *Mercy*, that it calls aloud for your *Indignation*, as well as *Justice*. This is a *Circumstance*, which is not only a high Aggravation of his Guilt, but a great Indignity to the Authority and Honour of Parliament; which I hope will never be eluded by the Artifice of the *most cunning and skilful*, nor controul'd by the Influence of the *most powerful and favour'd Minister of State*.

But, if the *impeach'd Earl's Actions* may be allow'd to be any Proof of his Intentions, the Fact stated in this Article goes further, and implies

a bold and desperate Attempt to mislead his Majesty, and to obstruct his gracious Endeavours to find out proper Methods for securing the Money and Effects of *the Suitors*, which is an Instance on one Hand of his *baseness* and *ingratitude* to his Sovereign, to whom he ow'd every thing; on the other of his *Injustice* and *Barbarity* to those of his fellow Subjects, whom he had injur'd, whom he had oppress'd, during the whole course of his *Tyrannick Administration*.

What, my Lords, must have been the Consequence, if *this Contrivance* had pass'd? And it would have pass'd upon a Prince of less Discernment than his Majesty. Whenever it had been discovered, all the Obloquy would have been thrown upon his sacred Person, as if he had been engaged in a *Confederacy* to skreen that Guilt which he was labouring to detect. But *the Earl's avaritious Temper* had set so wrong a Bias upon his Actions, that *the Means* by which he propos'd to shelter himself, and to conceal his Depredations, have brought upon him (what he so long dreaded) this *just and necessary Prosecution*.

As to *the Earl's Answer* to this Article, I hope I may be excused the Liberty of saying, that it is either *vain, evasive, or false*.

He begins with enumerating the many Inconveniencies and Abuses, which he thought necessary to be reformed in the Court of Chancery, and with assuring your Lordships of his good Intentions to contribute to the Reformation of them; but your Lordships will best judge of this pretended Zeal, and of the Sincerity and Candour, with which it is urged, by considering the constant Tenor of his Actions, by examining whether he can produce any Instance of his having endeavoured to correct these Abuses, or to remove these Inconveniencies. Now I don't find thro' his whole Answer, nor have I heard it asserted, that he ever attempted any Thing of that Kind. On the Contrary, it is too apparent, that many of them took their Rise while he presid'd in Chancery.

In the next place, my Lords, he arrogates to himself the Merit of *that Enquiry*, which his Majesty had directed to be made by a *Committee of his Privy Council*; and insists, that it was the Effect of his Application.

How true this Assertion is, some of your Lordships may know. But the Part he acted in *that Enquiry*, might have oblig'd him to Silence, or at least have restrained him from boasting of his Conduct. The *Commons* charge him directly with obstructing the Methods then propos'd for securing the Property of *the Suitors*; and it is not a sufficient Answer, to say, that *this Enquiry* was begun at his Instance, and that he press'd *the Masters* to bring in their Accompts: For all this may be true, and yet he might give them *the Advice* I have already mention'd, and complain'd of to your Lordships. Surely, my Lords, it is a Justice due to his Majesty, to observe upon this *vain-glorious Part* of *the Earl's Answer*, that, whatever Share He had in setting *this Enquiry* on foot, all the good Fruits, to be hop'd for from it, are the Result only of his Majesty's *Paternal Care* of his People.

He further says, That *he never thought of preventing a Parliamentary Enquiry, any other way, than by making it unnecessary, and by procuring*

curing the Suitors a full Redress of all their Grievances, &c.

This is another Instance of his Disingenuity: For the Grievances complain'd of, could no where be redress'd but in Parliament; and therefore nothing more can be understood by the Words [*Any other ways, than by making it unnecessary*] than by making it SEEM unnecessary; which is a poor and mean Prevarication.

Nor is there any Credit to be given to what he urges in Excuse for his *Fraudulent Proposal to the Masters, viz. That while the Accompts were taking, all the Masters, at least all that he saw, except Mr. Kynaston, had declared that they had Effects sufficient to answer their whole Accompts, &c.*

For we shall prove to your Lordships by Mr. *Thomas Bennet*, and Mr. *Kynaston*, that it is false, unless you'll suppose them perjur'd: For they are very positive, *That the Earl never ask'd them whether they had Effects to answer, or not, or were able to pay in their Cash-Ballance: Nay, they are sure they did not tell him so, because in Fact it would have been false, if they had.*

Besides, your Lordships will have the concurrent Testimony of almost all the *Masters* to prove, that (while they were making up their Accompts to lay before the *Committee of Council*) they were directed by *Cottingham* and *Dixon* to assist one another in making a *Shew of their Abilities*; and that some of them, viz. Mr. *John Bennet*, Mr. *Godfrey* and Mr. *Conway*, complied with this *Direction*, which we must ascribe to the *Earl himself*, as being given by his *Two Chief Agents and Ministers*.

Who is it, my Lords, that has been guilty of the Crimes, laid in this *Impeachment*? It is a *Peer of Parliament! A Lord High Chancellor of Great Britain!* And how precarious must be the Property, how deplorable the Condition of the Subjects of this Kingdom, if such Crimes should not be punish'd in so *exemplary* a manner, as to carry down Terror to all succeeding Chancellors?

My Lords, If I have express'd my self with too much Acrimony on this Occasion; if what I have said, has any way offended the *Impeached Earl*, I hope he will do me the Justice to believe, that I meant it only in *Detestation of his Crimes*, and not in *Disrespect to his Person*. For I assure him, I should have been heartily sorry for the Misfortune he has brought upon himself, if it had proceeded from *Ignorance or Neglect*, and not from an *insatiable Appetite after illegal Gains*, which he is pleas'd to mis-call *Voluntary Presents*, and for which I must ever entertain the *Utmost Abhorrence*. I will therefore conclude with a Word of Advice out of the Scripture for his future Conduct, *That he shall receive no Gift; for a Gift blindeth the Wise, and perverteth the Words of the Righteous.*

Mr. *Serj. Pengelly*. My Lords, we beg leave that Mr. *Thomas Bennet* may be examin'd, and that he may give your Lordship's an Account of what pass'd after this Inquiry directed by his Majesty, begun; what Order and Direction the Masters receiv'd from his Lordship in the Execution of that Inquiry?

Mr. *Tho. Bennet*. My Lords, I think, on the 3d of *November* last we receiv'd an Order from my Lord Chancellor, to make up our Accompts. It was a very particular Order, express'd abun-

dance of *Items*, and *Columns*, in what manner those Accompts were to be made up. The Masters had a meeting on this occasion; and a great many, if not all of them, agreed, that the making up of the Accompts in that manner as my Lord Chancellor had directed, was impracticable in so short a time; for we were directed to do it forthwith. It was represented by some of the Masters to Mr. *Cottingham*, and I believe, by him to my Lord Chancellor, that it was impossible to do it in so short a time, and it would take up a Month or two, or more. I did not know what other People could do: I had begun to make up my Accompts; I could have done it in a short time, having been in but a little while: Others, indeed, that had been in twelve Years, and must have given an Accompt of the whole Proceedings of that time, could not do it. I was inform'd by my Brother, that he could not have done it in a Year: But soon afterwards I was told, that the Order was dispens'd with, by my Lord Chancellor; and all we were to do, was to make up an Accompt of the Ballance of the Money and Securities that were in our respective Offices distinctly, the Money and Securities in Two Distinct Columns, only the Sum total at the Bottom. This Order the Masters all comply'd with, as appears by their Accompts: And between that and the 9th Day of *November* following, we had several Messages from my Lord Chancellor by Mr. *Cottingham* to dispatch these Accompts; for they were much wanted, being to be laid before the *Committee of Council*. On the 10th of *November* we had express Orders to appear at my Lord Chancellor's House with our Accompts ready. All the Masters, except Mr. *Conway*, were there.

Mr. *Serj. Pengelly*. I desire he may be ask'd, if there was any other meeting before that of the 10th of *November*?

Mr. *Tho. Bennet*. I think there were some meetings at Mr. *Edward's* House by Mr. *Cottingham's* Direction before, and after that at my Lord's House. At those meetings, at one of them, I particularly remember (which was the most material of all) Mr. *Cottingham* brought Mr. *Dixon* with him, and introduc'd him, saying, we need not be afraid of Mr. *Dixon*; for he brought him there by my Lord's Direction, because he himself was deaf, and could not well hear what was said. Upon that he began his Message, and said, Our Accompts were then laid before the Council just at that Time: But, said he, suppose my Lord Chancellor or the Council should expect, that the Bonds and Securities should be inspected, would you be willing, that any Officer from him should inspect your Books and Securities? The Masters answer'd, They were ready and willing to do it; I don't remember any body that oppos'd it. The next Question Mr. *Cottingham* ask'd, was, whether we could produce the Ballance of our Cash, and shew that we had the Money? To that all the Masters spoke in general, that they were under a great Concern and Surprise, and desir'd to know what Mr. *Cottingham* meant by that: Whether it was only to produce the Money, or the Money to be taken from us? and whether there was any Danger of that? Says Mr. *Cottingham*, you are only to produce the Ballance of Cash, and shew it. We asked, whether we should produce it in Goldsmiths Notes,

or Bank Notes? Says he, I believe Goldsmiths Notes will serve: You are to shew the Ballance of your Cash; but I think, Bank-Notes will do better. Upon that Mr. *Lightboun* said, I don't know what the Consequence of this may be. Suppose, when we have produced these Notes, they should be detain'd from us, I am afraid most of the Goldsmiths Shops about *Temple-Bar* would be shut up the next Day, and Inquiry would be made what Holiday it was, and Thousands of Families might be ruin'd by this Transaction. Mr. *Cottingham* propos'd, You may stand by, and assist one another. Mr. *Kynaston*, said, I find, we are like to be sacrific'd, and given up; for my part, I will neither borrow, nor lend: Any one that borrows is a Knave, and he that lends is a Fool. Upon this, the Masters were in great Concern. Mr. *Cottingham* and Mr. *Dixon* went back to my Lord Chancellor, and staid about an Hour and half, and then return'd to us, and said, my Lord was very busie, and dismiss'd us, and so we went home.

Mr. *Serj. Pengelly*. When was the next meeting?

Mr. *Tho. Bennet*. I don't remember; we had several meetings. I don't remember when the next was.

Mr. *Serj. Pengelly*. What pass'd on the 10th of November in the Presence of my Lord *Macclesfield*, at his House?

Mr. *Tho. Bennet*. When we came to my Lord Chancellor's House, upon the 10th of November, all the Masters then present carry'd up their Accompts: Two or three had not their Accompts ready; my Brother and Mr. *Conway* had not theirs; but all that were ready, carry'd them up to my Lord, and, according to Seniority, delivered them to his Lordship. The first was Mr. *Holford*: He had added to his Accompt, a letter, I don't remember the Words, or that it was read; but I remember a Subscription, which my Lord Chancellor read, and that he said it was very good, and he lik'd it very well, and, I think, he laid it down upon the Table. The next master gave his Accompt, and so all the rest. My Lord look'd them all over; some of the masters he objected to. I remember I had written at the Bottom of my Accompt, as near as I can remember, *I am ready and willing that the Bonds and other Securities in my Hands, may be inspected by such Person as your Lordship shall appoint.* My Lord, after looking them all over, said he lik'd Mr. *Holford's* Subscription, and, says he, I wish you would all make use of that: For it would be for your Honour and Service, to make yourselves appear able and sufficient to answer the Effects in your Hands. Somebody ask'd my Lord, what might be the meaning of this Commission being appointed by his Majesty? This, says he, I apprehend, will prevent a Parliamentary Inquiry.

Mr. *Serj. Pengelly*. We desire that Mr. *Bennet* may repeat the Expression my Lord made use of to persuade them to subscribe, as Mr. *Holford* had done.

Mr. *Tho. Bennet*. That they might appear able and sufficient. I think, those were the Words.

Mr. *Serj. Pengelly*. My Lords, I desire he may be ask'd, whether my Lord had at that time made an Inquiry of the masters, whether they were able and sufficient?

Mr. *Tho. Bennet*. I can only answer for myself. My Lord did not ask me, whether I was able and sufficient; but only directed me to write that Subscription that Mr. *Holford* had done; and I did go down, and write, in effect, that Subscription. I did subscribe thus: 'My Lord, I have all the Securities standing in my Name, as in the within mention'd Accompt are specified; as also the Tallies, Orders, and Bonds in my custody; and as to the Money, I am ready to give your Lordship satisfaction, that I am able to answer it to every Person that is entitled thereto. The Words, *to a Demonstration*, which are in Mr. *Holford's* Subscription, I omitted, because I could not make it out to the Lords of the Council.

Mr. *Serj. Pengelly*. My Lords, We beg leave to produce these Accompts, and shew to your Lordships that Subscription of Mr. *Holford*, that was to be followed by the other masters, and the first Subscription of Mr. *Bennet*.

Mr. *Onslow*. Pray, tell my Lords, if you can remember, was there any other Expression made use of at that time?

Mr. *Tho. Bennet*. The Expression was, it would be for our Honour and Service, to appear able and sufficient.

Mr. *Onslow*. No other Words?

Mr. *Tho. Bennet*. And it would be a means to prevent a parliamentary Enquiry.

Mr. *Onslow*. Was there nothing mentioned relating to a Stand?

Mr. *Tho. Bennet*. I don't remember that then; Mr. *Cottingham* said something of that at a meeting at Mr. *Edwards's*.

(The Subscription shew'd to Mr. *Bennet*. And proved by him to be Mr. *Holford's* Hand.)

Mr. *Serj. Pengelly*. My Lords we beg leave, that this Subscription may be read, which was to be follow'd by all the masters.

Clerk reads.

'I have all these Securities standing in my Name, as in this Accompt is specified, and will procure Certificates from the proper Offices, that I have, and had them before the Account, if your Lordship requires it. And as to the money, I am ready to give your Lordships satisfaction, to a Demonstration, that I have it in my power to answer it to every Person, that shall appear to be entitled to it, and who can give me a Legal Discharge.

Mr. *Serj. Pengelly*. We beg leave to read Mr. *Tho. Bennet's* First Subscription, that my Lord was not satisfy'd with.

Clerk reads.

'My Lord, I am ready and willing the Securities in the foregoing Account mentioned, shall be inspected by such Person or Persons as your Lordship shall be pleas'd to appoint.

Tho. Bennet, 10th Novemb. 1724.

Mr. *Serj. Pengelly*. Your Lordships observe, there is nothing in this Subscription, as to the Cash, and the producing it. Now we beg leave to see the subsequent Subscription.

Clerk reads.

'10 Nov. 1724. My Lord, I have all the Securities standing in my Name, as in the within mention'd Accompt are specify'd; as also the Tallies, Orders and Bonds in my custody. And

‘ as to the Money, I am ready to give your Lordship satisfaction, that I am able to answer it to every Person that is entitled thereto.

Tho. Bennet.

Mr. Serj. Pengelly. Your Lordships observe, he hath left out the Words *To a Demonstration*, because he thought that he could not so clearly make it out. I beg leave to mention, that these Accompts and Subscriptions thus alter’d, were actually delivered in, and laid before the Council, and are the Original Accompts.

Mr. Serj. Probyn. My Lords, I would ask Mr. *Bennet*, when this Proposal was offer’d to him, that he should subscribe as Mr. *Holford* had done, whether he made any Excuse, or pretended he was not able to do it?

Mr. Thomas Bennet. No, I did not; I did as the rest of the Masters did.

Mr. Com. Serj. I desire he may inform your Lordships when this was?

Mr. Thomas Bennet. I think, it was the 11th or 12th of *November*; I can’t be positive as to the Day.

Mr. Kynaston called.

Mr. Serj. Pengelly. My Lords, we desire that Mr. *Kynaston* may give your Lordships an Account, whether he was present at this Meeting on the 10th of *November*, and what passed there relating to their Accompts?

Mr. Kynaston. Yes, my Lords, I was there the 10th of *November*.

Mr. Serj. Pengelly. What passed at that Time at the Earl of *Macclesfield*’s?

Mr. Kynaston. I think I came there before the rest of the Masters, or only two or three were there before me. We gave my Lord an Account, that we had drawn out our Accompts of the Securities and Cash, and the Ballance in each Master’s Hands. Soon after the rest came. My Lord first received Mr. *Holford*’s Accompt, being the Elder Master. A Letter at the End of his Accompt was read: My Lord seem’d to be affected with, and to approve very well of it. There was some Writing at the End of it relating to the Ability. My Lord said, it would do very well to have something to the same purpose at the End of the other Masters Accompts, and mentioned to us to go down and write it; accordingly we did go down, and most of us, if not all, did write to that Purpose.

Mr. Serj. Pengelly. Can you recollect what Expressions the Earl of *Macclesfield* used, to recommend it to the Masters?

Mr. Kynaston. My Lords, I can’t justly recollect; I think it was, It would look well before the Council, and prevent a further Enquiry, or a parliamentary Enquiry, I am not positive which: But that I understood to be the meaning of it.

Mr. Serj. Pengelly. What was it that would look well to the Council?

Mr. Kynaston. What Mr. *Holford* had writ at the Bottom of his Accompt, *That they were ready, &c.*

Mr. Serj. Pengelly. My Lords, I desire he may be ask’d, whether there was an Enquiry made by the Earl of *Macclesfield*, as to his Ability or Sufficiency?

Mr. Kynaston. No, I am sure as to my self; and I don’t know as to any body else.

Mr. Serj. Pengelly. I desire he would inform your Lordships, what Subscription he had first made, and what was added, or what Advice was given?

Mr. Kynaston. I had writ before: ‘ My Lord, the Person I employed to write out this Account, has only gone thus far as to the Number of the Bonds. I have brought the Bonds with me, and desire you’ll appoint any Person to inspect them, and the other Securities I have here given an account of.

Mr. Serj. Pengelly. What was writ afterwards? This is wrote with a different Ink from that before: *And as to the Money, I am ready to pay it to the Persons entitled thereto.* That is with a different Ink.

Mr. Kynaston. I believe, upon looking upon it, I went down with the rest, and writ that in the Parlour in my Lord’s House.

Mr. Serj. Pengelly. I desire he may be asked, whether he, or any other of the masters then received any Explanation how this Sufficiency or Ability was to appear?

Mr. Kynaston. Not then, I don’t remember any thing of it.

Mr. Serj. Pengelly. Or at any other Time?

Mr. Kynaston. Some time after this, this was the 10th of *November*, and I believe, between that and the 16th, when we were to attend the Judges, the masters were summon’d to meet at Mr. *Edwards*’s House: I understood, it was a Summons from my Lord *Macclesfield*; and when we were here, there came Mr. *Cottingham* and Mr. *Dixon*. I don’t remember all the Discourse; but they were telling us what was to be done: First, we were to produce our Securities, and there would be no great Nicety in producing them: And then, next, we were to produce the Ballance of Cash: And I remember, on that, Mr. *Cottingham* said, You must stand by one another, and assist one another. Bank-Notes, said he, will be best; but if you can’t get them, then Goldsmiths Notes. You must get one or other to produce and shew.

Mr. Lutwyche. I desire he may be asked, what he thought he meant by the Proposal of getting Goldsmiths Notes, or Bank Notes?

Mr. Kynaston. I did take the meaning in the worst Sense to be, for the Masters barely to make a Shew of them; and that made me complain; and I spoke warmly, and said, I saw what the Design was; and whoever borrow’d any money on that Occasion, was a Knave, and he that lent it was a Fool.

Mr. Lutwyche. I desire he may be ask’d, whether there was any Recommendation by Mr. *Cottingham* or Mr. *Dixon*, and in what particular Expressions those Recommendations were made?

Mr. Kynaston. I believe, Mr. *Lightboun* express’d himself, That if they borrow’d Goldsmiths Notes, and they were detained, the Goldsmiths Shops would be shut, and People would be enquiring what Holiday it was.

Mr. Lutwyche. I desire he may be asked, what was said about making a Shew? if Mr. *Cottingham* own’d what was the meaning of those Words?

Mr. Kynaston. I don’t remember: They were pretty warm and said they would go to my Lord *Macclesfield*, which they did, and return’d again.

Mr. Plummer. My Lords, I desire he may be ask’d whether it was generally understood among the masters, that giving of Bank-Notes and Goldsmiths Notes was to be understood borrowing?

Mr. Kynaston. I understood it so myself, and I believe several others did; Mr. *Lightboun*, and Mr. *Holford*, and some of the others did so, by what they said.

Mr.

Mr. *Serj. Pengelly*. My Lords, we have done with this Witness.

Mr. *Serj. Probyn*. My Lords, I desire to ask this Witness the same Question that I ask'd the other; and that is, whether at the time when this Proposal was made to him, that he should subscribe as Mr. *Holford* had done, he made any Objection to it?

Mr. *Kynaston*. No, I did not make any Objection to it. I had been there first, and with my Lord, and at the farther End of the Room, that I remember less what happened at that time, than other People did.

Mr. *Lightboun* called.

Mr. *Serj. Pengelly*. My Lord, we desire that Mr. *Lightboun* may give an Account of what passed at this meeting, relating to the bringing in of the Accompts?

Mr. *Lightboun*. What meeting? That at Mr. *Edwards's*, or that at the Earl of *Macclesfield's*?

Mr. *Serj. Pengelly*. That at Mr. *Edwards's*.

Mr. *Lightboun*. I was at Mr. *Edwards's* about that Time, at some meeting when our Accompts were talked of, but whether it was before they were delivered in, or afterwards, I cannot tell. We had so many meetings about that time at Mr. *Edwards's*, that I don't remember exactly, which was before, and which after. I remember, at the meeting when Mr. *Cottingham* and Mr. *Dixon* both were there, there was some Discourse relating to the Producing of the Securities, and of the Ballance of the Cash. I then asked, whether we should produce it in Bank notes, or Goldsmith's Notes, and I understood, it was hinted that the Goldsmiths that we had dealt with, would assist any master that wanted money, but by whom it was said, I can't recollect. The Answer I made to that, was, that I should be sorry that any master should borrow Notes of a Goldsmith, and that they should be stay'd or secured when produc'd, which I apprehended would be done; and next morning several Goldsmiths would be forc'd to shut up their Shops, and it would look like a Holiday in *Fleetstreet*.

Mr. *Lutwyche*. Do you remember any Thing concerning a Net?

Mr. *Lightboun*. I don't remember the Expression of a Net.

Mr. *Lutwyche*. What Application was made to any of the masters to carry in their Accompts, and to whom?

Mr. *Lightboun*. My Lord *Macclesfield* one morning sent for me, and desired me, that when the Accompts were brought into the Council, I would be thereabouts, that if there was any occasion to clear up or explain any thing, or give farther satisfaction to the Council, I might be ready. I told his Lordship, I would give no Satisfaction about any one's Accompts but my own. But if his Lordship pleased that I should attend, I would be thereabouts; and if his Lordship pleased, I would have another master with me: I nam'd Mr. *Holford*, and my Lord desired me to acquaint Mr. *Holford* with it, which I did; who said, he was ready to go with me to answer any Questions that should be ask'd, arising on the Perusal of his Accompts.

Mr. *Lutwyche*. What did he desire you to attend for?

Mr. *Lightboun*. To resolve any Question or Difficulty that should arise before the Council. After this, Mr. *Cottingham* told Mr. *Holford* at Mr. *Ed-*

wards's, that my Lord desired that two of the masters should attend the Council with the Accompts of the whole, and that Mr. *Holford* being the senior master, should be one, and he was to choose whom he would have go along with him; and I having given Mr. *Holford* intimation before of my Lord's inclination, Mr. *Holford* desired me to go with him. I told him, I did not care to carry in any other Accompts than my own; as I had not concerned my self in other masters Accompts, I would not then begin; I would not carry any but my own, and no body else should carry mine; I would not be a Representative of the Body. Upon that, Mr. *Holford* recollected himself, and said, nor he neither; he would carry no Accompts but his own. I said, the Accompts were call'd for by my Lord Chancellor, and not by the Privy Council, and thereupon I thought it proper to wait upon my Lord Chancellor, and deliver them to him.

Mr. *Lutwyche*. Your Lordships will observe, the Persons thought most proper to appear for the rest of the masters, Mr. *Holford* and Mr. *Lightboun*, were so apprehensive of the masters being deficient, that they did not care to appear for them. I desire Mr. *Lightboun* may be ask'd, what pass'd on the 10th of *November*, when the Accompts were deliver'd to the Earl of *Macclesfield*?

Mr. *Lightboun*. My Lords, upon the 10th of *November* my Accompt was not ready at the time I was to deliver it. I rather chose it should not be ready; because I did not care that it should be carry'd in by any body but my self. However, I waited at the proper Time; and when we came there, Mr. *Holford* deliver'd in his Accompt, and a Letter he had writ to his Lordship, and fix'd to his Accompt, which was there read. My Lord seem'd to like the Letter, and took notice of it; and I think, another or two, who were my Seniors, deliver'd in their Accompts. When it came to my turn, I acquainted my Lord, that mine was not ready; but I would go home and finish them, and attend his Lordship with them at the *Cock-pit* by Eight of the Clock. Accordingly I did, and sent it in to his Lordship.

Mr. *Lutwyche*. What pass'd farther relating to their signing of the Accompts?

Mr. *Lightboun*. I know nothing of it; for I went away to finish my own.

Mr. *Serj. Pengelly*. My Lords, we desire that Mr. *John Bennet* may be call'd.

Mr. *John Bennet* appeared.

Mr. *Lutwyche*. My Lords, we desire that Mr. *John Bennet* may be ask'd, whether he was at this meeting at Mr. *Edwards's* House, and what pass'd at that time?

Mr. *J. Bennet*. My Lords, I was at that meeting at that time, when Mr. *Cottingham* and Mr. *Dixon* came in, and told us they came from my Lord Chancellor; and Mr. *Cottingham* said, he had brought Mr. *Dixon* with him, because he was deaf, and could not well hear. Mr. *Cottingham* said, he had two Questions to propose; first whether we were willing that all our Bonds, and other Securities in our Custody, should be inspected by him or any other? All of us were willing, and agreed to that. The second was, whether we were willing, or would produce the Ballance of Cash in our hands before the Council? To this the masters made a Stand, and said, The Cash was considerable;

ble; and it could not be presum'd that they kept it lock'd up in Chests or Trunks in their own Houses; that was the way to have our Throats cut: But we believ'd we could do it in a reasonable Time. To which Mr. *Cottingham* said, Can't you produce it in Bank Notes or Goldsmiths Notes? Bank-Notes, said he, will be best; but do it in Goldsmiths Notes, if you can't get Bank Notes. To which Mr. *Lightboun* said, If we produce them in Goldsmiths Notes, and there should happen to be a Net thrown over 'em, and they should be secur'd, the Goldsmiths might be oblig'd to shut up their Shops, and People would be enquiring what Holiday it was; and it might be a great Damage to those Goldsmiths.

Mr. *Lutwyche*. I desire he may be ask'd, whether any thing was said of assisting one another?

Mr. *J. Bennet*. Mr. *Cottingham* press'd us very much to help and assist one another, as far as we were able.

Mr. *Lutwyche*. Whether was any other Expression made use of by him?

Mr. *J. Bennet*. I don't remember there was: But he repeated it several times, that we should stand by, and assist one another with Cash.

Mr. *Plummer*. My Lords, I desire to ask this Witness, if, in pursuance of the Advice given by Mr. *Cottingham*, he did assist any of the masters, or was assisted by any of them?

Mr. *J. Bennet*. One of the Gentlemen did assist me with Cash, which is lock'd up in the Chest: I gave him Security for it. And as to my assisting any Body, Mr. *Conway* inform'd me, he had a Real Security for 9000*l.* and begg'd, if I could, that I would assist him with 5000*l.* and in two or three Days I should have it again: I told him, I had in my Accompt mentioned my Cash, and that I had offered to make up the Ballance by my Real Estate, and so could not assist him with any Cash. He ask'd me, if I had any Bonds by me? I told him I had 2000*l.* Bonds; and if he could engage to bring them back to me in two Days, he should have them: And upon lodging a Bag of Writings with me, which he told me was a real Security for 9000*l.* I accordingly did lend him them, and he brought them back again to me in two Days Time.

Mr. *Plummer*. I desire he may be ask'd, what his Inducement was for lending the Bonds?

Mr. *J. Bennet*. The real Inducement was the real Security which was given me: But it had been recommended by Mr. *Cottingham* too.

Mr. *Plummer*. I desire to know whether he open'd the Bag, to see what the Security was, or took it by Content?

Mr. *J. Bennet*. No, I did not open it; Mr. *Conway* assured me it was so.

Mr. *Plummer*. What use did he make of those Bonds?

Mr. *J. Bennet*. Indeed I don't know.

Mr. *Lutwyche*. My Lords, I desire he may be ask'd, whether those Bonds belong'd to the Suitors of the Court?

Mr. *J. Bennet*. They were brought in by the Suitors of the Court after my Accompt was deliver'd in, and I must give them in my Post-Accompt: Therefore I said, I must have them again in two Days time.

Mr. *Serj. Pengelly*. I desire he may be ask'd, whether this was after he had given in his own Accompt?

Mr. *J. Bennet*. Yes, it was after I had given in

my own Accompt of my Money Securities, and the Accompt of my Estate.

Mr. *Serj. Pengelly*. I desire to know what Subscription Mr. *John Bennet* made to his Accompt at first, and what afterwards?

Mr. *J. Bennet*. I came to my Lord *Macclesfield* just after the Gentlemen had been delivering in their Accompts; and they were below, writing their Subscriptions to their Accompts. I had then made no Subscription to my Accompt; they told me what my Lord had recommended to them to write; and I had one of them laid before me. I took my Pen and Ink, and varied it in some measure, and made the Subscription in this manner: 'I have all the Securities in my Name, as 'specified on the other Side; and all the Bonds 'and Orders are in my Custody; and I am 'ready to satisfy your Lordship, that I am able 'to answer the money to every Party, that is 'entitled, or shall have a right to receive it.

J. Bennet.

Mr. *Lovibond* called.

Mr. *Lutwyche*. My Lords, I desire he may be asked, whether he was present at this meeting (that hath been so often mentioned) at Mr. *Edwards's*?

Mr. *Lovibond*. My Lord, I was there but a very little while.

Mr. *Lutwyche*. I desire he may be asked, while he was there, whether any thing was proposed, and by whom, for the masters to lend one another money or Notes?

Mr. *Lovibond*. There was Mr. *Cottingham* and Mr. *Dixon*, and one of them said, that the masters should stand by one another, and recommended it to them to assist one another with Bank Notes or Goldsmiths-Notes.

Mr. *Serj. Pengelly*. To what Purpose?

Mr. *Lovibond*. Neither of them said to what Purpose.

Mr. *Serj. Pengelly*. What was the Discourse about at that Time?

Mr. *Lovibond*. The Discourse was about the Accompts, and how every Man's Ballance was to be made up.

Mr. *Serj. Pengelly*. I desire to know, during that Time, whether Mr. *Lovibond* observ'd that Mr. *Cottingham* or Mr. *Dixon* went to my Lord Chancellor?

Mr. *Lovibond*. Yes, my Lords, they both went, and I came away, and did not stay till they return'd.

Mr. *Serj. Pengelly*. I desire to ask, Whether Mr. *Lovibond* did not lend some of the masters some money?

Mr. *Lovibond*. I lent some money to Mr. *Bennet*.

Mr. *Serj. Pengelly*. How much was it?

Mr. *Lovibond*. It was 10,200 and odd Pounds.

Mr. *Serj. Pengelly*. I desire to know, whether Mr. *Lovibond* was present upon the Delivering in of the Accompts on the 10th of *November* last?

Mr. *Lovibond*. Yes, my Lords, I was.

Mr. *Serj. Pengelly*. I desire he would look upon that Subscription he at first made upon the Accompt, when he delivered it in.

Mr. *Lovibond*. It is here.

Mr. *Serj. Pengelly*. Read it.

Mr. *Lovibond* reads. 'All which before-
'mention'd Particulars I am ready to answer on
'demand, or to give Security so to do, whenever
'requir'd.

H. Lovibond.

Mr.

Mr. *Serj. Pengelly*. I desire he may be ask'd, whether my Lord *Macclesfield* made any Objection to any Part of that Subscription, and what Part in Particular?

Mr. *Lovibond*. He made an Objection to the latter Part of it, because that might imply that my Effects were not ready.

Mr. *Serj. Pengelly*. Whether did you alter it afterwards, or was it recommended to you to alter, and in what manner?

Mr. *Lovibond*. My Lord *Macclesfield* mention'd, that Mr. *Holford's* Conclusion of his Accompt was most proper; and I had best alter it to that, and make that the Form; accordingly I did, I went down Stairs, and altered it as it now stands.

Mr. *Lutwyche*. Read this Subscription.

Clerk reads.

‘ All these Securities standing in my Name as in this Account is specified, I am ready to procure Certificates from the proper Offices, that I have, and had them before this Account, if your Lordship requires it; and as to the money, I am ready to answer it upon Demand to every Person entitled thereto, and who can give me a legal Discharge.

November 10th 1724. H. Lovibond.

Mr. *Lutwyche*. My Lords, I beg leave to make one Observation upon this: I would not trouble your Lordships with observing upon every one of them; but there is something very particular and remarkable in this Case of Mr. *Lovibond's*. Mr. *Lovibond* had said, as the Truth of the Case was, when he delivered in his Accompt, and this Subscription, that he was able to produce or give Security, &c. That would have lookt before the Council as if the money was not ready to be produced, it was only giving Security; and for that Reason this Alteration is to be made, to make it look as if he had the actual Ballance in his hands.

Mr. *Serj. Probyn*. My Lords, we desire he may be asked, whether at the Time that he wrote this Subscription, he was not able to produce the Ballance?

Mr. *Lovibond*. My Lords, I did in my Conclusion offer it; and I could have done it the next Day.

Mr. *Strange*. I desire he may be ask'd, whether he could have done it out of his own Estate, or Effects?

Mr. *Lovibond*. I could have done it out of my own Estate.

Mr. *Strange*. Did not you mention the Sum of 10,000 and odd Pounds lent? I desire to know, whether you took real Security for it?

Mr. *Lovibond*. Yes, I have a Real Security.

Mr. *Strange*. In Land?

Mr. *Lovibond*. Yes, in Land.

Mr. *Plummer*. I desire he may be asked, if my Lord *Macclesfield* asked him any Questions about his Ability?

Mr. *Lovibond*. No, my Lord did not ask me any Questions about my Ability.

Dr. *Sayer*. I desire he may be asked, whether at that time he did not believe, that all the masters were sufficient and able to make good their Accompts?

Mr. *Lovibond*. I did believe so, from what Discourse I heard pass among themselves. I had no Knowledge of their Affairs, or of their Estates.

Mr. Edwards called.

Mr. *Serj. Pengelly*. My Lords, I desire Mr.

Edwards may give your Lordships an account of what passed at this meeting at his House?

Mr. *Edwards*. My Lords, I received a message from Mr. *Cottingham*, to know if I would give Leave for the masters to meet at my House? to which I consented. Some came before Mr. *Cottingham*, and asked me if I knew what this meeting was about; I could give them no Account of it. Mr. *Cottingham* soon after came, and the rest of the masters. Mr. *Cottingham* said, he had two or three matters to lay before them; One was, whether we were willing that our Bonds and Securities should be inspected, by my Lord Chancellor, or by any Person he should appoint? Every body consented hereto. I think, another thing was, my Lord Chancellor thought it proper, we should carry our Accompts to the Council: There were some objected to that, and we thought it not proper; and the Conclusion of that was, we were to deliver them to him, as being most proper for my Lord Chancellor to carry them to the Council.

Mr. *Serj. Pengelly*. Was that all that was offer'd at that meeting?

Mr. *Edwards*. Really I don't know but that there was a third thing mention'd. I can give you but a very imperfect Account of this meeting; and that for this reason; it was not thought proper that my Servants should come in, and they oblig'd me to go often out, which I did; and afterwards I heard the chief Substance of this meeting. And I remember, that after I had heard the main matter, I said, Gentlemen, the chief Consideration is to get your money ready as soon as you can; I think the intent is plain to get the money away from you.

Mr. *Serj. Pengelly*. Whether do you remember any Advice that was then given, relating to the making up of the Ballance?

Mr. *Edwards*. No, my Lords, I do not remember: I heard something afterwards by the masters, about producing Notes; but if any thing was mention'd about it, it was when I was out of the Room.

Mr. *Serj. Pengelly*. Whether on the 10th of *November* was you present at the Earl of *Macclesfield's*?

Mr. *Edwards*. Yes, my Lords, I was.

Mr. *Serj. Pengelly*. Look upon that Accompt and Subscription.

Mr. Edwards looks upon it.

Mr. *Serj. Pengelly*. I desire he may be asked, what Subscription he first made, when he gave it in, and whether any Alteration or Addition was made by him afterwards?

Mr. *Edwards*. Some of the masters were at my Lord Chancellor's before me: I did not think it necessary, nor had written any thing to my Accompt before I came there: So I went into a Room, and writ this that was first writ: ‘ My Lord, I am ready and willing, the Securities in the foregoing Accompt mention'd, shall be inspected by such Person or Persons as your Lordship shall be pleased to appoint.

H. Edwards.

Mr. *Serj. Pengelly*. What other Subscription was made after that?

Mr. *Edwards*. After I had made this Subscription, I carried my Accompt, and deliver'd it to my Lord Chancellor; who looking upon this Subscription, did not seem to approve of it: But he thought Mr. *Holford's* more proper, and desir'd me

me to alter it, that all might be as Mr. *Holford's* was. I then went out of the Room, and transcribed the Substance, if not the Words of Mr. *Holford's* upon my Accompt, and then I delivered it to my Lord again.

Mr. *Serj. Pengelly*. Read that Subscription.

Mr. *Edwards* reads.] 'The several Sums of money and Securities mention'd in this Accompt are what have come to my Hands since I was admitted a Master, separate from what were in the Hands of Mr. *Dormer* during the time he was a master (the account whereof, by reason of the Shortness of time, I have not been able to settle; but will as soon as possible) and for which I am ready to procure Certificates from the several Companies and Offices, if your Lordship requires it. And as to the Money, I am ready to pay it to every Person lawfully intitled thereto, having a proper Discharge for the same.

Nov. 10. 1724. *H. Edwards*.

Mr. *Serj. Probyn*. My Lords, if they have done with this Witness, I desire he may be asked, if he was not ready to pay his Ballance according to his Subscription?

Mr. *Edwards*. Yes, I was; I could have paid it in a Week sooner than the time required.

Mr. *Conway* called.

Mr. *Sol. Gen.* My lords, I desire that Mr. *Conway* may give your lordships an account whether he was at this meeting?

Mr. *Conway*. My lords, I was present at the first meeting at Mr. *Edward's* House, when Mr. *Cottingham* deliver'd my Lord Chancellor's Command, that we should provide and prepare our Accompts: But nothing more happen'd during the time of my stay at that meeting: I went away immediately. At the second meeting Mr. *Cottingham* and Mr. *Dixon* were there: Mr. *Cottingham* had a great Cold; and, as I remember, there were two Proposals made: The first was in relation to our Bonds and Securities; and the 2d. was in relation to the Money and Cash. After every Master had deliver'd his Opinion to these Points, Mr. *Cottingham* and Mr. *Dixon* went to wait upon my Lord Chancellor with an account of what the masters had said; and before they came back, I was gone.

Mr. *Serj. Pengelly*. I desire he may be ask'd, whether at that time, when it was propos'd to the masters to produce their Cash, they said they were able to do it?

Mr. *Conway*. Every master deliver'd his Opinion as he thought fit. Mr. *Lightboun* merrily said, If we produced Goldsmiths Notes, and they should be secured, the Goldsmiths Shops would be shut up, and People would be enquiring what Holiday it was. Mr. *Kynaston* made some Observations; every one spoke as they thought fit.

Mr. *Serj. Pengelly*. I desire he may be asked, whether they all declared, they were able and ready to make good their Accompts?

Mr. *Conway*, I think they all did.

Mr. *Serj. Pengelly*. Whether to produce their Effects or their Cash?

Mr. *Conway*. I am not sure, whether it was mentioned Cash or Effects; we made no distinction at that time between Cash and Effects.

Mr. *Serj. Pengelly*. I desire he may be asked, whether he himself declared, that he was able and ready to produce his Effects?

Mr. *Conway*. I did declare it at that time, as I afterwards writ, that I would endeavour to produce my Effects?

Mr. *Serj. Pengelly*. Whether there was any, and what Advice or Instruction given, relating to their assisting of one another?

Mr. *Conway*. No such thing happened while I staid there.

Mr. *Serj. Pengelly*. I desire it may be asked, whether Mr. *Conway* at any time afterwards borrowed any money of any of the masters and of whom?

Mr. *Conway*. The first time I attended the Judges and the Directors of the Bank, I did bring my Securities, and an Account of my Effects at the same time, without borrowing a Farthing from any Person: Before the Securities were gone through, and the Account of my Effects taken, it was observed, that the same was liable to Objection, as consisting of Land, Mortgages, Bonds and Notes, and things of that kind. And before I went, I was told, that some of the masters had taken an Oath; I desired to know what that Oath was: It was answered, that it was a voluntary Oath; and I said, I could only swear, that I had Effects to answer; and that I would endeavour to turn those Effects into Cash, and so withdrew.

Mr. *Serj. Pengelly*. I desire he may be asked, whether he borrowed any money?

Mr. *Conway*. Some time after this I waited upon Mr. *Godfrey*; and before I came away, he asked me if I had any Bonds? I told him I had; then pray, says he, let me have what you can spare, and send them immediately: Whereupon I went Home, and sent him 5000*l.* India Bonds. Some Days after that I expected Mr. *Godfrey* to return me the Favour; and I carried to him Effects to (as I apprehended) the Value of 6 or 7000*l.* or more; and I desired him to lend me Bonds, and he seemed unwilling without the Security, and he kept the Security.

Mr. *Lutwyche*. He hath not answered to those Questions, whether he borrowed money, and what Sums.

Mr. *Conway*. Mr. *Godfrey* lent me upon the Bonds, 9000*l.* and Mr. *Bennet*, 2000*l.*

Mr. *Lutwyche*. Only to pursue this Question, I desire to know, whether the Securities were turned into money, or into Notes?

Mr. *Conway*. Yes, my lords, they were turned into Notes.

Mr. *Lutwyche*. I desire he may be asked, whether they were lock'd up, or he did take them back again?

Mr. *Conway*. I took them back again.

Mr. *Lutwyche*. What became of them afterwards?

Mr. *Conway*. Some of them I paid off, others I returned to the Person that had advanced me money on those Bonds.

Mr. *Lutwyche*. I take it, he says, he had the Effects that produced those Notes from Mr. *Godfrey* and Mr. *Bennet*; therefore I desire to know, what became of those Notes after he carried them back from the Judges?

Mr. *Conway*. I returned them to the Person that had advanced me the Notes on those Bonds.

Mr. *Lutwyche*. Who was that?

Mr. *Conway*. The Goldsmith, Mr. *Rogers*, at *Temple-Bar*.

Mr.

Mr. *Plummer*. I desire to know when he returned those Bonds again?

Mr. *Conway*. In a few Days after.

Mr. *Lutwyche*. My lords, it may be necessary to examine how it was that he persuaded the Goldsmith to let him have those Notes?

Mr. *Conway*. I gave him Bonds for them.

Mr. *Lutwyche*. Whether were those the Bonds that you had from Mr. *Godfrey* and Mr. *Bennet*?

Mr. *Conway*. They were.

Mr. *Lutwyche*. Whether they were not delivered to the Goldsmith in the Nature of a Pledge for those Notes?

Mr. *Conway*. Yes, they were.

Mr. *Lutwyche*. What became of the Bonds?

Mr. *Conway*. I return'd them.

Mr. *Lutwyche*. To whom?

Mr. *Conway*. To Mr. *Godfrey* and Mr. *Bennet*.

Mr. *Serj. Pengelly*. When he carried back the Notes to the Goldsmith, at that time, whether he took up the Bonds?

Mr. *Conway*. I did.

Mr. *Serj. Pengelly*. As I apprehend, he says, he had lent Mr. *Godfrey* 5000 *l.* *India-Bonds*, and in return he expected that Mr. *Godfrey* should assist him; I desire he may be asked this Question, whether the 5000 *l.* in *India-Bonds* he supplied Mr. *Godfrey* with, was after or before he produced his Cash to the Committee?

Mr. *Conway*. After.

Mr. *Serj. Pengelly*. Was it before *Godfrey* had done it?

Mr. *Conway*. After he had produced his Securities.

Mr. *Serj. Pengelly*. Was it before or after he had produced his Cash?

Mr. *Conway*. It was after he had produced his Securities, and before he had produced his Cash.

Mr. *Serj. Pengelly*. My Lords, we think it will be very necessary to lay before your lordships a General State or Account of the total Deficiency; to shew how much, upon the Examination and Enquiry that hath been made, the total of the Deficiencies in the several Offices amount to; and we apprehend, that we are able likewise to give an Account of some additional Deficiencies that have been discovered since. I apprehend, there was at that time near 100,000 *l.* Deficiencies.

Mr. *Serj. Probyn*. I desire he may be ask'd, whether at that time when he wrote the Subscription, he was able to pay the Ballance of his Accompt?

Mr. *Conway*. I was, in Effects I had, and I said no otherwise.

Mr. *Sandys*. I desire he may be asked, if my Lord *Macclesfield* asked him as to his Ability?

Mr. *Conway*. No, my Lords, he did not; to my remembrance he did not. I deliver'd my Accompt to Mr. *Cottingham*.

Mr. *Serj. Pengelly*. I desire he may be asked, what Deficiency there remains upon his Office; whether he can recollect how much it is?

Mr. *Conway*. My Lords, I believe it is 13,000 *l.* my Charge, of which I can take off something in my Post-Accompt.

Mr. *Serj. Probyn*. I desire he may be asked, whether he is now able to make good the Deficiency in his Office?

Mr. *Conway*. Yes, my Lords, I am.

Mr. *Serj. Probyn*. Whether he hath made any Conveyance of any Estate as a Security for it?

Mr. *Conway*. I have.

Mr. *Serj. Pengelly*. I desire he may be asked,

whether any thing, or how much hath been rais'd out of that Estate?

Mr. *Conway*. It is made so very lately, that I don't know that any thing hath been raised since: It is but a few Days ago that it hath been made.

Lord *Lechmere*. My Lords, I would be glad to know, as there is a Ballance of 13,000 *l.* whether he stands indebted to any other Persons, but to the Suitors of the Court, and to whom?

Mr. *Conway*. No, my Lords, I don't owe any thing to any body, to my Knowledge.

Mr. *Lutwyche*. I should be very glad if Mr. *Conway* could extricate himself out of the Difficulties on Account of the Deficiency in his Office. It is very proper to inquire how, and by what Estate, that is to be made good.

Mr. *Conway*. It is to be made good by an Estate in land.

Mr. *Lutwyche*. I desire to know whether that Estate is settled, whether it was not settled upon his marriage?

Mr. *Conway*. It was never settled on my marriage. I was Tenant in Tail, and my Wife and Son joined with me in levying a Fine.

Mr. *Lutwyche*. Whether it is not settled by Will?

Mr. *Conway*. I was Tenant in Tail by the Will of my Father; I have levied a Fine, and my Wife and Son have joined with me.

Mr. *Onslow*. What Interest had your Son in it?

Mr. *Conway*. No Interest, as I apprehend; but I thought it was necessary he should join, to take off all Difficulties and Objections to the Title.

Mr. *Onslow*. Whether there are no Annuities charged upon that Estate, and what they are?

Mr. *Conway*. There are no Annuities charged on that Estate.

Mr. *Onslow*. No Payment to the Mother?

Mr. *Conway*. There is, out of another Estate.

Mr. *Onslow*. What are the rents of the Estate you have secured for the Payment of this money;

Mr. *Conway*. Between 5 and 600 *l.* a Year.

Mr. *Onslow*. Is that your Computation, or is it let at so much now?

Mr. *Conway*. I can't say it is all let so; there are some Demefns.

Mr. *Onslow*. What are the Rents of that part of the Estate that is let?

Mr. *Conway*. I take it to be 500 *l.* a Year.

Mr. *Onslow*. What, let at 500 *l.* a Year?

Mr. *Conway*. Yes, or thereabouts.

Mr. *Onslow*. Do you reckon the whole Estate to be worth 500 *l.* a Year?

Mr. *Conway*. No, I don't reckon in the whole Estate, but only that which is conveyed for the securing of this money.

Mr. *Onslow*. Then I desire to know what are the Rents of this Estate as it is let?

Mr. *Conway*. I take it to be 500 *l.* a Year, or thereabouts, that is applied for, and as a Security to answer my Deficiency.

Lord *Lechmere*. This 13,000 *l.* Ballance is due to the Suitors, which he says is secured by this Estate: I would be glad to know how the Deficiency came, and what is become of this 13,000 *l.* that is due to the Suitors?

Mr. *Conway*. The Occasion of it was, my coming into the Office cost me to my Predecessor 6000 *l.* I paid besides 1500 *l.* upon my Admission, and 500 *l.* Contribution towards making good Mr. *Dormer's* Deficiency.

Mr. *Onslow*. How was the rest of the Debt contracted? You have mention'd but about 8000 Pounds.

Mr.

Mr. Conway. I believe I might, upon Account of my Brother, borrow 1500 or 2000*l.*, to satisfie his Account to the Crown.

Mr. Serj. Pengelly. Out of what Cash did you repay it?

Mr. Conway. I believe it might be out of the Office.

Mr. Onslow. What is become of the rest; how did you apply the Remainder?

Mr. Conway. The Remainder; I can't tell but I may have so much due among my Acquaintance; I believe I may.

Mr. Onslow. Did you then lend your Acquaintance out of the Suitors money?

Mr. Conway. I believe I might at times lend Friends out of the Cash that remained dead and useles, and because I apprehended it was Secure.

Mr. Onslow. You say, you have lent to several of your Acquaintance out of the Suitors Cash; I would have you name any one Person to whom you have lent any of the money of the Office?

Mr. Conway. I remember a noble Person, if it is proper to mention his Name, to whom I lent 2600*l.* he is now dead.

Mr. Serj. Probyn. I don't know whether your lordships will not be pleased to confine the managers to examine only to the particular Article they are now on.

Mr. Onslow. We are now upon the Article of the Deficiencies, and the Question hath been asked by the Counsel for the Noble Lord, whether this Deficiency can be made up by Mr. Conway? therefore it is proper to know, whether this Deficiency is likely to be made up, and to know where the Money is, and therefore I would ask who this six and twenty hundred Pounds was lent to?

Mr. Serj. Probyn. My Lords, I submit it whether that Question be proper, because Mr. Conway hath given Land Security to make good this Deficiency; and therefore it is not material for your lordships Judgment, to enquire how this Deficiency happened.

Mr. Lutwyche. I am very sorry to lay before your lordships the Reasons and the Order upon which he was committed. I apprehend it extremely material upon this Point, and ariseth from what the Counsel for the noble Lord have entred into themselves; for they have asked, whether he was able to make good his Deficiency: Now is it not proper for us to ask the particular Circumstances, to find out the Truth, whether he is so or not. Therefore I beg leave to ask one Question, not waving the other, whether he hath assigned over all his Debts that he could, to make good his Deficiency?

Mr. Conway. I have assigned over all my real Estate.

Mr. Lutwyche. Whether he hath assigned over this 2600*l.* due to him?

Mr. Conway. That is applied.

Mr. Lutwyche. Applied, How?

Mr. Conway. Applied amongst my Causes.

Mr. Lutwyche. Did he lend a Nobleman a Sum of money, and apply it to a Cause?

Mr. Conway. That Sum of money you are pleased to enquire after, I applied to a Cause.

Mr. Onslow. He said he lent a Sum of Money, &c. I desire he may be asked, who this 2600*l.* was lent to?

Mr. Conway. I was applied to by a Nobleman to lend him the Sum of 2600*l.*

Mr. Onslow. By whom was you applied to?

Mr. Conway. By my Lord Bulkeley, and accordingly it was advanced to him, and it is since applied in a Cause.

Mr. Onslow. Applied, How?

Mr. Conway. Applied in a Cause, with the Approbation of the Parties.

Mr. Onslow. Hath it been repaid?

Mr. Conway. No, It is applied in a Cause of a Suitor, and now it remains as Security.

Earl of Abingdon. I am so nearly related to that Noble Lord that is mentioned, that I must do that Justice, as to put Mr. Conway in mind, as I did Mr. Hiccocks before, That if any Question is ask'd him, which may personally subject him to any Penalty, or, as he hath the Bar Gown, may concern his Client, he ought to be left to his Discretion, whether he will or will not answer.

Lord Lechmere. A Person is not obliged to answer any thing that may criminally affect him; but where the Enquiry is after a Debt, in order to explain his Oath as to his Sufficiency, which is the matter of Debate, surely that is material, and ought to be answered to; and I desire to be informed, whether this 2600*l.* which he said was lent this noble Lord out of the Suitors money, was repaid to him by my Lord Bulkeley, and when?

Mr. Conway. It is not repaid. It is applied in a Cause; the parties have approved of it as a Security.

Lord Lechmere. When was this money in the Hands of my Lord Bulkeley applied to the Benefit of any Suitor, and by what Order or Authority?

Mr. Conway. It is some Time since, some months ago, five or six months ago.

Lord Lechmere. Was this by any Order of the Court of Chancery?

Mr. Conway. No, my Lords, by the Approbation of the Parties.

E. of Macclesfield. My Lords, if you please to give me leave, I would suggest something, that possibly may help towards the better understanding him. If my Guess be right, this relates to his Post-Accompt. He hath said his Charge is 13,000*l.* And he hath said, he could discharge 2000*l.* or more, of that Ballance by a Post-Accompt; Now I apprehend this he is speaking of now, is that Article of the Post-Accompt. I don't know, if I guess his meaning right, but I desire he may inform your lordships, in case it be otherwise.

Lord Lechmere. It may be for your Information to know who are the Persons to whom this is applied; that it may be known whether it is in the Post Accompt or not?

Mr. Onslow. My Lords, We desire first to know, what Security my Lord Bulkeley gave?

Mr. Conway. He gave a Bond and Judgment.

Mr. Onslow. Who is it you have applied the Security to?

Mr. Conway. It is in the Cause of *Faulconberg* contra *Faulconberg*.

Mr. Onslow. Do you reckon this Part of the 13,000*l.* now deficient?

Mr. Conway. No, I do not reckon it in that Sum.

Mr. Onslow. Your Lordships will please to recollect, that his Deficiency is 13,000*l.* We ask him how that Deficiency came; he hath given Your Lordships an Account of 10,000 odd hundred Pounds; and first said the Residue was in the Hands of his Acquaintance, and named 2600*l.* money of the Suitors to be in the Hands of my Lord Bulkeley; now he saith this last Sum is not Part of the 13,000*l.* Therefore now I would ask, how the Remainder of his Deficient money was applied, or how the Debt happened?

Mr. Conway. If my Lords will please to give me leave to explain it; As to the Remainder of the 13,000*l.* you have been pleased to reckon 10,000 odd hundred Pounds to be made out; then there is 2100*l.* odd money I have laid out in land, which I have since conveyed, which makes 12,000 odd hundred Pounds; and the rest I have in Bonds and Notes, which I have to make up the Residue.

Mr. *Lutwyche*. I desire he may be asked, whether he hath those Notes, and they are ready? I desire to know, whether they have not been paid into Court to make up his Deficiency?

Mr. *Conway*. No I humbly hope to have it allowed me on my Post Accompt, being applied in the foresaid Cause with Approbation of the Parties.

Mr. *Onslow*, We have done with him; and leave him to Your Lordships Observation.

Mr. *Thompson* called.

Mr. *Serj. Pengelly*. My Lords, we beg leave, that Mr. *Thompson* may give Your Lordships an Account, upon the Inspection and Examination of those Accompts, how much the Deficiency of the several masters amounted to?

Mr. *Thompson*. So much as the several masters stood charged with by their own Accompts, and did not lock up or produce proper Securities for, I account a Deficiency; and by this Rule, I have collected the Deficiencies of the several masters, from the Reports made to the Committee of Council.

Mr. *John Bennet's* Deficiency amounts to L. 17,541: 15: 10.

Mr. *Conway's* Deficiency in his Cash only amounts to L. 10,039: 4: 4½, but Mr. *Conway*, while his Accompts were under Examination, sold 2000*l.* South Sea Annuity, and 3500*l.* South Sea Stock; and of the money arising thereby, he paid to the Suitors, to whom such Annuity and Stock did belong, no more than L. 2593: 9: 3. so that his Deficiency is increased by the Sum of L. 3550, somewhat more or less, according to the Price he sold at.

Mr. *Serj. Probyn*. Was what he sold, part of the Suitors Security?

Mr. *Thompson*. Yes,—Mr. *Kynaston's* Deficiency amounts to L. 26,908: 11: 3 ½.

Mr. *Thomas Bennet's* Deficiency amounts to 9075*l.*

The Total of the Deficiency of the present masters is L. 67,114: 11: 5 ¾.

The Charge that remained upon Mr. *Borret's* Office, amounted to L. 56,050: 10: 1 ½. But Mr. *Bennet* and Mr. *Godfrey*, the masters, who had the Care of his Effects, gave it as their Opinion before the Judges and Directors, that the Effects he left, would produce 44,000*l.* and upwards; so that I compute the Deficiency of Mr. *Borret's* Office at L. 12,050: 10: 1 ½.

The Total Charge upon Mr. *Dormer's* Office, when he resigned to Mr. *Edwards*, amounted to L. 49,604: 11: 11; but Mr. *Edwards* has paid in Discharge of that Sum, the Sum of L. 23,725: 15: 9 ½. so that the Deficiency of Mr. *Dormer's* Office amounts to L. 25,878: 16: 1 ½.

Mr. *Serj. Pengelly*. Whether in that is Mr. *Wilson's* and Mr. *Poulter's* Security included in *Dormer's* Accompt?

Mr. *Thompson*. Mr. *Dormer's* Deficiency I take to be L. 25,878: 16: 5 ½; and the whole Deficiency I take to be L. 105,043: 17: 8 ¾. And if any Securities or Sums of money belonging to the Suitors are omitted in the masters Accompts, such Securities and Sums are not included in this Estimate.

E. of *Macclesfield*. Have you had before you the Administrator, either of Mr. *Borret* or Mr. *Dormer*?

Mr. *Thompson*. No, my Lord.

Mr. *Serj. Pengelly*. My Lords, we shall beg leave to call one Witness to give your Lordships an Accompt of another Deficiency of 2000*l.* upon Mr. *Conway*, which is not charged in his Accompt. We desire that Mr. *Sanderfon* may be called.

Mr. *Sanderfon* sworn.

Mr. *Lutwyche*. We desire, that Mr. *Sanderfon* may give Your Lordships an Accompt of any money in Mr. *Conway's* Hands, and how much it is, that is not brought to Accompt?

Mr. *Sanderfon*. My Lords, I was concerned as a

Solicitor in a Cause in Chancery, between Sir *Erasmus Norris* and *Alexander Norris*; soon after the Accompts were brought into the Register's Office, I went to look and see if Mr. *Conway* had charged himself with a Sum of money paid in, in that Cause. I found by his Accompt, that it was not charged. I had drawn up the Accompt, and given a Copy of it to Mr. *Conway*, which he did not deny, but he said, there was not so much by 1 or 200*l.* Said I, there is no Entry at all of the Cause, and no mention of any Sum. I told him, it was an Omission not to mention the Cause or Sum. He said, that he believed it was not so much, he did therefore not mention it. I asked him, why he did not insert, how much it was as he thought it? He said, because he would pay in all.

Mr. *Serj. Probyn*. We desire he may be asked, how much the whole money in that Cause was?

Mr. *Sanderfon*. L. 2274: 8: 11. besides Interest from Lady Day last was Twelve-month.

Mr. *Sol. Gen.* My Lords, this is the Sum of the Account we had to lay before Your Lordships of the Deficiencies, notwithstanding the masters represented themselves as able to pay the whole. We would not represent it to Your Lordships, that this will certainly be the Loss, because some of the masters have given Security for some Part; tho' we apprehend the Security given will not be sufficient for half.

E. of *Macclesfield*. I desire to ask Mr. *Thompson*, whether this Charge he makes upon Mr. *Borret's* Office be a Charge taken from the Office, or only an Account taken from Mr. *Meller*?

Mr. *Thompson*. This Charge was taken from the Vouchers, which Mr. *Meller* produced.

E. of *Macclesfield*. Are there any Payments allowed, made by Mr. *Borret* in his Life time?

Mr. *Thompson*. A great many.

E. of *Macclesfield*. Who gave you an Account of that?

Mr. *Thompson*. Mr. *Meller*, my Lord.

E. of *Macclesfield*. But I speak of the money paid by Mr. *Borret* himself, not what Mr. *Meller* paid. Have you any Account what Mr. *Borret* paid out himself?

Mr. *Thompson*. The Account we had of this, was from one Mr. *Parker*, as I think his Name was, who was Clerk to Mr. *Borret*. He produced several Receipts for Sums paid: And the masters in Chancery, who had the Care of Mr. *Borret's* Effects, allowed the Books and Papers produced by Mr. *Parker*, to be the Books and Papers belonging to Mr. *Borret's* Office.

E. of *Macclesfield*. As to the Effects belonging to Mr. *Borret*, who gave you the Account of them?

Mr. *Thompson*. Mr. *Bennet*. and Mr. *Godfrey*.

E. of *Macclesfield*. Do you know who is Administrator to Mr. *Borret*?

Mr. *Thompson*. I have heard that Mr. *Paxton* is.

Mr. *Nicholas Paxton*. Yes, my Lords, I took out Administration to Mr. *Borret*, about the middle of April last.

Lord *Lechmere*. I desire to ask Mr. *Thompson* whether the Computation he hath made of the several Deficiencies, amounting to an hundred and five thousand Pounds, is taken from the Voluntary Accompts of the masters delivered in, or whether any of the Suitors were concerned in those Accompts, or have been Parties to such Computations?

Mr. *Thompson*. From the masters Voluntary Accompts only.

Mr. *Serj. Pengelly*. I beg leave to ask one Question, which arises from the Question, which the Lord within the Bar hath been pleased to ask, whether Mr. *Godfrey* and Mr. *Bennet* were not the master that appeared, and were employed under the Earl of *Macclesfield* at that Time, and had the Custody of the Effects of Mr. *Borret*? Mr

Mr. *Thompson*. Mr. *Bennet* and Mr. *Godfrey* were the Persons that appeared to us to have the Care and Custody of Mr. *Borret's* Effects.

Lord *Lechmere*. As to the Nature of these Deficiencies, I think he says, these Deficiencies arise upon the Cash Ballance. Then I would be glad to know, whether in the Accompts that he hath perused, and in the Computation of those Deficiencies, the several Deficiencies of the Cash Ballance arise upon the whole Ballance, or are appropriated to any particular Suitors concerned in those Ballances?

Mr. *Thompson*. No Part of the Cash Ballance is appropriated to any particular Suitor.

Mr. *West*. My Lords, the Commons have now produc'd a very long, and as they apprehend, a very full and convincing Evidence, in maintenance of the Impeachment by them exhibited against *Thomas* Earl of *Macclesfield*, for high Crimes and Misdemeanors; and I am commanded to acquaint your Lordships, That they do not intend to trouble this House with any further Examination. But, my Lords, the Commons considering the Length and Variety of the several Facts and Circumstances, that have been offer'd, are of Opinion, It may be of Service to that Cause, in which their Zeal for publick Justice has made them to engage, that the whole of what they have insisted upon or produc'd, shou'd in such manner, as I am able to obey their Commands, be shortly recapitulated and presented in one View to your Lordships Consideration.

The Charge in general, and the several Articles of it, have been fully open'd by those Gentlemen, who preceded me upon this Occasion. The Witnesses who have been examined, and the other Evidence that has been read, have been fully considered, so far as they relate to those Particulars, that were the immediate Occasion of their being produc'd; I shall not therefore waste Time, by enumerating once more the Articles of the Charge, nor by too minutely repeating the whole Evidence that has been given: But shall endeavour to reduce this long and various Examination to some general Heads, that may express the Substance of the general Articles, and then remind your Lordships of what I can recollect to have been most materially offer'd in Support of them. To this End, my Lords, I beg leave in the first Place, to observe that strict Union and Connection there is between the Crimes of which this Earl stands charged. Your Lordships cannot but remark, that the Articles mutually support, and almost prove each other; so that if any one be admitted to be proved, it is difficult, if at all possible, to doubt the Truth of the rest.

A wicked and corrupt Design and View to raise and procure to himself excessive and exorbitant Gain and Profit, was the fatal Principle, from which all this Mischiefe sprung. It was this that prompted the Earl of *Macclesfield* to extort those large Sums of money, which he received from the several Persons, whom he admitted to the Office of masters of the Court of Chancery. The gratifying this Avarice engaged his Lordship to neglect every other Consideration, to overlook that Care he ow'd to the Suitors of the Court, and to admit Persons of small Abilities, and every way unqualified for the Discharge of so great a Trust. — This, oblig'd him to connive at, and permit the fraudulent Practice of paying the Excessive Price of their Places, out of the money belonging to the Suitors of the Court. — That again, forc'd him to suffer, or rather to encourage the purchasing masters, to traffick and game with the Estates of the Suitors. — There was no other way, by which these liberal Purchasers, cou'd Reimburse themselves. — And this Circumstance, even after it was apparent the Suitors were likely to lose a great Part of their Effects, reduc'd him to the unhappy

Necessity of refusing to take those measures, that were necessary to prevent that Practice for the Future. And when the fatal Effects of this unbounded Liberty, which he permitted the masters to enjoy, began to appear, then was He compell'd to become a Confederate with the deficient masters, to prevent its being known to the World. — From hence sprung the unequal Composition with *Wilson*: The partial Orders for the Payment of money: The private Contribution, to answer the most pressing Demands: And from hence his own Liberality to *Lockman*. But when all these Methods prov'd ineffectual, and he found the Cries of the Widows and Orphans had reach'd his Majesty, then, my Lords, did the Lord high Chancellor of *Great Britain* combine with these Masters, advise and persuade them to make false Representations of their Circumstances and Accompts, in Order to deceive his Majesty, to frustrate his most gracious Intentions for the Good of his Subjects, and to prevent (what he most fear'd) a parliamentary Inquiry.

These, my Lords, are the malignant Consequences of that Corruption of which the Earl of *Macclesfield* is accus'd; and which the Commons apprehend to be perfectly consistent with the whole Tenor of his Actions, during the Time of his being Chancellor.

The Commons began their Evidence with that Oath, which it was prov'd the Earl had taken, in Consequence of the Statute of the 12 Ric. II. and which was administered in the usual and accustomed manner. I should not have reminded your Lordships of this Circumstance, if it was not for that unaccountable Attempt, to quible away the Sanctity of an Oath, and to represent it as a meer Ceremony and Form, for no other Reason, but because it was read to him in *French*, and when he kiss'd the Bible, his Lordship and the Clerk said nothing to each other. They afterwards gave other Evidence, relating to such Profits as he had made of the Office of Chancellor, which he did not admit in his Answer. But I do not apprehend it necessary to mention them particularly to your Lordships.

The first general Head of Accusation against the Earl, is, That he *Corruptly, Illegally, and Extorsively insisted upon, and received great Sums of Money, for the Admission of several Persons into Offices relating to the Administration and Execution of Justice.*

To lead the Way to this Charge, the Commons began their Evidence with the 9th Article, which relates to his taking 100 Guineas from *T. Bennet* for permitting him to resign his Office of Clerk of the Custodies, and for procuring a new Grant of that Office to *Hugh Hamersley*.

The Commons chose to begin with this Article, not because they thought the Sum taken so considerable, as to have any great Influence upon the Judgment your Lordships may give upon this Occasion; but because the Fact discovers the Man, and fully explains, what manner of Mind he must be endu'd with, who could stoop to an Action so low and fordid. This Article does of it self lay a Foundation of Probability for the others, in which he is charg'd with the extorting of much larger Sums. It is true, His Lordship in his Answer gives himself a very different Character, and offers to produce a Catalogue of his own Generosities. What Argument there would be in this when produc'd, I cannot comprehend. I will therefore endeavour to save your Lordships that Trouble. I can admit even more than is desired: Instead of being Generous, I will suppose his Lordship (far from the Truth) to have been profuse: Yet still would it prove nothing: For surely, it is not a new Character in History, that even Squanderers should be Rapacious.

To prove the Particulars of this Article, the Resignation of *Bennet* and the new Grant to *Hamersley*, were both

both prov'd. And as to the Payment of the money, Mr. *Cottingham*, who was Secretary to my Lord *Macclesfield*, and who, thro' the whole Course of the Evidence, appears to have been his great Agent and Confident: He owns the Receipt of the hundred Guineas, and swears he paid 'em to the Earl, within a Day or two after he received them. He also owns the Consideration, for which this money was paid, That it was for permitting *Bennet* to surrender his Place. — Were there no Evidence but *Cottingham* alone, the Commons think they have sufficiently prov'd this Fact. But the Evidence of *T. Bennet* puts it beyond Contradiction, and makes it manifest, that the hundred Guineas were in a manner extorted. — He swears soon after he was admitted a Master, he was desirous to part with his Place of Clerk of the Custodies; and to that End apply'd to *Cottingham* for my Lord *Macclesfield's* Favour, and acquaints him with the Person, to whom he desired the new Grant should be made: *Cottingham* upon this speaks to my Lord, and some short time after tells Mr. *Bennet*, that neither my Lord nor himself knew *Hamersley*. Your Lordships may remember that the Earl by his cross Examination, seem'd to endeavour at some small Triumph upon this Circumstance. My Lords, it is not so wonderful, that *Cottingham* should not speak Truth, there is no giving Evidence to the Tone of the Voice, nor the Air and Manner, in which a Conversation is carry'd on; more especially, if it be considered, that *Cottingham* was a Man who doubtless upon these Occasions would not have known his Father without the mediation of Gold. *Bennet* was surpriz'd at this Speech, as well he might, when *Hamersley* lived next Door to *Cottingham*. However, *Cottingham* at last explain'd the Mystery, by letting him know, a Present was expected by the Earl, and *Cottingham* himself own'd, he did say the Earl insisted upon a Present.

Mr. *West* was here interrupted by the Earl of *Macclesfield*, who said that *Cottingham's* Words were not, That he insisted upon, but that he expected a Present. Upon which Occasion Mr. *Onslow* represented warmly to the Lords, that the Behaviour of the Earl was Irregular, and that the Managers ought not to be broken in upon while they were speaking. And then Mr. *West* went on,

My Lords, It is my Duty to represent the Actions of this Earl in the strongest Light; and the strongest Light is the justest Light. Upon Recollection I do not think the Word I us'd to be of Force equal to the Fact. My lords, The Expectation of a Chancellor communicated by a Secretary to a new made Master, is more than to insist. But be that as it will; *Bennet* in answer to these Expectations, represented the Hardship of being oblig'd to pay Money upon this Occasion, when he had so lately paid a very large Sum to the Chancellor; and by way of Argument told him, that when he came into the Place himself, he paid nothing; and his Brother told him, that lord *Cowper* upon the like Occasion had taken nothing, because as that Noble Earl said, nothing was due. At last, my lord *Macclesfield* and his Secretary, being both inexorable, *Bennet* agreed to pay the one hundred and five Pounds. After this Agreement was made, *Cottingham* acquainted his lord with the Bargain, and then told *Bennet*, that the Earl agreed to it: But withal, that it was a great Favour he would take so small a Sum; and *Cottingham* at the same Time made this very remarkable Declaration, That if Mr. *Bennet*, would bring the hundred Guineas, he need take no farther Trouble, for the Chancellor would apply to the King for leave for him to resign, and would take Care of the other necessary Steps. And accordingly the Bargain was executed in that manner. For Mr. *Bennet* knew so little of the

intermediate Proceedings, that he has told your Lordships he knows not how, or by whom the Warrant came into the Hands of the Clerk of the Patents.

It is difficult not to feel some Indignation rise at the bare relating this meanness! Mean it would have been in any Man: But for a Peer of *Great Britain*, an Earl, Lord Chancellor of the Kingdom, and a Chancellor oblig'd and so dearly bought, to prostitute so many illustrious Characters, in so low a manner as to become a Broker for the Hire of 100 Guineas, is astonishing. But, my Lords, when I consider that this Earl was at the same Time one of the Lords Justices of the Kingdom, in a Commission to execute some of the Functions of Majesty itself, I want Words to express such a Transaction in its proper Colours.

My Lords, I have mentioned the Evidence relating to this Point something the more particularly, because the Proof comes up to the express Words of the Statute of the 12 of *Ric. II.* and proves, as I apprehend beyond Contradiction, that the Earl of *Macclesfield* dispos'd of this Place for Gift and Brokage.

Before I quit this Article, I beg leave to observe to your Lordships, that my Lord *Macclesfield* in his Answer insists upon it to be the Right of the Chancellors to accept Presents; and therefore owns he did in this Case accept a Present. But then he avoids, as he every where else does, the naming any particular Sum that he accepted. I wou'd willingly ask, why this Precaution, if what he did was lawful and right? I would also observe, that there is something strangely equivocal in that Part of his Answer, where he denies he insisted on 100 Guineas, or any other Sum. This Answer both explains his extorsive Method of proceeding, and almost demonstrates the Practice of it. For it is very remarkable his Lordship does not deny he insisted upon a Present in General, but only that he did not insist upon any particular Sum.

My Lords, your Lordships will find by the Course of the Evidence, that this Artifice of not naming any particular Sum was not peculiar to this Instance; but my lord *Macclesfield*, whenever a Master's Place, or any other Place was to be sold, carefully avoided fixing the Price by demanding a certain Sum. No, — It was more gainful to set every Thing up to the best Bidder, and resolve never to dispose of any Office, till the sanguine Purchasers, by bidding on each other, were artfully screw'd up voluntarily to offer a Present, his lordship gently phrases it, but as the Commons think, they have prov'd the Fact to be, a *Corrupt and Exorbitant Price*, equal to the avaricious Wishes of the Seller.

The next Instance to which the Commons call'd Evidence, was the illegal Sale of several of the Offices of Masters in Chancery. Now, my lords (not to be tedious in mentioning the Evidence) it is manifest from the Oath of Office, which they take, from the Commission granted to the Masters in Conjunction with the Judges, and from the Evidence given by Mr. *Mellor*, relating to that subordinate Jurisdiction, which they exercise, That these Offices do relate to the Administration and Execution of Justice.

My lord *Macclesfield*, in his Answer to this Part of the Charge, indifferently is silent as to the particular Sums which he received, altho' your lordships will observe, that Payment of the individual Sums charg'd in the Articles has been prov'd by the Persons themselves, who paid the Money. *Kynaston* and *Bennet* express as to the Payment of 1500 Guineas each; Mr. *Elde* is positive as to his carrying to the Earl 500 Guineas in a Dutch Basket; and Mr. *Thurston* swears, he left 5000 Guineas with lady *Macclesfield*. Now my lords, as the Earl insists that it was a known Perquisite of the Great Seal to accept of Presents upon the adm-

ting new Masters; why does he not own the Receipt of the several Sums, with which he is charged? If it was a known and establish'd Perquisite, doubtless the Sum payable would have been as known and establish'd. And this Consideration I apprehend to be the Reason of his lordship's Caution. He cou'd not but feel the Absurdity of his own Argument, and yet I will admit as much as his lordship or his Counsel can desire upon this Occasion. His Predecessors possibly may have accepted small Gratuities from new masters, after their Admission. Therefore *He* may publickly, and without any other Consideration, sell them to the best Bidder for the most he cou'd get. My lords, the Argument wou'd have been just as good, during the Time that it was usual for the Gentlemen at the Bar, to give New Years Gifts to the Chancellor, to prove he might have sold his Favours, and boldly suffer'd no one to plead before him, who wou'd not farm his Practice, and pay the full Price of what it might be worth.

To support this *Imagination* of its being a common Perquisite of the Great Seal, my Lord *Macclesfield* does in his Answer aver, that every one of the masters I have named, did *voluntarily and of their own Accord* send a Present to his Lordship on Occasion of their respective Admittances. How far it was a Present the Evidence I shall mention to your Lordships will fully explain. At present, I beg leave to observe the Equivocalness of these last Words, *On Occasion of their several Admittances*. This was not accidental, but calculated on Purpose to make the whole appear like a common and usual Perquisite. As the Words stand in the Answer, the natural Construction is, that these masters *voluntarily* made the usual Present to his Lordship, after they were admitted to their Offices: And yet the critical Sense of the Expression does not exclude the Payment of the money, even by way of Bargain, before their Admission. For even in that Case, the money may as truly be said to have been paid on *Occasion of their Admittance*. I should not have mentioned this Part of the Answer, if it was the only Instance of his Lordship's deviating from Truth. I should have imagin'd it to be an Oversight, of either his Lordship or his Counsel. But by the Observations, that have been made by the Gentlemen who opened the several Articles; Contradiction, Equivocation, and (I wish I cou'd not say) Untruth shine in every Part, and appear to be the predominant Qualities of the whole. My Lords, I mention this, not only as an Aggravation, but even as a Proof. For what Cause must it be that reduces a Man of the Abilities this Earl is known to possess, and of the Character *He* did once enjoy, to make use of such mean, such contemptible Arts? Arts! Unworthy a great Man; unpractic'd by an innocent Man, and I doubt not, will prove usefess to the Guilty.

The Fact upon the Evidence appears to be thus, *Kynaston*, *Bennet*, *Elde* and *Thurston*, all concur in this Circumstance, That they paid their money before they were admitted into their Offices. Mr. *Cottingham* also owns that he received the money of Mr. *Kynaston* and Mr. *Bennet*, and carried up the Basket of Mr. *Elde*, before any of them were sworn. All these Persons likewise agree, and *Cottingham* confirms their Testimony, that they apply'd to him as the proper Person to recommend them to my Lord *Macclesfield*, and to be inform'd of what Sum they must offer, in order to render themselves acceptable to his Lordship. The Evidence of *Kynaston* proves it to be a direct Bargain, for he swears, when he acquainted *Cottingham* of his having agreed with *Rogers* for the Purchase of his Place, that he offer'd but 1000 *l.* as a Present to the Chancellor: Upon which *Cottingham* said, he wou'd not mention to my Lord any Sum under 1500 *l.* and when *Kynaston* agreed

to give that Sum, *Cottingham* again represented that it must be Guineas, upon which the 1500 Guineas were paid.

Mr. *Bennet*, he says, that when he had agreed with Mr. *Hiccocks*, he also applied to *Cottingham* to know what Sum was necessary to be paid the Earl. *Cottingham* agreed that a Present was necessary, but he wou'd not name the Sum. Upon this, after *Bennet* had consulted with his Brother and Mr. *Godfrey*, he again went to *Cottingham*, and offer'd 1000 Guineas; but *Cottingham*, dissatisfy'd with this, shook his Head, and said, *He would not go to the Chancellor with that Sum; a great deal more had been given, and he hoped he would not lower the Price.* *Bennet* however still press'd *Cottingham* to offer the 1000 Guineas, to which *Cottingham* replied, there was *no baggling with the Chancellor; and that if he would not give more, he might be absolutely refused, and lose the Place.* *Bennet*, struck with this Reply, agreed to give the 1500 Guineas, tho' *Cottingham* graciously told him, he need not bring it in money, for Bank Bills would do as well. I cannot help observing, that there was a strange Caution used as to the Payment of this money, altogether inconsistent with the Nature of an establish'd Fee, or regular Perquisite. Mr. *Bennet* sent his Clerk to take out the Bills in a feign'd Name, and for this Reason, because otherwise they could not so easily be parted with. *Cottingham* it seems, was something jealous of a Man, who had the Confidence to persist so long in offering but 1000 Guineas, and therefore the first Word he said to him, when he repair'd to the Chancellor to be sworn in, *Have you brought the Money? Bennet* answered like a Man, who perfectly well knew the Family, He should not have ventur'd to have come without it. Upon this the money was paid, the master was sworn, and the whole Bargain fully executed.

These kind of Bargains were now become so much the Subject of common Discourse, that the Earl thought it necessary to be something more cautious, and even *Cottingham* was not now to be so much in the Secret as formerly. Mr. *Elde* applied to the Chancellor himself, and without any Ceremony offers his Lordship 5000 Guineas for this judicial Office. The Earl, it seems, was not at all offended with this Liberty, but answered with the engaging familiarity of a great Man; *Thee and I must not make Bargains. I will treat thee in a different Manner from others.* My Lord *Macclesfield* was as good as his Word, for upon this *Elde* went to the Secretary, and offer'd him 5000 Guineas, and he reported to his Lord what pass'd: So that *Cottingham* was not dismissed this Service at once; and the matter was so far agreed, that Mr. *Elde* went in a Chair to the Earl's House, with his Basket, in which he swears, he put 5000 Guineas, and delivered it to *Cottingham*, who carried it up to his Lord: But at the same Time he swears, he did not know what was in it. Upon this, *Elde* was introduc'd, and sworn into his Office. Your Lordships will observe that the BASKET was no Part of the Bargain, and therefore the *scrupulous Earl* return'd it back to him Empty.

The last Person examined as to this Point, was Mr. *Thurston*, and *He* also was treated in a Manner different from all others. He was certainly better recommended than any of them, and in the Strength of that was very well received. Upon which he was Sanguine enough to expect he should have the Place. But, my Lords, before he was recommended, Mr. *Thurston* likewise apply'd to *Cottingham*, and offer'd 5000 Guineas. *Cottingham* said he would report; but he was not trusted to return an answer.—In the mean Time Care was taken by the artful spreading of Rumors, That Mr. *Thurston* should hear the Chancellor intended to give

give the Place away to another Person. Alarm'd at this, and seeing all other methods of Recommendation avail'd nothing, he applied to my Lady *Macclesfield*; and after using several Arguments to no purpose, *As that his Name had been printed in the publick News, to be the succeeding Master; That Persons applied to him for the Business of the Office; and that his Reputation and Character depended on his Success;* He at last told her he did not expect to have the Place for nothing, and therefore he left Bills for five thousand Guineas upon the Table, and so retir'd. These he found were the best Arguments, and the best Recommendation; for within two or three Days after he was sworn into the Office. This new Way of Proceeding, deceiv'd even *Cottingham* himself so much, that he even scrupled to take his own Fees. I know not whether I ought to mention any other Particulars; but by the Questions put to the Witnesses, when they were cross examined, it seems as if his Lordship would persuade you, that this was entirely a Transaction between Mr. *Thurston* and my Lady *Macclesfield*, and in which he was in no wise concerned. If your Lordships can believe that the Earl intended really to give away this Place for nothing, the Earl will be fortunate: For Mr. *Thurston* himself own'd, he did not think he should have had the Place, if he had not left the money.

I have repeated this Part of the Evidence more fully to your Lordships, because, as I apprehend, it clearly explains the Earl's artful methods of Extortion, and also proves that in this whole Proceeding, *The Money, instead of being voluntarily given, was unjustly extorted, and that instead of being a Present or usual Perquisite, it was an illegal and corrupt Bargain and Sale of Offices, relating to the Administration and Execution of Justice.*

The last Thing I shall mention to prove this Point is an Evidence, to his Lordship, most unexceptionable. I mean the Earl of *Macclesfield* himself; for my Lords, consider once more his Answer in Relation to this very Point. What Caution! What Equivocation! What Confusion of Mind! That could make him even forget the Time of his own Impeachment. What other Circumstances of Guilt! That during the Course of this Trial have been visible to your Lordships.— Bank Bills taken out in feign'd Names, the Secrecy with which the money was paid, the dead Silence as to the Price agreed: One five thousand Guineas in a Basket; another five thousand Guineas left on a Toilett; and lastly, His own Declaration to the masters almost in a Body; How much they, how much himself might be affected. I submit to your Lordships what Inference is to be drawn from all these Particulars. The Commons are persuaded all flowed from this Principle, That his Lordship, the Masters, the Seller, and the Buyer, were all conscious that the whole Transaction was illegal and corrupt.

Before I quit this Head of the Charge, I must take Notice of that Part of his Lordship's Answer, wherein he hopes that the receiving Presents on such Occasions is not criminal in it self, or by the Common Law of this Realm; and that there is not any Act of Parliament whatsoever, by which the same is made Criminal. I hope his Lordship intends that the Words, *Or by the Common Law of this Realm* should be understood as Explanatory of the Expression, *Criminal in it self*; otherwise it supposes a very strange Distinction. For surely an Action cannot be conceived to be *Criminal in it self*, and at the same Time *not contrary to the Common Law of this Kingdom*. Is it possible for any one to imagine, that Corruption in the Officer is not the necessary Consequence of being obliged to purchase his Place? This is *in Terminis* the Reason of the Statute of *Edw. VI.* Is it possible for any one to imagine, that Oppression of

the Subject must not be added to this Corruption? Or, can the Man, who sells these Places, with no other View than to satisfy his own Avarice, retain his Integrity, and be a severe or competent Check upon the Actions of those Officers, to whom he has sold? And that is the Reason of the Judgment reported by *Moor*, viz. *That the Sale of Offices is Malum in se, and therefore finable.* But when

Moor 781.

Stockwith and North.

to what I have now said, I add the Consideration of the Oath enacted by the *Statute 12. Rich. II.* (his Lordship will be pleased to add his own Opinion and Apprehensions) I do not conceive it possible to doubt, but that the *Sale of Offices relating to the Administration of Justice, is criminal in it self, criminal by the common Law, and criminal by Act of Parliament.*

The next Point to which the Commons gave Evidence, is the necessary Consequence of what I last mentioned: I mean the admitting Persons to the Office of masters, who were of mean Substance, and every way unqualified for that Trust. The Evidence given of the Deficiency, now in several of those Offices, is so full and uncontestable, that I shall avoid the Repetition of it, and only just name Mr. *Thompson*, and refer your Lordships to the Report made to the Council, the Orders of the Court of *Chancery*, and the other Papers now upon the Table. Their being deficient at this time is a violent Presumption, and that, in Point of Law, is some Degree of Proof, that they were of small Substance at the time of their Admission. How else is it to be conceiv'd that masters, who have been so short a time in their Offices, should be so much in Arrear? *Kynaston* was admitted but in *August 1721*, and in *1724* there appears a Deficiency of *26,908 l.* *T. Bennet* is admitted but in *June 1723*, and in little more than a Year there is a Deficiency of *16,075 l.* And it is remarkable, that both these masters have sworn, all they were owners of in the World, was not sufficient to have paid the vast Prices they gave for their Offices. Yet these Men were chosen out to be trusted, one with near *50,000 l.* and the other with near *100,000 l.* of the money belonging to the helpless and the miserable. By the skill my Lord *Macclesfield* shew'd the other Day, in endeavouring to prove a Man illegally worth *1000 l.* or *1500 l.* who had own'd himself to be worth nothing; your Lordships may see it was not want of Knowledge how to make an Inquiry, that made his Lordship neglect it. It was because he never once concern'd himself, whether they had Substance or not. The Sum he himself was to receive, *was his only Consideration, and therefore his only Care*; for as Mr. *Bennet* has expressly declared, he never once asked him, either before or after his Admission, any one Question in order to be inform'd of his private Circumstances.

And yet, my Lords, these are the Men, whom his Lordship, as Mr. *Waller* has particularly sworn, thought fit in open Court, and while he was sitting in the sacred Seat of Truth and Justice, to declare *Men of as great Fortune, Abilities and Skill, as had ever sat in that Court.* I much more readily concur in the Truth of the other part of his Lordship's Declaration, and proved by the same Witness, *That he had great Satisfaction in the having admitted most of the masters himself.* The Reason Mr. *Waller* gave, in Answer to some quibbling Questions of his Lordship's, for his particularly remembering this remarkable Speech, is clear and convincing to every Man; *That the Astonishment he was struck with at the Hearing, made him to remember it.* And happy would it be for his lordship, was it possible ever to be forgotten!

But what could make the Earl of *Macclesfield* break out into this Panegyrick? A Reason so mean, and at the same time so gross, that I almost wonder even his Lord-

Lordship would venture to act upon it in Publick. A Day or two before this happened, a master died, and a new Purchaser was to be invited.

I have just now mentioned the Satisfaction his Lordship had in the Sale of these Offices. The Effect of which was, that the Earl connived at and permitted the unjust Method that was practis'd, for the purchasing masters to pay the Price of their Offices, out of the money belonging to the Suitors of the Court. This Practice the Commons charge to have been notorious, and the Evidence produc'd to your Lordships proves that it was so. *Godfrey, Conway, Kynaston,* and *Bennet* swore, that this Circumstance induc'd them to become Purchasers; and indeed as to them, the Fact proves it self, even though they had not sworn it to be so. For they have both own'd, they were not able to buy without it; nay, they were so low that even the fifteen hundred Guineas, they paid the Earl himself, was out of the Suitors money. And thus far the Earl of *Macclesfield* himself has own'd in his Answer. But alas! That would prove nothing, if it was not accompanied with a Fact, that cannot be disbelieved; *My Lords, He has repaid the Money!*

After this, I think, I need not repeat the Evidence so minutely as to explain the particular method, in which this Fraud was transacted. The whole seems obviously calculated for no other End or Purpose, than to induce Persons of small Abilities to become Purchasers, by facilitating and making easy the method of Payment. And indeed it was so easy, that I wonder his Lordship did not meet with Persons, who would agree to give one half of the money, for an opportunity of running away with the other. And if they had, I do not see but his Lordship's Defence would have been just as good as it is now. Such a Price might with as much Reason be called a Perquisite, as his condescending to take but five or six thousand Guineas, when no one would give more. It is true my Lord *Macclesfield* does in his Answer say, that he was ignorant of this Practice, But I apprehend his Lordship to be as much mistaken in this, as he has been in other particulars: For, my Lords, it appears by Mr. *Bennet's* Evidence, that he not only knew of this Practice, but endeavour'd to conceal it.

It happened that when this Mr. *Bennet* delivered his Accounts to the Privy Council, he concluded with a very remarkable Article; *Item, In the Hands of Persons of Ability and Honour, 9075 l.* My Lord *Macclesfield*, at sight of this Particular, asks him the Reason of it; Mr. *Bennet* explains it, That as to 1575 l. he meant his Lordship, and as to the Residue, Mr. *Hiccocks*, of whom he bought, had detained so much of the Suitors money in his Hands, by way of Payment for his Place, and at the same time he complain'd to his Lordship of the Hardship with which he had been us'd. The Consideration that induc'd him to give so large a Price, was his being immediately to receive a very large Cash; and yet the first time he waited on Mr. *Hiccocks* for that purpose, he could get but 1500 l. and that upon the hard Terms of giving a Receipt for 9000 l. During this Conversation, *Bennet* swears, the Earl said with some Concern, *That his Accounts were made up the worst way in the World, for every Body would now judge, that what he paid for his Office, came out of the Suitors Money, and that what had been so much suspected would be now discovered, and what he himself had taken so much Pains to deny, whenever he was asked the Question.* After this his Lordship and *Bennet* enter into a serious Consultation, how to make up this Affair. The Chancellor bids him go to Mr. *Hiccocks*, to try what he would do. But it seems he could not be brought to do more, than to lend 2000 l. which *Bennet* absolutely refused,

and insisted upon its being *given him, or not at all.* He reported this to the Earl, who displeas'd at it, said, *Hiccocks* should pay 2000 l. and that he himself would repay the 1575 l. but it should be in such a manner, as that *Bennet* should not know in what manner it was done. Most profound politicks this! *Bennet* afterwards told your Lordships, that he found the Earl intended to trick him out of this money; for several Times and Places were appointed for Payment, without any Effect. And therefore the Accounts were delivered in, and the Story comes out. Your Lordships certainly observ'd, that my Lord *Macclesfield* was very much offended with Mr. *Bennet's* Evidence, and therefore took care to cross examine him most accurately. But that Fatality which constantly attends Guilt, was so strong upon him, that the Answers given by this and almost every other Witness, to the Questions propos'd by the Earl, and his Counsel, evidently, as I apprehend, destroy his own Answer, and confirm our Accusation. But, my Lords, it is not only the Answers of the Witnesses, but even his Lordship's own Questions that afford Evidence against him. For to what part of the Charge am I now speaking? Why to that, wherein he is accus'd of knowing and endeavouring to conceal the Practice of paying the Purchase out of the Suitors money. And what does his Lordship ask! *Did not you at this Meeting tell me, that if Hiccocks would pay 2000 l. you then would make up the rest your self?* By his Lordship's own Confession therefore, *Bennet* was with the Earl upon this Occasion; they *did* talk upon the Subject, *Bennet* has inform'd your Lordships. *Hiccocks* retaining the Suitors money, was part of the Conversation. Else why should he pay 2000 l.? His Lordship *did* concert how to make up this Affair, and consequently how to conceal the whole. To this Question of the noble Lord's *Bennet* answers consistently with what he had said before, *That he did not say, if Mr. Hiccocks would pay 2000 l. that then he would stand the rest.* And the Reason he gives is good, *He was not worth the Money.* Your Lordships remember the other part of the Dialogue. I shall only add, that the Earl being angry at this Evidence, asks Mr. *Bennet*, *And how could you, as an honest Man, offer to buy a place, when you were not worth the purchase Money?* I submit to your Lordships, whether it was not as honest for him to buy without Money, as for his Lordship to sell without Right.

I have now stated to your Lordships the Fact, as to this scandalous Practice. And I think it can never be thought reasonable to suppose the Earl of *Macclesfield* only ignorant of what every one else knew: Or that he did not know of what he endeavour'd to conceal. And if it is certainly true, that the Office of Chancellor is an Office of the highest Trust, it is as true, that every wilful Neglect of what is necessary to be done, in order to discharge that Trust, is criminal. It cannot be doubted, but that this Practice was unjust, and fraudulent upon the Suitors of the Court. It cannot be doubted, but that the Earl of *Macclesfield* knew of this Practice. It cannot be doubted but that the Chancellor was the proper Person, because in Fact, he was the only Person, who could, *ex Officio*, either remedy or prevent this Abuse. What ought to be the Consequence of these Premises, the World will learn by your Lordships Judgment.

Hitherto, my Lord's, Avarice, *uncorrupted Avarice!* has been the only Principle of this Earl. In what follows, your Lordships will perceive Apprehension and Fear begin to mingle in all his Actions; and for this Reason the Bankruptcy of *Dormer* was to be concealed, that the Clamours of the World might be hushed. It has appeared in Proof to your Lordships, that upon *Dormer's* absconding, the Deficiency in his Office a-

mounted to upwards of 52,000 *l.* for the Account upon the Table, which reduces the Ballance to 49,000 *l.* was made up long after the masters had been obliged to contribute their 500 *l.* each.— When *Dormer* run away, it is natural to imagine, that even this Chancellor should have turned his Thoughts to the Security of the Suitors: Not because it was his Duty so to do, but as Mr. *Dormer* was a master whom he had not had the Satisfaction to admit himself, he might with the more Security have given himself the Show at least, of acting vigorously in relation to his Affairs. By the Evidence that has been given it appears his Lordship's Behaviour was quite the Reverse; my Lord *Macclesfield*, instead of being Sollicitous for the Good of the Suitors, was apprehensive only of the loss that might happen to himself, by sinking the Price of Places, and thereby defeating that gainful Trade he carried on in the Sale of them. But this Thought was attended with another Consideration, that this open Acknowledgement of the Bankruptcy of one master might induce the World to suspect the Abilities of the rest, and as he best knew what Care, what Circumspection he had used upon their Admission, so he was determined to prevent an Incident of that kind. With these Views therefore every Step that was taken was mysterious, and the Deficiency itself with the utmost caution kept secret; so secret, that at last some of the masters themselves, his own masters, for that very Reason, refused to contribute any farther towards it. *It is a bottomless Pit, says one; We know not what it is, says another.*

The first Step the Earl took was to direct Mr. *Rogers* and Mr. *Hiccocks* to carry on a private Negotiation with *Dormer*, for his Return into *England*, assuring him in his Lordship's Name, that his Person should not be confin'd, provided he made an Assignment and Discovery of his Estate and Effects. Upon this *Dormer* returns, and executes an Assignment; but I do not find he was ever examin'd upon Interrogatories, or that any of his Creditors attended, in order to enquire into the Truth of his Discovery. Your Lordships observe, that the Promise of liberty was conditional; but *Dormer*, and the Earl, tho' for very different Reasons, were equally afraid of this Commitment; and therefore his Lordship took Care not to direct any Proceeding, that might lay him under a Necessity of doing it. If there was nothing else in the Case, this Behaviour was sufficiently Gross. But, my Lords, it was still worse; for Mr. *Lightboun* has acquainted your Lordships, that soon after *Dormer's* Failure, he waited on my Lord *Macclesfield*, and told him, that he suspected the Account given in by *Dormer* was not Fair and Just; and that therefore he ought to be committed for example's sake. This Witness added another Circumstance, that justifies what I have before suggested to your lordships, as the Reason of the Earl's Conduct. He says, that in this Conversation with his lordship he intimated and gave broad Hints of his suspecting the abilities of some of the other masters; he represented that the Year 1720 had been a very fatal Year, and might affect the masters as well as other People; that what had been might be, and several other matters of this Nature. Your Lordships remember the manner in which this evidence was given, there was an air of Probability and Truth, that appeared in it; he own'd indeed, when the Noble Earl ask'd the Question, for fear, I suppose, lest your lordships should want Proof of there having been such a Discourse, that he did not name any master in particular whom he suspected. He did not know how far an action might lie, and if known, it would make him unacceptable to his brethren, and himself might be made uneasy in his Office, and several other Reasons of that kind; and therefore he chose to express himself in gene-

ral Terms. Your lordships will observe that the Earl was very early in this Resolution, some way or other to patch up this affair of *Dormer's*, so far at least, as to make it last his Time: For Mr. *Kynaston* has informed your lordships, that when he was in Treaty with Mr. *Cottingham*, to be admitted Successor to Mr. *Borret*, he objected this very Deficiency of *Dormer's* as a Reason why the Chancellor should not insist upon so large a Sum, since the Consequence of it must naturally lessen the Value of the Office. But he made light of it, and said, it would soon be made up. Mr. *Edwards* also, who succeeded *Dormer*, said he never would have bought the Office, if he had not been assured the Deficiency would have been made good. Here your lordships may also remember, that my lord *Macclesfield*, by cross-examining this Gentleman, laboured to prove, that the masters had actually agreed, in all events, to make good *Dormer's* effects. Mr. *Edwards* said, *he could not say 'twas actually agreed, he hoped they would, and by Conversation he had had, imagined they were inclined so to do, &c.* Upon this the Earl asked, *From whom then had you those Assurances that it would be done?* His lordship (ever fortunate in his Questions!) I believe was not well satisfied with the answer; for says *Edwards*, *I had them from Cottingham and Godfrey.* Their Names and Qualifications are well known to your lordships.

The next Step that was taken, relates to the Composition of a Debt of 24,046 *l.* due from one *Wilson* a Banker, to the estate of Mr. *Dormer*. This Composition the Commons do aver the Earl did direct and establish, in an unwarrantable and clandestine manner. On the other hand, my Lord *Macclesfield* does in his answer say, that it was done in the proper and usual manner: Your lordships will judge of the Truth between us. The Commons, to prove their Averment, have produced the original Instrument of Composition, by which it appears that this Debt of 24,000 *l.* was to be discharged for the Sum of 1463 *l.* in money, and an Assignment of 10,000 *l.* or a proportionable part of what should be recovered of a desperate Debt of 22,600 *l.* due from one *Poulter* (who also is a Bankrupt) to *Wilson*.

The Introduction to this Affair was thus; Mr. *Edwards*, to whom *Dormer* assigned his Effects, acquainted the Chancellor that *Wilson* proposed a Composition, but apprehended he had not Power to conclude any such Agreement. To this the Chancellor agrees, and therefore advised him to apply to the Court by way of Petition for that Purpose. *Edwards* followed this Advice, and petitioned. Upon which the Earl referred the matter to Mr. *Hiccocks*, who made his Report, which being annexed to another Petition, the Composition was confirmed. In the Answer which the Earl gave to the second Petition, these Words are inserted, *Of which give Notice forthwith;* To what Purpose these Words were inserted, I cannot comprehend, unless it was to deceive the poor master, who trusted him, into Ruin, by craftily laying a Groundwork for throwing the Blame of the whole upon him, unless he could divine to whom this Notice was to be given. For his Lordship took Care not to give any Directions, as to what Persons, or in what manner it should be done.—During this whole Transaction *Wilson* was never examined upon Interrogatories; No one Creditor ever summoned to attend; the Character of *Poulter* perfectly unknown, or by what they did know, they might have reasonably suspected what afterwards happened; No Knowledge of *Wilson's* Affairs but what he communicated himself; the first Proposal he made was accepted; no Consultation with any other of *Wilson's* Creditors; and to show how useful that might have been, it has been proved to your lordships, that *Wilson* has paid several of his Creditors their whole Debt.

This was the Care the Earl thought fit to take of the Suitors of the Court: Doubtless he imagin'd, that tho' more vigorous measures might secure more money, yet they might at the same Time make the Circumstances of the Court too publick; for, at the same Time his Lordship took abundant Caution to prevent any of these Particulars coming to the Knowledge of the Suitors, or of the World. For, my Lords, not one of these Facts appears upon any Record or Register whatsoever; the Whole was a private and clandestine Transaction between his Lordship, two or three masters and the Bankrupt himself. Your Lordships have a Certificate from the proper Officers for what I now say, *That none of these Petitions, Reports, or Orders, were ever regularly drawn up, or filed.*

My Lords, this Caution, this Secrecy, this Mystery, is a strange Way of proceeding for Justice and Equity; but, if the contrary be supposed to have been his Intentions, the Whole is of a Piece, natural and consistent.

Permit me, my Lords, once more to observe upon his lordship's Cross-Examinations. And, First, He very nicely examin'd *Edwards*, as to what he had receiv'd by virtue of this Composition; and certainly it receives a wonderful Justification from Mr. *Edwards's* owning that he received in *October* last 1000*l.* The next Point he examin'd to, was his lordship's Diligence in securing *Dormer's* Effects. The Commons brought Evidence to shew, that some of *Dormer's* Estate had been conceal'd, and, for ought I know, it may be true, that one *Goodfellow*, by his lordship's means, did give the Administrator (appointed since his lordship's Dismission) the first Notice of it. The Fact is, that a Parcel of old Hops, 500*l.* the worse for keeping, were not long since sold for the precise Sum of 100 Guineas. To which I shall only say, that I wonder his lordship chose to recal that Sum into your lordships memory.

My lord *Macclesfield* hitherto might possibly meet with the Approbation of those masters, on whom he vouchsafed to smile: Both he and they seem to have considered themselves as in an Interest separate, and quite opposite to that of the Suitors. His View was to keep the Circumstances of the Court secret, and to prevent any Thing that might happen to lessen his Profits in the Sale of Places: *Theirs* was to retain the money of the Court in their Hands, and for that Reason to hush any publick Clamour that might occasion the taking it away. I think I am not mistaken in this Conjecture, because I find his lordship himself was of the same Opinion: For this was the great Artifice and Machine, which his lordship employ'd, to terrify them into a Contribution of 500*l.* each, towards supplying the Deficiency of *Dormer's* Office. To shew how much this Custody of the money was in the masters Thoughts, your lordships will be pleas'd to remember, that all the masters own'd, that it made a very considerable Article in what they call'd, the Profits of their Places. Mr. *Holford* (on whom the only blemish I know, is the misfortune he has had of being a master) acknowledg'd, in answer to a Question propos'd by a Noble lord, *That he understood it so; for he never propos'd to lock the Money up, but to employ it for his own Use.* In fact, it was what the masters bought, and what the Chancellor sold, or rather, Widows,

Orphans, Lunaticks, the Wards and Suitors of the Court were the wretched unhappy merchandise, in which the Earl of *Macclesfield* thought fit to deal. When *Kynaston* was to buy, he swears that *Cottingham*, or *Rogers*, or both, recommended it to him as being the Senior Office, and therefore the best. And *Cottingham* himself own'd, the first Day of this Trial, that he had acknowledg'd to a Committee of the House of Commons, that he said to Mr. *Kynaston*, *You have purchased a very good Office; for there is a great deal of Money in it.* But, my lords, the Thing proves itself: Consider the Nature of the Office, the attendance and labour that is required; deduct the unlawful Interest made of the Suitors money; how can the honest Fees (even supposing it lawful to sell) be worth 6, 7, 8, or 9000*l.* I leave this for my lord *Macclesfield* to explain, and shall at present take it for granted, that the masters esteem'd the Custody of the money to be part of their Bargain.

That there was, in fact, a Contribution by the masters of 500*l.* each, is evident from the Receipts now upon your lordships Table; and Mr. *Holford* fully explains the method that was taken to draw them into it. He received, soon after the Report of *Dormer's* Bankruptcy, an Order from Mr. *Cottingham* to prepare and bring in his Accounts to the Chancellor; soon after that, it was intimated to him, that a Contribution of 500*l.* was necessary towards supplying the Deficiency of *Dormer*: Upon which he paid his money, and his Accounts (tho' ready, as he swears expressly) were never afterwards called for.

Lightboun was another master, who received Orders to prepare his Accounts; but not paying his money, *Cottingham*, some short Time after *Dormer* broke, ask'd him if he had not heard of the Proposal to contribute 500*l.* *Lightboun* own'd he had: *Cottingham* then said, 'twas necessary to raise some money to go on, and that, if he contributed, possibly the money might be repaid. Still *Lightboun* was inflexible, and said it was a dangerous Step, and he would not pay the money. Upon this Refusal, he inform'd your lordships, that he was look'd upon as a very troublesome Fellow, among the masters, and little Arts were us'd to make him uneasy in his Office: But when this likewise prov'd ineffectual, the Earl himself, at last, condescended to talk with him, and in the beginning of the Year 1722, he was taken into his lordship's Study; and the Earl told him, he was sorry to hear he did not pay; desired him to consider the Consequences, and how dangerous it was, not to take Care of *Dormer's* Affair. Upon this, *Lightboun* still refus'd to pay, saying he did not know how far a Contribution of this Kind might be constru'd to be an Undertaking of the masters to answer one for the other: At the same Time he boldly and honestly represented to the Chancellor, how cautious his lordship ought to be; that this method was no Cure for the mischief; and that as to its being propos'd by the Senior masters, 'twas no Argument to him, and ought to raise some Jealousy in his lordship, since they were visibly endeavouring to withdraw from the Court, and came into a Project of this Kind, only to keep up the Credit of the Court, till they found an Opportunity of selling their Places at great Rates; and a great deal more to this Purpose; and concluded with a peremptory Refusal to contribute.

However, as the other masters paid their money, the Earl was not discourag'd, but depended upon it that some Time or other (as he told Mr. *Edwards*) he should be able to force Mr. *Lightboun* to comply and therefore, as he thought; he had by this means contriv'd a Fund to answer any Demands upon Mr. *Dormer's* Office, he went on, just as if there had been no Deficiency at all. By the Orders that have been read to your lordships, and by the Evidence of Mr. *Edwards*, who paid the money, it appears that he made several Orders for the Payment of money, without any Regard to that due Proportion all the Suitors of the Court were entitled unto. His lordship in his Answer says, It was not incumbent upon him, *ex officio*, to declare an Average. If it was not his Duty, my Lords, for God's sake, whose Duty was it? This is too gross to be a Sin of Ignorance. A Barrister of but a Term's standing knows, nay, it is obvious to the lowest Capacity, that where several Persons have Demands out of one Common Fund, and that Fund proves to be defective, all ought to be upon the same Foot, and be paid in an equal Proportion. Mr. *Lightboun*, Mr. *Edwards*, both represented to him the Hardship of one Creditor's receiving his whole Demand, and another Creditor, who had equal right, losing his whole Debt. The Reason therefore of this otherwise absurd Proceeding cou'd only be, that the Declaration of an Average wou'd publish that Deficiency to the World, which he had us'd so many Stratagems to conceal.

I cannot conclude this Part of the Evidence, which relates to that Criminal Design the Earl carried on of concealing this Deficiency, and of deceiving the Suitors of the Court, without reminding your lordships of one other Instance of this noble Earl's great Regard for Truth and Veracity. Mr. *Atwood*, who was the Solicitor in the Cause of *Harper and Case*, in which the Deficiency of *Dormer* being mentioned, the Earl took occasion to declare, *That indeed he had heard of the Deficiency, but nothing of it had ever come judicially before him; and that he knew nothing of it but as publick News.* This, my Lords, was after he had paid 1000*l.* towards it himself. After what I have said, I shall not attempt to aggravate this Prostitution of the Seat of Justice. But this did not satisfy his lordship: That his Dissimulation might for ever remain upon Record, he thought fit to pronounce an Order, that is now upon your lordships Table, and dated no longer ago than in *December* last; in which he directs the masters to enquire, whether there was any Deficiency in *Dormer's* Office; and whether the Suitors were likely to lose any Part of their Money, or not.

Your lordships know the Contract that was made between the Chancellor and the masters: I therefore shall not waste your Time in mentioning Evidence to prove, that they, who gave such vast Prices for the Custody of the money, did not neglect the Opportunity of employing it for their own Use. The Proof is but too visible: They who are rich, confess it; and they who are poor, dare not deny it: It was the necessary Consequence of his lordship's Extortion; and that put it out of his Power, to take those Measures that were necessary to prevent that Practice. The misfortunes of the *South-Sea* Year were so universal, that surely any Man of even com-

mon Sense would have been upon his Guard: My Lord Macclesfield *knew*, that these masters gam'd with the Suitors money themselves, or for an extravagant Interest lent it to those who did: *He knew* that this was the Occasion of *Dormer's* Deficiency: *He knew* that the other masters had it still in their Power to do the same; therefore he permitted it: He took no measures to prevent it; therefore he encouraged it.

But what could engage this Earl (whose Understanding is no wise question'd) after so fatal a Year, thus to risque his own Character; and what perhaps he values more, his own Fortunes not only upon the Understanding, the Integrity, but even the good Fortune of a parcel of Men, whom he had thus pick'd up, without either Enquiry or Care? My Lords, *as the Borrower is to the Lender, so a corrupt Chancellor is the Servant of his confederate Officers.* He durst not put a stop to their Practices (tho' his own Estate was embarked with theirs) lest Resentment and Revenge should make 'em discover the infamous Secrets, with which they were entrusted. How durst he demand Security from those whom he had admitted, knowing they were able to give none? Surely, my lords, no Reason, but such as I have now mention'd, cou'd induce his lordship to neglect (and a long neglect amounts to a Refusal) the obliging these masters to give Security, or else to call them to a strict Account, as to their Cash and Securities, after he had been inform'd by Mr. *Lightboun*, that some even of the masters were to be suspected. But Mr. *Lightboun* this Day went farther; he represented the Danger of trusting Men with such vast Sums: That this Credit had been the Occasion of all the Losses in the Court, and therefore propos'd a Scheme of Security, to prevent any Losses for the future. The Chancellor did not absolutely reject this Proposal; that was too gross *even for himself*: He therefore desires Mr. *Lightboun* to put it in Writing: 'Tis done; and his lordship most carefully kept it by him for two Years, without taking any notice of it. But, my lords, there is one Circumstance in this Neglect, that in Equity (and surely a Chancellor will not decline to be try'd by that Rule) makes his lordship answerable for a very large Sum in one Case only, without entring into any the other Consequences of his Crime. Mr. *Kynaston*, your lordships remember, was prov'd to be deficient in the Sum of 26,000 odd hundred Pounds; and yet, my lords, this very *Kynaston* did, in the Year 1722, propose to his lordship, to give land, or other Security, for the Effects with which he was entrusted. I know his lordship will object what this Gentleman has before sworn, in relation to his own Circumstances: But what is it to the Suitors, whose Land it is, provided it be pledg'd for their Safety? *What Answer, my Lords, must we give to our Fellow-Subjects, those unhappy People, who are undone, I will not say by Kynaston's and the other masters Deficiency, but his lordship's own wilful Neglect?* I will not take up any more of your lordships Time upon this Head. In what I have already mention'd, it is proved, notwithstanding what the Earl in his Answer says to the contrary, that he knew the masters converted the money of the Suitors to their own Use. And he himself owns, that he did not insist upon any Security from them. In a late Order of his own making, he has recited it not to be usual in the Court of Chancery,

Chancery, for the masters to give Security; and therefore in his Answer covers himself under the Practice of his Predecessors. My Lords, the Reasonableness and Necessity of Security depends upon the Greatness of the Trust committed, and the Qualities of the Persons intrusted. In *Dr. Edisbury's Case*, tho' there was a Stop, yet there was no loss, for his Estate prov'd sufficient to answer all Demands. And therefore his lordship's Argument, in my Apprehension, amounts to this, That because his Predecessors did not insist upon Security from Persons who wanted none, therefore he might justly entrust those who were able to give none.

My Lords, I am come to the last Head of our Charge, and your Lordships will now see the Earl of *Macclesfield* abandon'd to all his Fears! Even Avarice forsakes him! The Dread of a Parliamentary Inquiry sits heavy on his Mind; and I firmly believe, he now repents his having illegally taken this money, because he parts with it to prevent, if possible, that Punishment he most justly deserves for having received it. He finds all his Arts in vain to hinder his Practices being known to the World; and therefore his whole Study is now bent how to ward off their coming into Parliament.

The first Instance of this appears in the Case of *Mrs. Chitty*. The Fact is thus: An Order was made for the Payment of 1000*l.* to her, Part of a Sum upwards of 11,000*l.* belonging to her, and which had been paid into the Hands of *Mr. Dormer*. She, it seems, assigns this Order to a very importunate Solicitor, one *Mr. Lockman*, who, as he has told your Lordships, diligently pursu'd the Chancellor from *London* to *Kensington*, from *Kensington* to *Westminster-Hall*, and the Court of *Chancery* it self. He represented to his Lordship the Circumstances he was in; that he had compounded some *South-Sea* Contracts, and absolutely wanted, and insisted upon his money to compleat his agreement, and set himself at Liberty. The Chancellor finding himself so press'd, was at last forc'd to promise him, that he would take care to get the money paid. Upon this he summons a meeting of the masters, in order to persuade them to pay the money, by a Contribution of fifty Pounds each; and in the mean while it had been given out among them, that such a Contribution was expected. *Cottingham* himself, as *Mr. Lightboun* says, told it to him, and at the same time made a fresh Demand of the old Sum of 500*l.* and ask'd him what Answer he would send to the Chancellor? *Lightboun* prudently replies, he would deliver his Answer himself; and in the mean while he applies to the other masters, tells them the ill Consequences of what they had done, and works them all up to a Resolution not to comply with this fresh Demand. He desires 'em not to give the Chancellor false Hopes, but to speak their mind freely. And thus prepared, they all repair to his Lordship's House. I need not upon this Occasion repeat the Names of the Witnesses, for all the masters present concur in giving the same Testimony. His Lordship began the Conference with asking *Mr. Lightboun*, in a very angry Tone and manner, why he did not pay his 500*l.*? Who reply'd, he had often told his lordship the Reason, and that he neither cou'd nor wou'd pay, and was confirm'd in his Resolution, by his having since heard all, or most of his Brethren repent of their Compliance. The Earl, without regarding *Lightboun's* Reason, propos'd the Necessities of the Court

to the other masters, in relation to this 1000*l.* The masters not seeming willing to comply, he us'd many Arguments to persuade 'em to it: He desires 'em to consider the consequences; the occasion presses, and Clamours grow strong; and if this Affair was not taken care of, *Dormer's* Deficiency must break out; and therefore what he propos'd, was the only way to prevent a Parliamentary Inquiry: Upon this *Lightboun* interpos'd, and said. If it was so, he could not help it: That he had rather lose the keeping of the money and Securities; than hold it upon those Terms. The Chancellor reply'd, But that is not the worst: Suppose the House of Commons should in a Committee of Justice resolve, that your Offices relate to the Administration of Justice; that the buying them is contrary to the Statute of *Edward VI.* and therefore forfeited. Consider (says he) tho' it may affect me, as to the Disposal of these Places for the future, yet it will affect you much more in the Loss of your Places; and therefore, upon the whole, desired them to agree to the Contribution. My Lords, the Masters were Proof against his Lordship's Eloquence, and *seriatim* refus'd to comply. Upon which the Earl was struck, and with a vast concern said, Then I will pay it my self. What Guilt, what Fear, must this Noble Earl be sensible of, thus to part with that money he had so sacrific'd his Honour to get! In this manner the Earl parted with his masters, and *Lockman* returns again to the Charge; and at last, meeting the Chancellor in the Room behind the Chancery Court, he got a Promise from him, that *Mr. Cottingham* shou'd pay the 1000*l.* But at the same Time his lordship (I suppose to get rid of so troublesome a Suitor) advis'd him not to engage with the Widow *Chitty*; for if her money in the Court of Chancery was all her Fortune, that Sum was all she was like to have. Soon after this, *Cottingham* paid the money. But it seems he forgot to desire *Lockman* to keep the Secret; so he told it about so much, that *Cottingham* meeting him rebuk'd him for it, saying, *Can't you fare well, but you must cry Roast Meat?* Your Lordships undoubtedly remember, that the Earl endeavoured to shew, by Cross-examining, that he had generously given this 1000*l.* to *Mr. Lockman*, out of meer Charity and Compassion to his miserable Circumstances. *Lockman* reply'd very reasonably, that his Circumstances were not so low as to want his Charity; for he might have discounted the Order; and he did not think it a Favour that he was paid his own.

The Evidence I have now last mention'd to your lordships, even without the Assistance of other Proof, almost maintains the whole Charge. By the Testimony of a Cloud of Witnesses his lordship here confesses the Sale of Offices, and owns that Sale to be illegal: He acknowledges his being acquainted with *Dormer's* Deficiency; and at the same time endeavours to conceal it: He in a manner confesses his own Guilt, pronounces Sentence upon himself, and therefore proposes methods to prevent a Parliamentary Inquiry.

But, my lords, there is still more behind: There is not only a Connection among the Articles, but the Crimes charg'd in 'em rise upon each other. Hitherto his Deceit has extended only to the Subject, but now he attempts the Throne it self. His Majesty graciously directed an Inquiry to be made into the Disorders of the Court of Chancery. His lordship knew that this dutiful House of Commons wou'd not interpose in the Affair, till his Majesty's Commands were obey'd, and therefore he now summons all his Arts and Skill to ward the Blow, and deceive his

his Majesty into a Belief, that the World had taken a false Alarm; and that the Circumstances, of the Masters were much better than they were represented to be: That they were able to answer all Demands; and that consequently the Suitors of the Court were not in any Danger. His Agents are sent among the masters, to encourage them to stand by each other; that they should make a bold stand, and defeat the Designs of their Enemies. He himself becomes their Counsellor, and advises, and (without Inquiry, or Regard to either Truth or Justice) he persuades them to make such a Subscription to their Accounts, as might mislead the Council in any Report they should make to his Majesty.

All his Thoughts, Counsels, and Measures, are now swift and precipitate. Your Lordships have heard Evidence of the several Discourses of *Cottingham* and *Dixon*; the meeting of the masters at Mr. *Edwards's*, and the last Conference with the Chancellor himself; all within two or three Days of each other, and all tending to the same End of deceiving the King, and preventing the Parliament. My Lords, all the masters concur in the meeting at the Chancellor's House; when, it seems, his Lordship, upon considering their several Accounts, declared his Approbation of Mr. *Holford's* Subscription; and without any the least Inquiry into their Abilities and Circumstances, he advis'd them all to make the same Subscription as Mr. *Holford* had done.

Your Lordships have likewise heard it prov'd, that the masters, in order to make a Shew, were advis'd to assist and stand by each other. *Bennet* and *Conway* are both Instances of this Counsel's being put in Practice; and—— But why should I abuse your lordships' Patience with particularly recapitulating the Evidence that has been this Day given? I observ'd the Attention with which it was heard, and any Thing I can say, will only weaken that Impression it must naturally have left on your Lordships' mind. I shall therefore conclude the Whole with an Observation from the Parliament-Roll of *Henry IV. Complaints and Subsidies belong to the Commons, Judgments belong to the Lords, and Redress is the Glory of the Crown.*

My Lords, The Commons have now discharg'd their Duty; they have declar'd their Grievances, explain'd the Crimes, and produc'd the Offender. They are assur'd the King will of his Fatherly Goodness, grant a just Redress, and apply a proper Remedy; and they doubt not but your Lordships will pronounce a righteous Judgment.

Then the House adjourned to Wednesday next, at Ten of the Clock in the Forenoon.

Wednesday, May 12. The fifth Day.

THE Lords being seated in their House, the Serjeant at Arms made Proclamation for Silence; as also another Proclamation, That all Persons concerned were to take Notice, that *Thomas Earl of Macclesfield* now stood upon his Trial, and they might come forth, in order to make good the Charge.

L. C. J. King. Gentlemen, You that are Counsel for the Earl of *Macclesfield*, may now proceed.

Mr. Serj. Probyn.

May it please your Lordships,

I HAVE the Honour to be Counsel for the Noble Lord within your Bar, the E. of *Macclesfield*, who stands impeach'd for high Crimes and Misdemeanors in the Name of all the Commons of *Great Britain.*

My Lords, When I consider the Importance of this Charge, in respect to the Noble Earl impeach'd, the great Experience and wise Conduct of the several Gentlemen of the House of Commons, who are intrusted to manage the Prosecution, and the great Variety of Arguments they have used to enforce and aggravate their Charge, it is with the utmost Concern that I presume to appear before your Lordships in his Defence; not but that I am well assured of the Truth and Justice, the Strength and Fulness of the Defence which may be made in his behalf, but out of real Consciousness of my own Inability to discharge so great a Trust.

Unequal to it I should have been, had the longest Time been allowed me to prepare myself; but I shall now appear much less capable, having so very little, so few Days Notice of your Lordships' Pleasure in appointing me for that Service.

If therefore I shall be so unhappy, as to offer any Thing in this Case less proper, or correct, than might otherwise be expected from me, I hope I shall obtain your lordships' greater Indulgence.

The Offences, which are charged to be committed by the Noble Earl impeach'd, are contained in many Articles, no less than twenty one in the whole; but the Gentlemen of the House of Commons have been pleas'd to wave several of them, and, I hope, when your Lordships have heard us, and our Evidence, you will be pleas'd to acquit him of all the rest.

These Articles have been conceived with the greatest Caution, and opened with the greatest Art, heighten'd with every Circumstance that may induce Resentment, and urged against the Noble Earl impeach'd with a particular Zeal, well becoming the great Concern which those Gentlemen always shew for what they apprehend the Publick Service, and the faithful vigorous Discharge of the great Trust reposed in them by the House of Commons.

The impeach'd Earl is pursued back from his late Resignation of the High Office of Lord Chancellor, through every Stage of Publick Life; and, with inquisitive Eyes, they have also view'd and pry'd into even his most private Transactions, so as not even the least Indiscretion has passed unobserved.

Some Actions, which in themselves are truly innocent, and are declared to be so by the constant uniform Practice of all the Great and Honourable Persons that have gone before him, are here represented as highly culpable.

Others, which we humbly apprehend, are not only innocent, but commendable and meritorious, even his personal Acts of Charity, are imputed to him as Crimes.

But in one Respect I must beg leave to congratulate the impeach'd Earl, and think it is his great Felicity, that in this so publick an Examination, so strict and rigid a Scrutiny into his whole Conduct, at least ever since he was first advanced to the Great Seal, there is not one Objection made, one Instance given of Corruption, Partiality, or Oppression, in his own personal Administration of Justice; and therefore, I hope, I may well conclude (since it is admitted by the Prosecutors themselves) that he has deny'd Justice to no Man, he has delay'd Justice to no Man, he has sold Justice to no Man.

The principal Objection that seems to be rely'd on by the learned Managers, and the only one which I humbly apprehend can any Way affect the impeach'd Earl in the present Case, is, that possibly he may have been too easily lead into a good Opinion of some Persons, who in the Eye of the World appeared

appeared to be Men of good Substance, and fair Reputation, Persons that were recommended to him by others of undoubted Honour and Credit; that he has admitted these Persons into Offices of great Trust and Profit under him; and they have at length been found not to have deserved the good Opinion, which he at first had been persuaded to entertain of them.

Some of these Officers have been negligent, others unfaithful in the Discharge of their Duty; and in their Crimes 'tis now attempted to involve the impeach'd Earl as their Principal and Patron.

And, in regard the principal Complaints against the noble Earl are founded upon the Disposition of the Offices of Masters in Chancery, therefore it has been thought necessary (in the Preamble of the Articles exhibited) to represent the Masters in Chancery as Officers of very great Trust, sworn to serve the King and his People, and associated to the Lord Chancellor by particular Commissions, for his Assistance in the due Administration and Execution of Justice.

My Lords, what Use Masters in Chancery might formerly be of, and what Assistance to the Lord Chancellor they might antiently give, I know not; but at present they seem to be of very little Advantage to him in the Determination of Causes in Court.

They sit indeed in Court, at proper Distances, on each side the Chancellor, and sedulously attend his Motions, but never pretend to advise or interpose in Judgment.

They have likewise the Honour to be named in Commissions of Association to the Lord Chancellor; but the whole Body are not always named in such Commissions, but only such particular Persons as his Majesty is pleased to think fit: And this appears from one of the oldest Commissions that has been produced and read before your Lordships, I think it was the Commission granted to *Robert Southwell* and others the 9th of *October*, 4 *Edw. VI.* wherein there were not more than four or five of the Masters named; tho' I believe in the later Commissions their Names are usually all inserted. But what Power or Authority is given them by this Commission? None at all, that they can execute of themselves in the Absence of the Master of the Rolls, or some of the learned Judges named therein; for the Judges and the Master of the Rolls are only included in the *Quorum*.

But, my Lords, Commissions of this Kind are not uncommon: Clerks of Assize, and other Officers, are named in the Commissions of Association to the Judges of Assize, in their respective Circuits, yet act as ministerial Officers only under them.

And I humbly apprehend, that in this Case it has been sufficiently proved before your Lordships, by a Gentleman (that was once a very good Master in Chancery) that they now pretend to exercise no judicial Authority whatsoever.

They examine and state such particular Matters and Facts, as the Court is pleased to refer to them, for its better Information, and which the Court itself has not Time to look into; they settle Accounts depending between the Suitors of the Court; they look into, and take Counsel's Opinions upon Titles of Estates bought and sold by Order of the Court; and they tax Costs.

This seems to be their principal Concern; and yet, in this they are not absolute Judges, they deter-

mine nothing finally; for when they have made such Enquiry as the Court directs them, they only certify their Opinions of the several Matters referred to them by way of Report, which Report is not conclusive to the Parties; for either of the Parties that thinks himself aggrieved by such Report, may take Exception to it; and the Court, on hearing such Exception, will controul the Master's Report, and determine as they think Just. And in case the Parties themselves do not controvert the Matter reported, but totally acquiesce and submit to it, yet is not the Master's Report a final Judgment, nor will bind the Parties thereto, till it be afterwards confirmed by the Order of the Court: It receives its Authority and Sanction from the Order of the Court, and has none without it.

But it was certainly very rightly judged by the learned Managers, and they have thought it very material for them, to advance the Reputation of these Offices, in order to make it more penal to have any Present or Compliment made to the Great Seal, upon the Admission or Resignation of the Masters.

Another Observation was made by one of the learned Gentlemen of the House of Commons, in relation to their general Charge, which is this; They charge, that the Earl, in or about *May*, One thousand seven hundred and eighteen, by the great Grace and Favour of his Majesty, was constituted Lord Chancellor, and did thereupon take the usual Oath for the due Execution of that Office, and such other Oaths as have been accustomed; in order, as I conceive, to insinuate that he had acted contrary to, or in Violation of some particular Oath which had been administer'd to him.

The Earl in his Answer admits, That on the fourteenth of *May*, One thousand seven hundred and eighteen, he took the Oath of Office as Chancellor, which is set forth in his Answer; that at the same Time he took the Oaths of Supremacy and Allegiance, but no Oath of Office, except that above set forth.

To this Part of the said Earl's Answer, the learned Managers are pleased to object, That the Oath prescribed by the Statute of *Richard* the Second, had been frequently administer'd to the noble Earl, but that he had forgotten that Oath in his Answer, as well as in his Conduct and Practice.

And to prove this Fact, *Mr. Eyre* (one of the Officers of the Exchequer) was produc'd, on whose Evidence it did appear (as we apprehend the Fact truly is) that when the Honourable Privy Council are annually assembled in the Court of *Exchequer*, to prepare a List of Names of proper Persons to be presented to his Majesty, for his Choice of Sheriffs for the Year ensuing, and the Judges then also attending, one of the Officers of the Court reads over the very Words of the Statute of *Richard* the Second in *French*, and then the Bible is presented to the noble Lords, and others of the Privy Council, and also to the Judges present, which they kiss, and then proceed to the Nomination of the Sheriffs for the several Counties in *England*.

My Lords, I must observe that upon this Occasion no formal Oath is administer'd, in pursuance of this Act of Parliament; nor any Entry or Record made of any Oath taken by all or any of the Persons present.

The Words of the Act of Parliament are, That the Chancellor, Treasurer, and other great Officers therein named, the Justices of the one Bench, and of the other, the Barons of the Exchequer, and others, who shall be called to ordain or make Justices of Peace, Sheriffs, or other Officers therein named, or any other Officers or Ministers of the King, shall be firmly sworn that they shall not ordain, name, or make such Officers for any Gift or Brokage.

This Act of Parliament doth direct an Oath to be administer'd, tho' the precise Form of the Oath is not prescribed.

But the Act of Parliament it self can't be called that Oath which itself directs; nor the reading or hearing that Act of Parliament read, be called the administering or taking that Oath: The Oath must be something distinct from the Act of Parliament which directs it.

Therefore, my Lords, I humbly submit it to your Lordships, that the reading of this Act of Parliament, upon this particular Occasion, is rather used as a particular Exhortation or Admonition to that August Assembly, how they ought to demean themselves in that single Instance of their Duty (the Choice of Sheriffs) than to have an universal Obligation in respect to the Nomination of all other Officers in general.

If this was intended to be administer'd as an Oath of Office, then being once taken by any Person in Office, it need not be taken again, during the same Person's Continuance in the same Office; but this Act of Parliament is annually read over upon the Return of every Election of Sheriffs, and seems to be particularly applicable to that Duty.

Sheriffs are indeed very great Officers, have whole Counties under their Influence and Jurisdiction; and therefore very singular Care ought to be taken in their Nomination.

The Chief Justices and Judges present upon that Occasion, use the same Ceremony of *Kissing the Book*; and if this should be interpreted an Oath, it would be of great Extent, and the Consequence of that must be, that the best Offices should have no Candidates for them; for the latter Part of the Oath, directed by this Act, is, That none, who pursueth by him, or by other, privily or openly, to be in any manner of Office, shall be put in the same Office, or any other.

So, if this be consider'd as an Oath, every one of the great Persons that have taken it, must be indispensably obliged not to give any Office to any Person that hath even ask'd, or made Application by himself, or any one in his Behalf, for that or any other Office whatsoever.

If this Construction, which is now contended for, was admitted, a great many Persons might be thought guilty of Perjury, who themselves never apprehended it; and how far the Guilt of this Perjury may be extended, is not easy to determine.

But, my Lords, it is not the noble Earl's Intention to incur the Censure of quibbling himself out of the Obligation of an Oath, or the Letter of an Act of Parliament; we beg leave to insist, that in whatever Light this Transaction is taken, it can't be constru'd to be the taking an Oath within the Intention of the Charge contain'd in the present Articles, which is, That he took the Oath of Office, and such other Oaths as have been of Right accustom'd.

This Charge, my Lords, must be confined to some reasonable Time, wherein these other Oaths charged must be suppos'd to be taken: I apprehend

it can relate to such Oaths only, as the noble Earl took at the same Time, when the general Oath of Office was administer'd to him.

And the Earl, by his Answer, certainly understood it in this Sense; otherwise, to make a compleat Answer to so general a Charge, he must have been under a Necessity, to have set forth all the Oaths which he hath taken in his whole Life-time; at least, since his first Oath as Chancellor.

He took the Oath of Office as Chancellor the fourteenth of *May*, One thousand seven hundred and eighteen; this Proceeding in the *Exchequer* is proved to be in *November* following: Who would understand that this Charge intended to couple two Transactions together, that in themselves were so distinct and remote?

Having thus endeavoured to remove these Objections, which seem to be no Part of the Charge, but only used as introductory to it, I shall now proceed to the Charge itself.

The first and general Charge is, That the said Earl, not regarding the Obligation of his Oath, or the Duty of his Office, but, entertaining wicked and corrupt Designs and Views to procure himself exorbitant Profit, by divers unjust and oppressive Practices, whilst he continued in the Office of Chancellor, did illegally, corruptly, and extorsively, take and receive to his own private Use great Sums of Money, in Breach of his Oath, and Violation of his Duty as Lord Chancellor.

This is insisted on by the Gentleman, who first spoke, as an offence of the deepest Dye, which strikes at the very Root and Foundation of all Civil Government; and to render it more odious, it is introduced as an Act of the highest Ingratitude to his Majesty, as well as injurious and oppressive to his Subjects. To demonstrate this, it is represented, that upon the said Earl's being appointed Lord Chancellor, in *May*, One thousand seven hundred and eighteen, his Majesty was pleased, of his Grace and Bounty, to bestow upon him the Sum of fourteen thousand Pounds in Money, and to grant him several other yearly Pensions and Payments, which another Gentleman (in observing the Evidence given on this Head) was pleased to say, did, together with the usual Salary, Fees, and Profits, belonging to the Office, amount unto near ten thousand Pounds *per Ann.* and this was strongly urg'd as enough to satiate the Appetite of the most Avaricious, and prevent any illegal and corrupt Extortions of other Sums from his Majesty's Subjects.

To this, my Lords, we hope your Lordships will think the noble Earl has put in a very plain and satisfactory Answer.

That he had, for several Years before his Advancement to the Great Seal, the Honour of serving his Majesty in the Office of Chief Justice of the Court of *King's-Bench*; and as a Reward for good and faithful Services in that high Office, his Majesty, out of his Royal Grace and Favour, upon the 10th of *March*, One thousand seven hundred and fifteen, was pleased to advance him to the Dignity of a Peer of this Realm; and for the better Support of that Honour, to grant him a Pension of twelve hundred Pounds *per Annum*, and to declare his Royal Intentions of giving the said Earl's eldest Son an Office of considerable Profit, when Opportunity should offer.

That in *May*, One thousand seven hundred and eighteen, his Majesty was pleased to appoint him Lord Chancellor; on the 14th of the said Month

of May, he took the usual Oath of Office, and at the same Time the Oath of Supremacy and Allegiance, and no other Oath of Office.

That during the Time he continued in the Office as Lord Chancellor, he enjoy'd the usual Salary, Fees, and Perquisites, which Mr. *Pynsent* (who was called as a Witness to this Particular) proved to be about eleven or twelve hundred Pounds *per Annum*.

That his Majesty also granted to him the Salary of four thousand Pounds *per Annum*, during his Continuance in that Office; which was not particular in his Case, but constantly granted to, and enjoyed by all his Predecessors.

That to this, his Majesty was further pleased to sign a Warrant to him for fourteen thousand Pounds, as mention'd in the Articles; whereof two thousand Pounds was the usual Allowance to other Lord Chancellors, or Keepers, towards the Expences in entering upon the Office; and the rest was his Majesty's Royal Munificence, and received as such.

The Noble Earl likewise admits, that his Majesty was also pleased to grant his only Son, then going to travel, a yearly Pension of twelve hundred Pounds, determinable upon his Majesty's granting him one of the Offices of Teller of the *Exchequer* for Life; which was accordingly granted, and he came into the Possession of it, in One thousand seven hundred and nineteen, whereby that Pension determined; so that the yearly Payments to his Lordship were but six thousand four hundred Pounds *per Annum*, besides the Pension of twelve hundred Pounds to his Son, which soon after determined, upon his coming into Possession of his present Office.

This is all the Revenue which the Noble Earl received during his Continuance in this great Office: And, I humbly presume, this can't be thought excessive, considering the great Fatigues, Difficulties, and Expences, that necessarily attend the Execution of this high Office: Perhaps other Offices might be found, that are less difficult in the Execution, and yet superior in Profit.

But, my Lords, the Objection does not seem to turn that way; but rather, that this Noble Lord, not contented with these several Instances of Royal Grace and Bounty, illegally, corruptly, and extorsively took and received other great Sums from other Persons to his own Use.

This the Noble Earl expressly denies, and says, That during his Continuance in the Office of Chancellor, or at any other Time, he never once had a Design or View, or even a wish, to raise to himself any exorbitant Gain or Profit, much less to extort Money by any unjust or oppressive Methods whatsoever.

And indeed, my Lords, this is a Charge that gives the Noble Earl at once the greatest Trouble and Surprise; he never suspected a Crime of this Sort, so contrary to his Nature, and the whole Tenor of his Life, could ever be objected to him: And to shew that this is without any Foundation of Truth, the present Circumstances of his Family and Fortune (when laid before your Lordships) will abundantly demonstrate and convince Mankind, that he is not that rich, that avaricious, and corrupt Man, he is represented.

As he has received large Bounties from his Majesty, he has been abundantly liberal to Persons that were proper Objects of Charity; and his Purse has been always open to succour and relieve the Distressed.

This, my Lords, brings me on to the material and principal Part of the Charge, which is, That he did illegally, corruptly, and extorsively take and receive to his own private Use great Sums of money, in Breach of his Oath, and Violation of his Duty as Lord Chancellor.

The Instances given of this corrupt taking of money refer to the several Sums mentioned in the five Articles, which the Gentlemen of the House of Commons were pleased first to enter upon, and which relate to the several Sums of money received from the four masters in Chancery, mentioned in the fifth, sixth, seventh, and eighth Articles, and the Clerk of the Custodies mentioned in the ninth.

If the Charge contained in these several Articles be a Crime, it must appear to be so in its own Nature; to be an Offence at Common Law; or made such by some Act of Parliament. I submit it to your Lordships that taking a Present, or taking money from Persons upon their Recommendations or Nominations into Offices, though they do concern the Administration or Execution of Justice, is not a Crime in its own Nature; it is no Act of Immorality; it is no Act of Injustice to any Man; for no Person has any particular Right to these Offices, but his Advancement must be owing to the Favour or Friendship of him, who has the Right and Power of Nomination: And if the Office itself be valuable, so is the Right of Nomination to it, and may be esteemed as Part of the Estate of that Person to whom it belongs. And if we consider it in this Light, I think it can't be denied but that every Man has a natural Right to dispose of his own Estate or Interest, his own Friendship or Favour, upon what Consideration he pleases: It is his own, and therefore he has a Right to make any just and legal Advantage of it.

From hence, my Lords, I would beg leave to infer that the taking a Gratuity or Sum of Money from any Person, upon his Nomination to one of these Offices, is not criminal in itself, if simply considered, and distinct from the Good or Evil Consequences that possibly may attend it.

And, in the next Place, I humbly submit it to your Lordships, that it is not a necessary Consequence, that every one that buys an Office, must and will behave himself either unfaithfully or corruptly in it. Instances may be given, and those very antient ones, of Offices of Justice, Offices of the highest Character in the Administration of Justice, that have been purchased, and purchased from the Crown.

In Mr. *Madox's* History of the *Exchequer*, Page 43. we find that *Richard Fitz-Allured*, in the Time of King *Stephen*, fined fifteen Marks of Silver, that he might sit with *Ralph Bassett* to hold the King's Pleas; and in Page 743. of this Book it appears, that *Ralph Bassett* was the King's Justicier. Here we see one of the Justices of the *King's Bench* purchasing his Office for fifteen Marks in Silver.

And

And in the same Page of the said Book it appears, that in the seventh Year of King *John*, *Walter de Gray* gave the King five thousand Marks *pro habenda Cancellaria Domini Regis tota vita sua, & pro habenda inde Charta Domini Regis.*

These, my Lords, are great Instances what the antient Usage was, in purchasing even the highest Offices of Justice.

Inferior Offices were doubtless disposed of in the same manner; and if this had been thought Criminal, we should have had some Instances in our Law Books, wherein they would have appeared to have been adjudged so.

I beg your Lordships leave to consider in the next Place, and that very briefly, whether this can be taken to be criminal within the Words of the Statute of *Edward VI.* which has been taken Notice of by some of the learned Managers.

By the 5th and 6th of *Edw. VI. c. 16.* it is Enacted, *That if any Person or Persons shall at any Time thereafter bargain and sell any Office or Offices, or take any Money, Fee, or Reward, or any other Profit, directly or indirectly, for any Office or Offices, which shall in any wise touch or concern the Administration of Publick Justice; All and every such Person and Persons that shall so bargain and sell, or take any Money, Fee, or Reward, for such Office or Offices, shall not only lose his Right, Interest and Estate in such Office or Offices, but also every Person and Persons that shall give or pay any Sum of Money, Reward, or Fee, shall be adjudged a disabled Person in the Law, to have, occupy, and enjoy the said Office or Offices.*

This is the Purport of this Act of Parliament, so far as it relates to the Offence charged in these Articles; and I apprehend it cannot be extended to the present Case.

Here are no prohibitory Words that Persons shall not bargain and sell Offices, nor any Words declaratory that they could not do so before, by Common Law.

And all Penal Laws are to be construed favourably for the Benefit of the Subject, and not extended beyond the Letter.

But on the contrary, by the many Provisoes after contained in this Act of Parliament, it is plain that all Offices, before the making of this Act, might be bought and sold without Offence; and many Offices are authorized and intended by the express Provisoes of this Act, to continue to be bought and sold for the future.

For by the first Proviso in this Act, it is declared not to extend to any Office of Inheritance; which is an express Declaration that Offices of Inheritance were to be bought and sold even after the Act should take place.

The second Proviso I apprehend is stronger to our Purpose; for by that it is declared, That this Act shall not extend to any Contract made or agreed before the first of *March* then next, but all such Bargains and Contracts to be good, as if the Act had never been made.

And, my Lords, there is yet a further Proviso, That this Act, or any Thing therein contained, shall not extend, or be prejudicial, or hurtful to any of the chief Justices of the King's Courts, commonly called the King's Bench and

Common Pleas, or to any of the Justices of Assize, as now be, or hereafter shall be, but that they and every of them may do in every behalf, touching and concerning any Office or Offices to be given or granted by them, as they, or any of them, might have done before the making of this Act, any Thing therein contained to the contrary thereof notwithstanding.

What is that which these great Officers of Justice might have done before the making this Act? They might have given, granted, bargained, or sold, the respective Offices under them, in such manner as they thought fit; and by this Proviso they may continue do so still.

What Alteration then is made in the Law by this Act of Parliament? Here is no new Offence created, but a particular Penalty given, to be inflicted on all that shall buy or sell Offices, not contained in any of the subsequent Provisoes; that is, the Contract made between the Buyer and Seller is declared void: The Party selling loses his Estate and Interest in the Office; and the Party buying is render'd incapable to hold and enjoy it.

In *Castle's Case, Cro. Jac. 644.* it was adjudged, That when a Statute appoints a Penalty for the doing a Thing, which was no Offence before, and appoints how it shall be recovered, it shall be punished by that means, and no other.

Therefore, my Lords, in the present Case, supposing that the Presents proved to be sometimes made to the impeached Earl, upon the Nomination of Masters in Chancery, can be interpreted a selling of an Office, or taking Money for an Office, within the Intention of this Act of Parliament, it can be liable to no other Punishment than what the Act it self directs; and this the Noble Earl has already suffered by his Loss of the Great Seal. The Statute inflicts a Penalty upon the Seller of an Office, only of forfeiting the Nomination to the Office for the future; and no other Penalty or Punishment ought to be inflicted by virtue of this Act of Parliament; and consequently the Offence, as now charged against the Noble Earl, and the Facts, as proved before your Lordships, cannot subject him to any Punishment or Judgment, that can be prayed in this Prosecution, upon the present Articles of Impeachment.

But my Lords, there is another Answer, which the Noble Earl has been pleased to make to this Part of the Charge against him, and which I hope your Lordships will have great regard to.

It is the Example of the many great and learned Persons, who have executed this high Office before him.

The Precedent is too antient, for us to discover when it was first made; and I humbly submit it to your Lordships, that the immemorial constant Usage and Practice of it in all Ages since, will sufficiently establish the Reasonableness and Justice of the Precedent.

The same Objection, which is now made against the Noble Earl impeached, in this particular Instance, might undoubtedly have been insisted upon against every one of his Predecessors.

And

And I doubt not but we shall be able to prove, that these Officers have made Presents to the Great Seal, as frequently and constantly as the several Vacancies have been supplied.

This noble Lord has only followed the Example of his Predecessors; he has trodden in their Steps: And I must beg leave to say, There must be something peculiar in his Case, if the same Paths, which led them to Honour and Immortality, shall betray him to Infamy and Disgrace.

This Objection, my Lords, some of the learned Managers of the House of Commons were well aware of; and therefore they have endeavour'd to distinguish the present from the preceding Cases.

They admit it to be true, that small Sums have been formerly given to, and accepted by former Chancellors, upon Admissions into these Offices, by way of Compliment or Present, and this without a Crime: But then they urge, that the Sums now complain'd of are exorbitant; they are bargain'd, haggled for, and given unwillingly by the Purchaser; and that there is a great difference between a Present given, and a Price bargain'd for and paid.

My Lords, I can't deny but that this Distinction is just: A Present implies a voluntary Gift of something less than the Value of the Thing given, or promised, for which that Present is to be made; a Price, the full Value of the Thing contracted for.

And I think the Earl's present Case is exactly within this Distinction, and justifies the Earl's Answer in this respect.

The Present which Mr. *Kynaston* made to the Earl, upon his Admission, was One thousand five hundred and seventy five Pounds. The Price he paid Mr. *Rogers* for the Purchase of his Office, was no less than six thousand Pounds.

The Present which Mr. *Thomas Bennet* made to the said Earl, upon his Admission, was One thousand five hundred and seventy five Pounds. The Price he paid Mr. *Hiccocks* for the Purchase of his Office, was seven thousand five hundred Pounds.

Mr. *Eld*, upon his Admission into the Office, upon the Death of Mr. *Fellowes* (the former Master) made a Present to the late Chancellor, of five thousand two hundred Pounds. But when his Lordship consider'd the Greatness of the Sum, he returned him all but eighteen hundred Pounds: When at the same time Mr. *Lucas* offered six thousand Pounds for the same Office.

Mr. *Thurston* has also proved, that he left Bank-Notes to the amount of five thousand two hundred and fifty Pounds, sealed up in a Letter at the Earl's House, before his Admission, upon Mr. *Borret's* Death. But when the Lady, to whom the Letter was directed, discovered how great the Sum was, she, without any Application made to her for that Purpose, returned all but two thousand Pounds.

And this, my Lords, was done before the Seal, before *Michaelmas*-Term last, before the Masters were ordered by the Privy-Council to give in their Accounts; and when the present Prosecution was not in any sort apprehended: And it is likewise proved, That Mr. *Lucas*, upon this Occasion, renewed his Offer of Six thousand Pounds for the Office; and Mr. *Thurston* was admitted for a less Sum of Money.

These, my Lords, we humbly hope and insist, are not Instances of a corrupt Mind, an avaricious, rapacious Temper, such as some of the Gentlemen Managers have been pleas'd to represent them. On the contrary, we humbly hope, that upon the Evidence already given, it plainly ap-

pears, that these Payments were not Sums of Money extorted and unwillingly paid by the Gentlemen, who were admitted into the several Offices that have been mentioned, but Presents voluntarily made, and press'd upon the Earl impeach'd, with such Application and Earnestness that shews, that at the Time they were offered, the Persons offering thought they were not equal to the Value of the Favour they expected. And their Importunity was so great, that Mr. *Thomas Bennet* one of the present Masters, that has been so often examined, would endure no delay, but impatiently press'd to be sworn into his Office, at a time when the late Chancellor was sick, and by his Physician thought to be dying. This may rather be said to be extorting a Favour from the impeached Earl, than Money from Mr. *Bennet*, ev'n upon his own Evidence.

My Lords, We do humbly insist, That as the noble Earl within your Bar was not conscious of any Crime in accepting these Presents, so he is justified in so doing, by the Example of many successions of great and learned Men, who have done the same in the like Case. And should this now be adjudged Criminal, what Numbers of very good and just Men must be involved in the Imputation of this Guilt? It must necessarily spread an universal Cloud of Infamy and Reproach over the Ashes of many just and upright Sages of the Law, whose Memories have hitherto been preserved as venerable and sacred; Men who despised Riches, and abhorred the remotest appearance of Bribery, and never were, nor were suspected to be Corrupt: yet these Men thought it a just Duty, owing to themselves and Successors, to adhere to the known and just Rights, the ancient established Fees and Perquisites of their Offices; and believ'd it as justly due to them, as the Salaries which were annexed to their said Offices.

My Lords, We shall beg Leave to shew that this has been the ancient Usage and constant Practice of all Ages; and that the several great Persons, who successively have presided in the greatest Courts of Law and Equity, from the earliest Times to the present, have disposed of the several Offices in their Gift, as they became vacant, for Money.

Frequent Instances of this kind will be produced before your Lordships, in our Evidence.

My Lords, I would not be understood to mention this, so as to insist that the Actions or Examples of the greatest Persons will alter the Nature of Good and Evil, or give a Sanction to any Action that in it self is really Criminal; but only as an Argument (and I apprehend it a very strong one) to prove, that it was the concurrent Opinion of all those Great Persons that have taken Presents, upon their Disposition of Offices, that it was not criminal to do so.

The Opinion and Judgment of so many learned Persons must have very great Weight in a Case of this Nature: And if in strictness it can't be said to justify the Action, it will certainly very much Ex-tenuate the Guilt.

In the next place, the Gentlemen are pleas'd to proceed to shew, That Masters in Chancery, being, as before represented, very great Officers in that Court; the noble Earl within the Bar, for his own corrupt Gain, has admitted Persons into that Office, that were not duly qualified for it, and forced them to give great Prices, and bartered and haggled for such Prices.

This, my Lords, is urged as the greatest Inconvenience, That Men who have no Substance of their own, should be trusted with such large Sums of other Persons Money.

It is insisted, That honesty, Probity, and good Substance, are absolutely necessary for the Suitors Security; yet Inferior Persons have been put in by his Lordship, who had little or no Substance of their own: That they paid great Sums for their Places, yet paid it out of the Suitors Money; and that this was known, connived at, and encouraged by the noble Lord that then presided in the Court of Chancery. This therefore could only be with a view to enhance the Price of those Places: For what would not People hazard, who had nothing of their own to lose? If any Profit could be made, it was their own; if any Loss, the Suitors; for no Security was given to answer the Effects in their Hands.

My Lords, It must be confess'd, that this way of Arguing has a very popular Appearance, and finds an easy Access to every Ear.

The Court of *Chancery* must be admitted to be the greatest Court of Justice in the Kingdom: And it must be also admitted, That the Business of that Court has of late Years increased, in Proportion, more than any other Court; and consequently, much greater Sums of Money are now deposited in the Hands of the Masters of that Court, than formerly.

This may possibly make it to be wished, that some better Method might be found out, for the Suitors Security, than has been formerly used.

But in what Manner this Reformation is to be made, is beyond the Power, or at least the Prudence of any one Judge or Chancellor to determine; the ancient Practice of every Court is the Law of that Court; and it would be a dangerous Experiment for any one presiding Judge to vary it: If any ill Consequence to the Suitors attended such an Alteration, he that made the Alteration would certainly be answerable for the Consequences of it; for every Suitor will then say, Why was the ancient Practice vary'd? He that made the Alteration, surely did it for his own Advantage; and then every Argument that in the present Case is only colourably made use of, in that would be obvious and natural, and be apply'd with double Force.

He that acts without a Precedent, acts upon the Peril of his own Judgment: But he that acts against Precedents, against ancient, concurrent, uniform Precedents and Practices, is without Excuse, and justly to be suspected of some particular View, in the Language of the present *Articles*.

The Earl of *Macclesfield*, when he was first intrusted with the great Seal, found the Suitors Money in the Custody and Care of the Persons who were then Masters of the Court, and without any Security given or demanded for it.

He consider'd, that his Predecessors were a Succession of Great and Honourable Persons, of equal if not greater Sagacity and Learning, Probity and Experience, than any that ever had fate in any Court; they found the Masters in possession of the Suitors Money upon the same Establishment, and they left them so.

Was it proper or prudent for him to oppose his single Opinion to the united Judgment of so many wise and great Men that had gone before him? surely, no. Inconveniencies had been seen before, and Deficiencies had happened, and those

Deficiencies had been supply'd by a voluntary Contribution of the other Masters then in Being. Why was not Security then demanded? and why not all the other Masters then called upon to bring in their Accounts, to prevent the like Deficiency for the future? If that Method had been thought either prudent or practicable, no doubt it would have been then taken: And this being then not done, or ever before or after attempted to be done, is a good Argument, that it was not expedient, or, it may be, possible to be done, at least upon the single Authority of one Lord Chancellor. And that therefore is a good Excuse for the Omission or Neglect in that Particular, in the present Case.

But, my Lords, It is now objected, That as the Sums of Money in the Masters Hands are greater than ever, and it may not be proper to alter the ancient Method of the Masters receiving and keeping it for the Suitors Benefit; yet greater Care ought to be taken of the Persons to be admitted Masters, upon Vacancies and Resignations. And therefore another part of the Charge against the Honourable Earl impeach'd, is, That he appointed Persons to be Masters of the Court, that were not proper or sufficient either in Substance, Knowledge, or Probity.

These are said to be all essential Requisites in the Character of every good Master; but grossly neglected in the present Case: And a Reason is given, or (if I may presume to say) rather invented, in the present Case, that it was the Advantage of the Earl impeach'd, to put in such unqualified Persons; because such Persons would be drawn in, to give larger Prices for their Places, and consequently it redounded to the Earl's Advantage.

My Lords, I must beg Leave to observe, that in the Evidence that has been given, there has not been any one Instance proved (or at least, that I can recollect) that any of these Masters were really Insufficient in any of the Particulars objected to, at the Time of their respective Admissions into their several Offices; or at least that the noble Earl impeached, then knew that they were Insufficient, or had any reason to suspect it: They were all Gentlemen of good Families, well Educated; each of them a Barrister at Law (which, I submit to your Lordships, is not the least expensive Education) and had all visible Fortunes, and appeared as Persons in very plentiful Circumstances.

Even Mr. *Conway* and Mr. *Thomas Bennet* (who are the Persons intimated to be the least qualified in Point of Fortune and Substance) had at that time very good Estates in their Possessions; Mr. *Bennet* had then also a very valuable Office, Clerk of the Custodies; had married a Lady of considerable Fortune, kept a Coach and decent Equipage in Town; was the Son of Sir *John Bennet*, tho' a younger Son; and the whole Family then seem'd to be in a very prosperous Condition. Mr. *Thomas Bennet* has proved to your Lordships, that he was worth twenty thousand Pounds, in the Year 1720. And it does not appear, that the late Lord Chancellor was ever informed of any Incumbrances upon his Estate (tho' now, he says, there are great ones) or that his Circumstances were less at the Time of his Admission, than in the Year 1720. Surely then the late Lord Chancellor had at that time no reason to suspect his being unqualified in Point of Substance.

Mr. *Conway* had also then a very good visible Estate in Land, an Estate of Four or Five hundred Pounds a Year; had been Receiver-General of several Counties in *Wales*, had discharged his Office punctually, and produc'd his *Quietus* to the Lord Chancellor, before Admission.

Mr. *Kynaston* had, at the time of his Admission, an Estate of Four hundred Pounds a Year in land, Timber of very considerable Value, and a Personal Estate of two or three thousand Pounds; and moreover, was a Gentleman of a very good Family and unblemished in his Character.

Mr. *Thurston*, I think, the Gentlemen of the House of Commons don't object to in any respect. None of their Reputations, in respect of their Probity, have been called in question, 'till their late Misfortunes: And as to their other Personal Endowments, their good Sense and Judgment, I need only refer to your Lordships own Observations, upon their several Examinations in the present Trial.

But, my Lords, great Strefs seems to be laid upon the Masters paying for their Offices out of the Suitors Money; or replacing the Money so paid out of the Suitors Money.

Suppose that was the Practice amongst the Masters; does it appear to your Lordships, that the impeached Earl had any Notice, or the least Information given him of this Practice? Or if he had known it, how could he possibly have prevented it? Certainly, no other way, than by ordering all the Money immediately out of their Hands. And then another Difficulty would have occurred, how that Money should have been disposed of. Publick Societies would not submit to be under the immediate Direction of the Court of Chancery; and no private Person could be trusted with so great a Sum, or give Security for it.

The Masters of the Court are in nature of Cashiers; they subsist upon Trust and Credit; and no Security can be expected to answer the Quantity of Cash in their Hands, more than in the Case of a common Banker. People will trust Men in Credit with the Custody of a Thousand Pounds; when if they propos'd to borrow an Hundred Pounds on Security, would scruple to let them have it. But the Objection is carried yet farther: It is said, if Security could not be expected, why were not their Books inspected, upon one's transferring to another, and Schedules taken of their Effects?

To this it must be answered, That the Lord Chancellor has not Leisure to attend this Duty Personally. And what other Person can be appointed more fit to be trusted (as an Inspector of the going-out Master's Accounts) than his Successor, who is to stand charged with all the Money and Securities, and the whole Effects transferred?

Can any Obligation incline a Man more strongly to Care and Exactness in Business, than private Interest? And his own private Interest will oblige him not to make himself accountable for more than he actually receives, and has transferred to him. And when the succeeding Master has examined the Effects of his Predecessor, by proper Schedules approved of by himself, they are then transferred to him by a General Order of the Court, and he becomes accountable for what is so transferred.

This, my Lords, we humbly submit, has been the ancient Usage and Practice of the Court in these Cases; and that the same Method was used

by the present Earl Impeached, the same Care taken, as had been formerly in the like Cases by any of his predecessors.

But, my Lords, I would beg leave to submit it, That supposing it to be possible that greater Care might have been taken by the late Lord Chancellor, in inspecting the Schedules and Transfer of the Effects of Masters to their Successors; Does it appear that the Suitors of the Court have been any way injured or prejudiced by that pretended Neglect? Or would the greatest Care, the greatest Exactness in this Particular, have given the Suitors any greater Advantage or Security? Certainly, not at all: For let the Effects of the preceding Master be never so carefully and justly Examined and Scheduled, and after that transferred, and actually delivered to the succeeding Master; has not the new Master to whom these Effects are thus carefully and justly delivered, the same power over them, to manage and dispose at his pleasure, as he would have had, in case such Transfers had been made with less Caution and Exactness, as in the present Case?

If any corrupt agreement had been made by any new Master, upon coming into his Office, and previous to this Transfer, to have repaid or replaced any Sum of Money, before borrowed by him, either for the purchase of his Office, or any other Occasion; could not he have complied with this, and paid it out of the Suitors Money or Effects, the very next Moment after they were transferred to him? And would the previous Care and Caution in any degree obstruct or prevent his so doing? I apprehend, not at all; for as soon as the Master is in possession of the whole Money and Effects, he may return any part that he pleases to his predecessor, by virtue of an Agreement before made for that purpose; which would be as much to the prejudice of the Suitors, as if what was so returned to the predecessor, after a Transfer made, had been retained in the first Instance by the predecessor, and never actually delivered over to his Successor.

Therefore, my Lords, this Security, as projected, is but Imaginary; and gives the Suitor no greater Advantage than he had before; and consequently this ought to be no Ingredient of Complaint against the Impeached Earl.

But, in the next place, it is strongly urged, that tho' the Noble Earl during his High Offices, might not have Leisure to attend little Occurrences, or regard small Neglects; yet the Going-off of Mr. *Dormer* should have awaken'd him; some Care should, upon that Accident, have been taken. If what had pass'd before was only Supineness, this was a wilful Neglect; and not enquiring into the State of his Affairs, and securing his person and Effects for the Suitors, was concurring in Defrauding the Suitors.

My Lords, this was indeed a remarkable Occurrence: The Going-off of Mr. *Dormer* was unforeseen, and unsuspected: His person was withdrawn, and out of the power of the Court; but all imaginable Care was taken to secure his Effects.

The two Senior masters immediately were directed to enquire into his Effects, secure his Chambers, and put a stop to all transfers in his Office. What more possibly could be done in this Emergency, his person being out of the power of the Court?

A proposal is made on his Behalf, That if the then Chancellor would engage that his Liberty should be secured to him, he would return, and discover

discover and assist to get in his Effects. This is thought reasonable, and for the Suitors Benefit, and accordingly complied with; and thereupon the unhappy Man returns, and not only makes the best Discovery of his Effects, but delivers all in his power, for the Benefit of the Suitors. Could any thing be more Advantageous to the Suitors, or contribute more to their Interest than this?

The Impeached Earl had indeed promised his person should not be imprison'd; and it would have been the highest breach of Faith to have departed from it. Had not that promise been made, Mr. *Dormer* had not return'd, nor any Discovery been made by him; but by this means they had the Benefit of the best Discovery that could be had, and the best Assistance the Noble Earl could give them. He never deny'd or discouraged any Application that was made by or for the Interest of the Suitors in that respect, nor endeavour'd to conceal the true State of his Effects, and the Condition of his Office. And as to the Expressions insisted on to delude the Suitors, by saying, as has been objected, That Mr. *Dormer* was only gone to take the Air, and would soon return; tho' these Expressions have been much insisted on, in the Arguments against the Impeached Earl, I do not remember that they have been mentioned in the Evidence.

And, my Lords, to shew that the Impeached Earl did all that was in his power to render what Assistance he could give the Suitors; when a new Master was to be appointed; he left the Disposition of the Office to the Direction of the other masters: And Mr. *Edwards* gave no less than Five thousand Pounds for that Office of Mr. *Dormer's*, which was wholly apply'd towards the making up his Deficiency. By this Enquiry, *Dormer's* Real estate was secured to the Suitors; and it was expected by the Earl himself, and by Mr. *Edwards* who succeeded Mr. *Dormer*, that the rest of his Deficiency, which was then uncertain, would have been supplied by the other Masters, provided they could be continued in their Offices upon the old Establishment.

It may not be improper to observe further in this Case, That Mr. *Dormer's* Deficiency does not appear to have happen'd through any Extravagance of his own, or by his misapplication of the publick Money: He employ'd Mr. *Wilson*, then a person in good Credit, as his Banker, and entrusted him with his Cash. *Wilson* had Dealings with *Poulter* in the fatal Year 1720. *Wilson* was reduced, and stopped payment; his Debt to Mr. *Dormer* was then Twenty four thousand and forty six pounds; this, Mr. *Dormer* assigns to Mr. *Edwards* his Successor in the Office; it was all that Mr. *Dormer* had, all therefore that he could restore, and more than could be got in: For Mr. *Edwards* applying for this Money, found Mr. *Wilson* not able to pay the whole Debt, and thereupon a proposal is made of a Composition.

The Masters considering this, thought proper to petition the Lord Chancellor, that it might be referred to the Senior Master, Mr. *Hiccocks*, to examine and report, Whether it was for the Benefit of the Persons entitled, that a Composition should be accepted.

The Master to whom this Question was referred, Reports it Reasonable; and an Order is made, upon a second Petition preferred, That the Composition should be accepted.

This, my Lords, we apprehend, was an engaging in this Affair with all the Zeal that could be desired on the Earl's part; no Evidence of any Design or Endeavour to conceal the Deficiency: All or most of the Masters consulted upon this Composition, and consented to it: And as for those that were not Parties to it, they are not bound by it.

But it is objected, That this Transaction was Private and Clandestine between the Masters and the then Chancellor; not carried on in the usual Manner, nor any Notice given to the Suitors in Reality, tho' a Pretence of uncertain Notice mentioned at the Bottom of the Order.

My Lords, we hope this cannot affect the Noble Lord within the Bar; it is the Duty of the Chancellor to pronounce Orders in Court; but it is the Care and Duty of the Solicitors or Clerks in Court to see them Drawn up, Entred and Registered, in proper Time and Form.

The Substance of the Order is pronounced by the Court: The Form is the Act of the Register; and the Chancellor can't have Leisure to attend the Entries of all his Officers.

Fourteen hundred Pounds was paid in upon this Composition; One thousand Pounds has been brought in since, out of *Poulter's* Effects: so much has been secured at all Events by this Composition, and the Suitors have received the Benefit of it. Have the Gentlemen on the other Side shewn, that without this Composition, any thing could have been secured to the Creditors in General, or that any other Creditor has obtained more advantageous Terms? It was said indeed that other Creditors had received their full Demands: But I submit to your Lordships, that no Proof has been made thereof, only an uncertain Hear-say of small Sums sent, to give him new Credit after his first Absconding. But when the Composition was made, a good Debt was subsisting to *Wilson* from *Poulter*, and Judgment obtained against him, and he committed to the *King's-Bench* Prison in Execution. The Marshal suffers him to Escape: thereupon an Action is brought, and Judgment obtained against the Marshal, for his Escape; and at length the Marshal is run out of the Kingdom, to avoid making a proper Satisfaction.

What a Series of evil Accidents concur to increase this Misfortune, and prevent the just Design of the Earl to do the Suitors all the Justice in his Power! But to whom has he been Defective, if all prudential Steps have been taken? It is hard that he should answer for the Consequence, that he could not, it was not in his Power to prevent.

But, my Lords, in the 15th Article, it is objected to the Impeached Earl, That to carry on his unjust Purposes, in Concealing *Dormer's* Deficiency, in *February* one thousand seven hundred and twenty, he ordered the masters to bring in their Accounts of their Cash, Effects, and Securities; not with a real design to Examine the Accounts, and secure their Effects, but to terrify them into a Contribution; and threatned that the Cash should be taken out of their Hands, if they did not comply; by which means he got nine of the said masters to contribute Five hundred Pounds a-piece out of the Suitors Money, and then no farther proceedings were had upon their Accounts.

My Lords, One would have thought that these Proceedings, which so plainly tended to the Good of the Suitors, could not by any Artifice have been interpreted to their Prejudice. In

In February 1720, the late Lord Chancellor (finding Mr. *Dormer's* Deficiency like to be greater than at first it was apprehended) was willing to look into the State of the Accounts of the other Masters, to guard against the like Misfortune; and at the same time proposes to them to advance Money to help to pay Mr. *Dormer's* Deficiency. Five hundred Pounds a piece is raised by nine of them, and applied accordingly; the last of these five hundred Pounds paid in August 1721. And upon the 7th of November 1721 a second Letter is written to hasten these Accounts, and every Argument used that could be thought likely to induce them to it: But the Labour proved too difficult, and the Pursuit was forced to be given over 'till a more convenient Time and Opportunity should present. What was done in this Instance also, I beg leave to say likewise, was following the Example of another Great Man, in the Method he took in the Case of Dr. *Eddisbury*, and that has some Circumstances less favourable than the present: Dr. *Eddisbury* was always in Town, or at least within the Reach or Power of the Court, and yet his Person was not secured for many Years after his first Failure.

Upon the 29th of January, 7 *Annæ*, there is an Order entred in his Case, (the only one we can find on the File) for Dr. *Eddisbury* to deliver up his Effects to the two Senior Masters: It recites, That Dr. *Eddisbury* had several Sums and Securities for Money in his Hands, and that several Orders had been made for Money out of his Hands; which were not complied with; and that he declared himself not able to pay; and that his Accounts given in were not full: It is therefore Ordered, That in four Days time after Notice, he do Account to the several Masters, and deliver in to the said Masters what he hath in Hand, and the Report to be taken in ten Days.

My Lords, By this Order it appears that Dr. *Eddisbury* had several Orders made upon him for Money to be paid, not in Average, for some Time, and those Orders not complied with; and that he had not given full Examination, and had Prevaricated with the Court; yet the last Extremity, the Committing his Person, and ordering Payment in an Average, was not thought of, 'till it was certainly known, and he had actually confessed, that he had not Assets to pay the Whole.

In the present Case, Mr. *Dormer* was examin'd; discover'd his Estate, assigned the Whole in Trust for the Suitors, but died before the Enquiry could be perfected.

In Dr. *Eddisbury's* Case the other Masters contributed at first to supply his Deficiency, as they since did in the Case of Mr. *Dormer*: And this without doubt was so done; in hopes that his Effects, when fully discovered, would in time prove sufficient to answer all, or much the greatest part of the Suitors Demands: And thus far both Cases are parallel; and Orders made for Payments to the respective Suitors in general, as they applied for them. And no Average was directed in the Case of Dr. *Eddisbury*, 'till it appeared even by his own Confession, that his Assets were not sufficient to make good the Suitors whole Demand: And when the *quantum* of the Deficiency was known, Payments were directed by the Court to be made in Average. So, in all probability, in due time the like Order would have been made in the present Case: But that could not possibly be done 'till the Value of Mr. *Dormer's* Effects could be known

and ascertained, in order to fix the Proportion to be paid, in Average. And this, my Lords, to this time, through the many Accidents before mentioned, it has not been possible to effect: And therefore, the not directing Payments in an Average, can't be reasonably objected to the present impeached Lord as Criminal: His Intention throughout the Whole appears to be calculated for the alone Service and Benefit of the Suitors of the Court, without any Prospect or Possibility of Advantage to himself. His Design was, to procure every Suitor full Satisfaction for his Demand: And if nothing had happened to interrupt so just a Design, 'tis possible that his great Zeal for the publick Good, and his indefatigable Industry, might in due time have had their desired Effect.

But greater Powers have now interposed, and this Difficulty being found to exceed the single Authority of a Chancellor, may be thought to deserve the greater Power, Care, and Wisdom of the Legislature.

My Lords, What afterwards happened in the Case of Mrs. *Chitty*, is in part answered, in what has been observ'd upon the last Article; and I humbly apprehend, that a plain Narrative of that Fact, will be a sufficient Answer to the Objection that has been made in this respect. The Earl of *Macclesfield* having no certain Account what Cash of Mr. *Dormer's* remain'd in his Successor Mr. *Edwards's* Hands, made Orders for payment of Sums of Money, from time to time, as Application was made in Court; and particularly to pay Mrs. *Chitty* One thousand pounds, part of eleven thousand pounds of her Money which had been brought into Court in Mr. *Dormer's* time. Mrs. *Chitty* assigns this to Mr. *Lockman*. Mr. *Lockman* applies to Mr. *Edwards*, the present Master, for payment, and is there disappointed of his Money: Then he applies to the Lord Chancellor, and represents the pressing Necessities they laboured under, That the payment of one thousand pounds to him at that Juncture of Time, would be of greater Service to him than the whole Money could be at any future Day: That this Sum of Money, if immediately advanced, would make his Creditors easy; and without it, he must inevitably be thrown into a Goal.

This, my Lords, we shall be able to make out in proof (tho' Mr. *Lockman*, upon his Examination, deny'd it,) and the late Chancellor, out of pure Compassion and Charity to this Gentleman, and believing his Circumstances to be as he represented them, pays him the Money out of his own pocket; and at the same time, or soon after, told him, that he must expect no more from him, but must wait 'till Mr. *Dormer's* Effects could be got in, or the Money could be advanced some other way.

What Objection can be reasonably made to this part of the impeached Earl's Conduct? To deliver a Suitor in Distress; to extend a Charitable Arm to rescue him from the very Gates of a prison just opening to receive him. If this be a Crime, and to be objected to him by the very person who now enjoys his Liberty, as the Gift of this noble Lord's generous but undeserved Bounty; I must not pretend to say that he has many Virtues.

On the contrary, I hope it will abundantly appear to your Lordships, even from this Instance, and from the whole Series of this noble Lord's Conduct, that he firmly believ'd that all the Suitors of the Court would, in due time, be made easy,

easy, and their whole Demands be made good to them. And had the whole Body of the Masters as cheerfully concurred in this good Design, and contributed as generously to support the Honour of the Court, and themselves, 'tis more than probable that the Suitors would not long have had any just Occasion of Complaining, nor your Lordships the Trouble of this Prosecution.

It was for this End, that the Masters were so often called upon to make a reasonable Contribution, and all Arguments made use of that would either persuade or terrify them into a Compliance, in making the Suitors easy, 'till a proper Fund or Method could be found out to give them entire Satisfaction. Most of the Masters, I think all but one, were convinced that this was a reasonable and just Proposal, and express'd a Readiness to come into it; and 'twas for this Purpose, that they were bid to consider of the Consequences of forfeiting their Offices, and of a Complaint in Parliament.

And for whose Benefit were these Arguments thus made and pressed upon the Masters? Who could profit by their Compliance, or suffer by their Refusal? Not the Chancellor himself: He had no other Interest to serve, no Inclination to gratify, but a just Zeal for the publick Good, and a generous Concern for the great Loss that was like to happen to the Suitors of the Court, without his vigorous Interposition and Assistance.

This, my Lords, I humbly hope, appears to be the sole and just Principle upon which this Noble Lord has founded all his Designs and Actions, to restore the Credit of the Court, which had been greatly injured by other Mens ill Conduct; to procure the Suitors in general the best Satisfaction that could be obtained; not partially preferring one to another, but endeavouring to do every Suitor full and equal Justice, in order, as their Complaints were brought before him.

As to the Expressions proved to be made use of by the impeached Earl, in the Case of *Harper*; surely they can have little weight.

Can it be imagined, that after so many Transactions had happened in the Court of *Chancery*, in relation to Mr. *Dormer's* Misfortunes, and the great Losses that were like to happen to the Suitors thereby, the then Chancellor himself should be the only Person that had never heard of it; and even after such time as he had been endeavouring to find out Means to remedy so great an Evil? Could any Man of less Sagacity than he must be allowed to have, conceive that he could be credited, even in the Court wherein he presided, in saying (as it is now represented) That he was a perfect Stranger to the Affair of Mr. *Dormer*; that he had heard nothing of it, but as idle News, a flying Report, that might be true or false? No, my Lords, that certainly could not be his Intention, in speaking the Words that are said to be uttered by him on this Occasion.

But when a Purchaser under the Decree of the Court, that had paid his Money in to the Master, and required his conveyances to be executed, could not procure the Parties interested to execute, without actual Payment of the Purchase-Money to them at the Time of the Execution, and that Money was sunk in Mr. *Dormer's* Hands; this first brought the Deficiency of Mr. *Dormer* in Judgment before his Lordship; and it was the first time it came regularly before him in Judgment.

Upon this he declared, That then it was a proper Time for him to make a strict Enquiry into this Matter: He could not properly enter upon this Enquiry, upon the uncertain Reports of Persons about the Town, or upon any private Conversation or Information that he might have received, and possibly might have the Expression of common Talkers of News; but now that it came judicially before him, he would thoroughly examine into the whole Matter, and endeavour to apply a proper Remedy.

This, my Lords, we shall prove to be the Occasion and Manner of the speaking these Words, by Persons that were then present in Court; and this happened but in *December* last was *Twelve-month*; and accordingly it was ordered to be put under the immediate Examination of Mr. *Edwards*, who succeeded Mr. *Dormer* in the Office, and who must therefore be admitted to be the most proper Person to perfect that Enquiry, and also because he was the most concerned in the Consequences of it: But Time has been wanting to proceed as far as he intended in that necessary Work.

My Lords, Tho' by this time, it can't be pretended but the late Chancellor, as well as every other Person belonging to the Law, must know of Mr. *Dormer's* Deficiency; yet I believe, that none had then discovered, or even imagined how great it was; and that even his Lordship, and most other Persons, were persuaded, that whatever should appear to be wanting in his own Effects, would be supplied by the other Masters; or some other Method would be found out to prevent any real Loss to the Suitors; and in virtue of this Persuasion, Orders were made for Payment of Money to the Suitors, as they apply'd for it, without directing an Average.

This is exclaimed against, as contrary to all Equity; some to have all, and others to lose all, when they were all to be paid out of one Common Fund.

My Lords, Had it been proved to you, that when these Orders were made, it had legally appeared to the then Chancellor, that Mr. *Dormer's* Effects would at all Events prove Deficient, and that no way had been foreseen, whereby that Deficiency could have been supplied; I must admit this Objection would have been very strong: And in that Case, to have order'd full Payment to those Suitors who first applied, and left nothing for those that came after, would have been a manifest Partiality.

But this is not the present Case. When the Court ordered the first Payments to be made, it does not appear in Proof (as I humbly apprehend) that there would at last be any certain Deficiency in Mr. *Dormer's* Effects, or at least no pretence of judging how great that Deficiency was like to be. And consequently, the Payment of the whole Demand to the Suitors that first applied, does not necessarily infer that there would be any Loss to those which came after. His Effects, upon further Enquiry, might possibly come out to be more than were at first discovered; they might prove sufficient to answer all Demands: Or in case the Deficiency was not very great, a moderate Contribution from the other Masters, or, it may be, a reasonable Addition intended to be made to that by the Chancellor himself, would have supplied that

that Defect. And that this was really intended, I apprehend that the Evidence already given does abundantly demonstrate.

Another Objection has been made; That very great Sums of Money have been deposited in the Masters Hands, without any Security; and that some proposals have been made to the Noble Earl, for securing in some measure those great Sums, and preventing the Masters having too great Power over so great a Cash.

Mr. *Lighboun*, one of the present Masters, first mentioned the Proposal: He had before communicated it to Mr. *Holford*. The Chancellor received it kindly, desir'd him to reduce it into Writing; took Time to consider of it, and frequently talked with him about it; always shewed an earnest Desire that this might be done, but thought the proposed Scheme not effectual. Many Consultations were had upon this proposal; at last he summons all the Masters of the Court, the Registers, the Usher, and other Officers of the Court; obtains the Favour of the Master of the *Rolls* to join with him and them in the general Consultation; and every one expected some effectual Resolution would have been made, upon this grand Affair.

But the Master of the *Rolls* then taking notice that there were other things in the Court that required a Reformation, as well as this; and taking notice that the masters in *Chancery* had lately assumed to themselves a Power of Judicature in the Court, in opposition to him; insisted, That this pretended Power of Judicature in the masters should be given up by them, before he would enter into the Debate of the other Question.

Mr. *Lighboun*, upon whose original proposal this great Assembly was convened, was the first, if not the only Person that opposed the relinquishing this new-assumed power, tho' he knew the Consequence would be the Destruction of the other proposition which himself had made.

He preferred the Affectation of this Power of Judicature in his Office, more than the Interest of all the Suitors; and upon this, the great Expectation of this solemn meeting was disappointed, and nothing done.

What could a Lord Chancellor do more, that has the Honour of the Court and Interest of the Suitors the most at Heart?

Mr. *Lighboun* himself tells your Lordships, that after this last Attempt proved unsuccessful, he began to think there was but one single Lord in the World that had sufficient Spirit to undertake it.

But during all this time, nothing had happened to give the late Chancellor any just Jealousy or Suspicion of the Deficiency of any of the other Masters. They are proved to have often declared they were Sufficient; nay, they have themselves sworn, upon the giving in their Accounts, that they were able to make good the Balance. The Noble Earl Impeached, sincerely thought they were so; and therefore when their Accounts were brought to him, in order to be laid before the Counsel, in Obedience to His Majesty's gracious Commands, he did all that was in his power or Capacity to forward that good Design, and make it successful: He ordered the Masters to speed their Accounts: And when they were brought before him, he observing that the Senior Master had under-written his Account in a full, and plain, and more direct Manner than the other masters had done, he told them, He liked the Form which Mr. *Holford* the

Senior Master had used, and thought it a proper precedent for the rest. They all complied, without Hesitation or Objection; no one pretended they had not sufficient then in their Hands to make good their Balance; and accordingly subscribed to it, That they were able and willing to make good their respective Balances; or to the like Effect.

Can it be imagined, that this so fair and candid a Transaction, intended for the Satisfaction of the Council, and the good Security of the Suitors, can by any means be interpreted an Imposition upon His Majesty, by the late Chancellor? It was for His Majesty's Service that the Accounts should be laid fully and truly before him in Council; and it must likewise be a great Satisfaction to His Majesty, to find that his Subjects money in the masters Hands was secure, by seeing their Acknowledgment, under their Hands, that they were able.

The late Chancellor knew no more than any of the rest of the Honourable Privy-Council, or His Majesty himself, that this Declaration was false; and therefore it was equally an Imposition upon Him and Them; but no Fraud, no Crime in the Chancellor himself; which is the Objection now made against him. And indeed, many of the masters which have been now examined before your Lordships, have, upon their Evidence, Declared, That the Subscriptions thus made to their Accounts, were true, and that in Fact they have given good and effectual Securities to answer the respective Balances of their Accounts.

How hard a Work this Regulation of this great Abuse in the Court of *Chancery* was, the late Experience has shewn; and a total Reformation of it hereafter, would have proved more difficult, without the prudent and cautious Preparation, which the Noble Earl within the Bar has made for it, and which in due time he might have been able to effect.

Thus my Lords, I have endeavoured (but very imperfectly, I am sensible, and confusedly) to offer what occurs to me in the Impeached Earl's Behalf. I ask your Lordships Pardon, and His, for taking up so much of your Time so unprofitably. What Omissions I have made, I doubt not, will be supplied by the several learned Gentlemen that are to speak after me.

I have this very great Satisfaction, that before your Lordships, the Merits of this, or any other Cause, will not suffer through the Incapacity of the Advocate on the one side, nor the Solemnity of the Prosecution on the other. When Facts are proved before your Lordships, no Observations can be equally Instructing as your Own. And upon the Evidence given, your Lordships will undoubtedly form a Just Judgment: A Judgment, I humbly presume to hope, That the Impeached Earl is Not Guilty of any of the Articles exhibited against him.

Dr. *Sayer*. My Lords, I am likewise of Counsel for the Noble Earl Impeached.

I am afraid it may seem somewhat improper, that I should engage in a proceeding of so much Difficulty, foreign to the profession in which I am bred: But as the very great Obligations I have to the Earl, prevail on me so far to forget my own Unfitness, I hope they will, on your Lordships, to excuse it.

The Articles exhibited by the Honourable the House of Commons, charge him with *Corruption*

tion and Extortion, in the most odious Manner; and the learned Managers have heigten'd every Circumstance with the greatest Art and Eloquence; every ill Turn which his Actions, his Words, his very Omissions, could be imagined capable to receive, hath been given; Suspicions and Jealousies have been rais'd; and every Consideration forgot, which could interpret them in his Favour.

This my Lords, was their Duty, as Managers; and tho', by some, undertaken with Reluctance; yet, I may venture to say, it has been perform'd by all with great Success and Reputation.

But however unanswerable their Eloquence may be, we hope to be able to defend the Earl against the Facts they have alledged; and shew, That they were either not done, or done with Innocence and Honour. Against *meer Imaginations*, nothing can secure him, but your Lordships Candour and Justice.

The words *Orphans*, and *Widows*, and *Lunatics*, have been employ'd to raise Tenderness and Compassion, and arm your Lordships against every Argument which we can offer. Well was it commanded by the *Jewish Law*, *Not to respect the Person of the Poor, in his Cause*; knowing the Disposition of Human Nature, and the Necessity of guarding against this generous Weakness. This Caution ought particularly to be remembered by *Englishmen*, who are allow'd to be more subject to an Excess of it, than those of any other Nation.

The learned Managers have very rightly observ'd, how much your Lordships Honour is concern'd in this Prosecution. My Lords, It was with the greatest Satisfaction I heard them say it; for I am by it induced to think, that notwithstanding the Zeal which has been express'd, they will be much pleas'd to find every Member of your Lordships Body Innocent.

It appears from the Answer, and needs no Proof, That the Noble Earl was once *Lord Chief Justice of the King's-Bench*: And his Conduct in that great Station, will, I hope, be some Defence.

I may appeal to those Gentlemen who are now Managers against him, whether they have not applauded him with Warmth? whether they have not commended his Zeal and Intrepidity in the Cause of Liberty and our Country? his steady Adherence to the Protestant Succession? his uninfluenced Behaviour? My Lords, I would ask, whether then they did not praise and love him? whether they did not esteem his being placed in that High Station (which he executed with Honour) their Comfort, their Security.

My Lords, I beg pardon, for replacing those Times before your Thoughts, or for desiring any to consider, how an Accusation against him, supported by *meer Refinements*, would at that time have been regarded. My Lords, his experienc'd Merit would then have silenc'd every Objection.

If there wanted any Evidence of the High Character he bore while in that Station, we might appeal to the great Rewards His Majesty has bestow'd upon him: Those very Graces which have been exaggerated against him, are the noblest Testimony in his Favour. His Majesty thought him worthy of the Great Seal, because he had found him faithful in his other Trusts. His Majesty approved him, because his Subjects had:

It was for their Sakes (the constant Motive of his Choice) that he appointed him Lord Chancellor.

This once was the Earl's Character; this once his Merit. These were, nay, are still our Obligations to him. My lords, *experienc'd Worth* has a Right to greater Confidence and Credit: This is a Rule of Evidence, and of common Justice; and unless the most convincing Proofs are offered, your Lordships never can believe, that one who has done so greatly Well, can do so Basely as is suggested by the Charge.

But supposing, upon so very strict an Enquiry into the Conduct of any Great Man, *something amiss* was found (for the Greatest are but Men, and must have Failings) yet is former Merit not quite to be forgot. *Publick Services* are thought just Reasons for Remission of the highest past Offences, though done perhaps *meerly* with a View of obtaining it: And shall those done upon a more generous Principle, arising from an honest disinterested Heart, deserve a less Regard?

But my lords, that I may have the better Opportunity of observing, on the Evidence brought for the Commons, as well as on the Arguments offered, I shall beg leave to follow the learned managers in the method they took themselves.

The Foundation of their Charge, is, The disposing of several Offices for considerable Sums of Money. This is the Corruption! This the Extortion! And to aggravate the Guilt of this, and raise your Lordships Indignation, the Preamble sets forth, "That in or about May 1718, the Earl was appointed Lord Chancellor of Great Britain, and did thereupon take the usual Oath for the due Execution of that High Office, and such other Oaths as have been accustomed." And the subsequent Articles proceed to charge his lordship with Breach and Violation of his Oath, as Lord Chancellor. The learned Gentlemen who had the Conduct of the Evidence, justly sensible of the Expectation they had raised by this Aggravation, did attempt a Proof.

The Earl, in his Answer, had set forth at large, the Oath he took as Lord Chancellor, when first appointed; and had insist'd, that he took no other Oath of Office. Was this the Oath the Earl had thus broke and violated? No, it was not this; but one, which, by the Articles, he is no where charged with ever having taken. Upon the Choice of Sheriffs, it seems, the 12th of Ric. II. is annually, in Old French, read over by the Clerk; and all present at the Council kiss the Bible. It is this Transaction with which they would affect the Earl. But, my Lords, it is notorious, that the Statute is so far grown obsolete, that in no other Instance besides this of Sheriffs, is it at present taken notice of. And as the Oath upon this Occasion must be absolutely confin'd to the Choice of them; so is it evident, that the Statute it self never did nor was intended to reach Officers of the nature with these in question; as I shall further observe. And indeed, with the Oath directed, the Statute is so extremely rigid, that I must own, for my part, I do not see any Service it can do Society, in its full Extent. It may perhaps afford some Protection to a First Minister, in laying him under the Obligation of an Oath, to put none into any Office who shall pursue or solicit by himself or by other.

However,

However, I can't help thinking that the learned Manager had but very small pretence for the Reflection he was pleased to make, in saying, that *the Earl seemed to have forgot this Oath not only in his answers, but in his conduct*; when it appears that *he himself had forgot how he had charged it in his Articles*. If he will cast his eye back upon them, he will find that the Preamble makes mention of *no Oaths*, but what were taken by the Earl upon his Majesty's Appointment of him to the Seal; and the Articles charge him only with Violation of his Oath, as Lord Chancellor.

Having justified the Earl's Memory in this Point, I proceed to justify his Conduct in others; and I hope the Defence he has made by his Answer will have its Weight with your Lordships. The Earl has insisted, "*That the making Presents has been long used and practised in the Time of his Predecessors; That such presents have been reckon'd amongst the antient and known Perquisites of the Great Seal; that the making and accepting them has been Notorious to all the World, and never before looked upon as Criminal, or complained of as such.*" My Lords, this (as far as Proof is requisite) We shall make fully appear by great Numbers of Witnesses, who are able to speak to both the Opinion and Practice of the Earl's PREDECESSORS. To this it has indeed been said, that the Earl may be Guilty, tho' his Predecessors have escaped unscathed or unpunished. My Lords, the Examples we have followed are too Worthy to lead us into Guilt: But, my Lords, if the Earl has only done what they have done, and received what they esteemed an honest Perquisite; was the Practice in it self not quite so regular at first, yet, *Sunt tolerabilia, quæ consuetudo comprobatur*—Usage (if antient) has so great Authority, that it makes the Common Law of England; and tho' with us it cannot repeal a Statute, or destroy its Force, which it does in other Countries, yet, my Lords, there is an Equity to be observed; and Reason as well as Humanity must inform your Lordships, that no Man ought to be treated with the utmost Severity, which an old Statute may direct; when great Examples may have led him to the Action, and a long Connivance of his Predecessors promised him Security from Censure.

But the Earl's Defence stops not here; he says, "*He humbly hopes that the giving or receiving Presents on such Occasions is not Criminal in it self, or by the Common Law, and that there is not any Act of Parliament whatsoever, by which the same is made Criminal, or subject to any Punishment.*" To this the learned Gentlemen have given but very general Answers. Some have by Rhetorick, instead of Reason, endeavoured to persuade your Lordships, that the Act it self is highly *Sinful*, and that the Corruption in selling Offices is greater and far more dangerous to Society, than even selling Justice it self: Others have talked of Common Law, and Statutes, but have produced none, except those of 12th of Rich. II. and V. and 6 of Edw. VI. and a few Inferences drawn from them, which I shall speak more largely to immediately: And as the Learning and Experience of those Gentlemen are too great for any Law to escape their Observation, as is their Honour to reserve any for their Reply, I shall take it for granted, that since no other has been mentioned, there is no other.

My Lords, the Writers upon the Law of Na-

ture have properly distinguished between *selling Justice* and *Offices concerning the Administration of Justice*: and not as the learned Managers have done. With them the *selling Justice* is absolutely forbid, is absolutely *Corrupt* and *Immoral*. The *selling Offices* is Matter of meer Policy, varied in different Governments, *prohibited* in some, *allowed* in others.

Among the Romans the Law in this Particular fluctuated and changed, and tho' the *Sale of Offices* was generally forbid, yet it received great Alterations, as the Emperors or the People were disposed: When Elections of the Magistrates were Popular, the *Suffragia*, or Votes of the People were bought and sold; but as this Practice produced frequent Riots and Disorders, frequent Laws were made to restrain it, which are still extant, and part of the Body of the Civil Law: However, all proving unsuccessful, the Emperors took occasion from it to usurp upon the People, and name the Magistrates themselves: This Translation of Authority carried the Benefit to Courtiers, and other Men of Power, who took a sort of *Brokage* for their Interest. *Theodosius*, the Emperor, so far gave Countenance to this Practice, that he even allowed an Action for the Recovery of what was promised for *Procurement of any Place*. In process of Time the Emperors themselves participated and took a Share of this Advantage, which introduced a distinction of *Suffragium Dominicum*, and *privatum*. *Suffragium privatum, quod Aulicis dabatur*; and *Domicum, quod Imperialibus rationibus inferebatur*. This Distinction, as well as the Practice, is very Evident from the two Novels of *Justinian*, which were intended absolutely to prevent for the future all Sale of Offices. In *Novel 161*. it is said, *Ejusmodi Dominica suffragia magnum reddebant pecuniarum cumulum*; and in *Novel 8*. that by the Prohibition, *Questus immodicus imminuitur imperio*.

It is well known that in *France*, the Laws have varied in like manner. Sometimes the Sale of Offices was permitted, sometimes forbid; but at present, and for this last Century, it has been so far encouraged, that Officers retain the Right of Resignation even in *Succession*, and transmit it to their Heirs, in case they have paid the *Annual Tax* or Duty within the Year.

I mention this to shew what the Opinion has been of other Governments; that they have not esteemed this Practice so highly Criminal, or unreasonable; and as they have not, so neither have we: For notwithstanding what has been urged with so much Ingenuity; (according to my poor Apprehension) that very Statute of *Edw. VI.* so much insisted on, is the strongest Proof which can be given, not only that in particular instances the Sale of Offices is now permitted, but that it was in general before that Statute, by the Common Law of England. This Statute in Sect. 3d. enacts, that "*All Bargains, Sales, Promises, &c. shall be void.*" And yet by Sect. 6th, it makes Provision, that "*It shall not extend to any Bargain, Sale, Gift, Grant, &c. concluded and agreed before the First Day of March next coming, but that the same Bargain and Sale so concluded and agreed, shall always remain, continue, and be in such force, strength, and effect, as if this Act had never been had or made.*" If Bargains and Sales, agreed before the First of March, are to continue in such Force, &c. as if this Act had never been made, the Consequence to me seems certain,

tain, that *those Bargains and Sales had Force*, and that they were before *Effectual and Legal*; for otherwise the Provision would be absurd and ridiculous.

The 7th Section of this Statute still goes further, and makes a perpetual Provision, that “*This Act, or any thing therein contained, shall not in any wise extend, or be prejudicial or hurtful to any of the Chief Justices of the King’s Courts, commonly called the King’s Bench, or Common Pleas, or to any of the Justices of the Assize that now be, or hereafter shall be; but that they, and every of them, may do in every Behalf, touching or concerning any Office, or Offices to be given or granted by them, as they, or any of them, might have done before the making of this Act.*”

If this Statute be *Explanatory* of what the Common Law was before, and as such it was insisted on, it is certainly impossible to doubt, but that by the *Common Law* the *Sale of Offices* was allowed: “*the Chief Justices, &c. may (TOUCHING THEIR OFFICES) do as they might have done before:*” This Act is to prevent the *Sale of Offices*, and yet *not of their Offices*: They had been used to *bargain*, and *sell* them, and still may do it, for this Act is not to be in any wise *prejudicial*, or *hurtful*, to any of them. This is the plain Sense, this the very Language of the Provision.

But I humbly conceive that this Provision is not only an Evidence of what the *Common Law* it self was, but that the *Act of Rich. II.* (of which I before made mention) could never be intended to reach *Offices of this Nature*; for as the *Act of Rich. II.* directs an Oath, which the *Chief Justices, &c.* are expressly *required* to take, can it be imagined without the greatest Extravagance of Fancy, that the Legislature should be so very forgetful, as to guard and secure to them a *Privilege*, which they could never exercise without the highest *Perjury*?

This, my Lords, is the only Statute, which, as I apprehend, any way concerns the Charge brought against the Noble Earl: But does this Statute make the *Sale of Offices Criminal*? Does it direct a *Punishment*, or even by any general Clause forbid the Practice of it? ’Tis true the *Bargains* are hereby made *void*, the Person who *sells*, does lose his *Right of Nomination*, and he who *gives* or *pays*, is to be adjudged *disable* in Law to have the Office. My Lords, these are the *Discouragements*, which the Legislature then thought proper to lay such *Bargains* under, these the *only Penalties*: If the Earl has by his Conduct done what this Statute disapproves; if he has bargained and sold Offices, which your Lordships judge within the Statute, and the *constant Usage* of his Predecessors will not give *Protection*, the Statute points out your Lordships Justice. But, my Lords, this unfortunate Great Man, we think, has already more than *satisfied* this Law, he has *resigned the Seal*, and yet *stands Impeached* before your Lordships.

Offences are to be judged of by the *Penalties* and *Punishments* the Legislature has annexed; for in determining the Penalties, it determined the Sense it had of the Offence: When Penal Laws are made, it must always be supposed, that a Consideration was had of the Malignity of the Act forbid, and of its Influence on Society, and that the Punishment directed was esteemed adequate and just: By this rate it is easy to guess

what the Legislature thought of the Offence of selling Offices. And, indeed, it would have been (if I may use the Expression) unbecoming the Legislature to have *inflicted severer Penalties*, while by the same Law it *permitted the first Judges* in the Nation to do what it seemed to condemn in others.

When a Law is once past, the Transgressor of it is *subject only* to what that Law directs; to inflict a *greater Punishment*, would be deserting Law, and acting *arbitrarily*. This Observation will hold in every Instance, in Matters of *Common Justice*, as well as *Publick Policy*: To forbid to *Rob*, or *Murder*, is only to enforce what was *always Law*; to forbid to *sell Offices*, is to lay a *Political Restraint* on Acts indifferent. And yet in the former Case, to punish the Offender *beyond the Law*, would be *unjust* and *arbitrary*. Are Prohibitions *meerly Political more Sacred*? Or is a *Trespas* against them more severely to be treated, than one against the Law of Nature, the Law of God? No, Your Lordships (I say it with Submission) are the Supreme Judges of the Nation; as such, the Supreme Judges of the Law; for by the *Laws* your Lordships always judge: It is the peculiar Blessing of our Nation, to have *known certain Laws*, to be the *Guide* of our *Actions*, and the *Measure* of our *Punishments*; to secure to us *this Blessing* has been the *Labour* and the *Glory* of our Ancestors. For the Sake of *this*, the REVOLUTION is *beloved*; and for a steady Adherence to *this Sacred Rule*, his MAJESTY is esteemed the *Joy*, the *Safety*, the *Liberty* of his *People*.

I beg Pardon for dwelling so long upon this Subject; but the Honourable Gentlemen of the House of Commons having made the *Sale of Offices* the *Foundation* of their whole CHARGE, I thought it of some Consequence to prove to your Lordships, that it is no ways *Criminal* in it self: And, my Lords, if it be not *Criminal*, Where is the *Corruption*? Where the *Extortion*? Is it in the *Manner* of receiving Presents? How *that* was, the *Learned Serjeant* of Counsel with me has already given your Lordships an Account: An Account, which we hope does sufficiently *justify* the Earl against the Imputation of *Haggling*, or of *screwing up the Candidates* to what they gave. But as these several Articles will be more fully spoke to, when we come to produce our Evidence, I shall pass them over with an Observation or two. If the Earl had so great a *Thirst for Gain*, and was so *resolutely bent to amass such excessive Sums of Money*, it is to me very strange, that whenever his Opportunity offered, and he had the *free and full Disposal* of an Office upon a *Vacancy by Death*, he should always receive a *much less Sum*, than what from the very face of the Articles themselves appears constantly to have been paid by *Master to Master*. Had the Earl *put the Office up to Auction*, or even *insisted* on a Price, Is it probable that he should *not be able* to obtain one as great?

However, as I pass, I can’t help taking notice of the Circumstance with which the Article of Mr. *Thurston’s* admission is introduced, “*That Borrett died insolvent, greatly indebted to the Suitors, and the said Earl did, without securing a just Satisfaction, admit him.*” Your Lordships must have observed, that the Earl is not so much as *charged* here with a *knowledge of this insolvency*; and, my Lords, *knowledge only can create the guilt*. If the Earl did not know it, can your Lordships censure him? If it be asked

asked why he did not? Mr. *Godfrey*, who was produced and examined by the managers, has already given a full Answer: Mr. *Godfrey* was most intimate with the Affairs of *Borret*, and as such was directed by the Earl to inspect them; he has deposed, that he told the Earl, he thought *there would be no deficiency in his Office*, this (your Lordships may remember) he said was his *own* sincere Opinion, and he gave good Reasons for it. Mr. *Borret* had a very good Income, reputed 400 *l. per An.* besides his Place; he had lately married a Wife of Fortune; his Family lived with his Father-in-law; and he himself a man of no Expence: My Lords, Mr. *Godfrey* told you, he was so fully in this Opinion, that when Mr. *Green*, the deceased's Uncle, made a demand of a debt, he was *greatly surpris'd, not imagining that he had owed one single farthing*. Whence this deficiency (if there is any) none can tell: But, my Lords, that fatal Year of 1720 is not so long past, as to leave us quite without conjecture; a Year, my Lords, when the Contagion was so virulent, that scarce any *Virtue* was left *uninfected*; and those who sunk under it, remarkably deserve our Pity, as sad Instances of human Frailty: *To this Year*, the masters owe their whole *Distress*, and to them the Earl, tho' innocent, *this aggravated Charge*: But, my Lords, supposing a *Deficiency in this Office*, and known too by the Earl himself, what *Satisfaction* to the Suitors was from him expected? What could he possibly *secure*? There is but *one Method*: which, I hope, he will not, by the *Managers*, be thought *criminal in not taking*, since it is *that*, which *they themselves* condemn as *illegal and corrupt*.

It may be expected, that I should shew some Regard to the 9th Article: But as it is that which the learned Gentlemen made choice of to *begin* with, I apprehend *greater Difficulties* than I see; and therefore shall leave the Consideration of it to those, who are much more able to surmount them than myself: But I must ask Pardon, that I can't reach a Distinction on which great Strefs has been laid: It has been observed by more than one, that in this Case, the money was paid for the *resignation*, and not for the *admission*. Is there any real Difference, whether the *Buyer* or the *Seller* pays the *Compliment*? Must it not be supposed that it was considered in the Bargain, and part of it? Or is it imagined that a greater Hardship was in this Case done Mr. *Thomas Bennet*, by a seeming *Obstruction* of his Inclination to part with an Office, when in fact the Earl could not *binder* his resigning it? For notwithstanding the Observation made by a learned Gentleman, that the *Lord Chancellor* was the *King's Officer*, and therefore a *Resignation to the Crown* was the same as to *him*; yet am I from his very great Abilities persuaded to believe, that he is not so entirely a stranger to the *Thought* of that *high Office*, as not to be able to distinguish the *Crown* from the *Seal*, and to know that in many Instances of *Patronage* they are *different*: The *Lord Chancellor* being the *King's Officer*, a *Resignation to him* may in some Cases be equivalent in Law to one made to the *Crown* itself, but never *è contrario*. As to this particular Office, and indeed to many others of the like Nature, we shall make it fully appear, that tho' the *Officer* himself is in the *Nomination* of the *Crown*, yet has he always been under the *Recommendation* of the *Seal*, and has as constantly *paid Acknowledgment* to the *Lord Chancellor*.

Upon these Charges are built the whole of the following Articles: Every Expression, every Action which could bear an ambiguity, has been collected to form a Crime. The Earl has *received* money for *his Offices*, his *Aim* is therefore *Gain by Sale of Offices*, an easy Inference; and whatever is after *said or done*, or *vice versa*, is at first *Suspicion*, and then an *Evidence* against him.

But, my Lords, before I proceed to try Particulars upon this Head, I must beg your Lordships Patience to compute in general the very small Advantage the Noble Earl could propose by the *Scheme*, the learned Gentlemen have *projected* for him: The *Office* of Lord Chancellor is *precarious*, and only *during Pleasure*: The *King*, for his Subjects Welfare, *jealous* of every Minister, and *ready to remove* the greatest Favourite upon the very first Offence; and upon this Contingency, what would the *Chance* of disposing of a Master's Place be worth? A very trifle, I may boldly say, not so much as what he has *refused* the Opportunity of *gaining* upon every compleat vacancy he has disposed of. And can your Lordships suspect a Character *once so dear*, once allowed *so worthy*, of doing such little Things, I should say, such base Things, for *no Advantage*, and yet to promote *this illegal and corrupt Gain* on which his Heart was *eagerly set*? The noble Earl is further charged "*with having admitted several Persons to the Offices of Masters, who were at the Time of small Substance and Ability*:" Against this there lay an obvious Objection; Why Persons of small Substance? When the Earl *might have*, and indeed *always had*, when of his own Choice, others of *Sufficiency*. Wherefore, to make their Charge consistent, a *fraudulent* method is supposed to be introduced, of *paying for their Places out of the Effects of the Court*; a Method *best suited to such Persons*: But your Lordships Justice must have led you to observe, that they *no where* so much as *insinuate*, that the Earl *knew* them to have been as charged: They were sensible of the proper Caution he had taken, and (as it will appear in Evidence) that not only previous Inquiries were always made, and *none* admitted, who came not *well recommended*, or *personally known* to the Earl himself; but that when several Candidates have offered, his Lordship has been so unmindful of the *little Views*, he is supposed ever to have acted with, that he has *constantly preferr'd* him he thought the *worthiest*, tho' the *present* to the Earl was far *less* than what others gave him Expectation of. This surely, my Lords, will be enough to *vindicate* his *Care*; and tho' it should appear, that he was *deceived* in any *single Instance*; nay, tho' the *Man himself* should be the *Evidence* of his own *Deceit and Fraud*, yet I hope, my Lords, *such Person* will have his full Compliment of Credit, if he is *believed* in the Character he gives of *himself*. But to make some excuse for the Earl's *good Opinion* of this Mr. *Thomas Bennet*, and his *Circumstances*, I must observe, that it is Evident from his *own Account* which lies upon the Table, that *when he was admitted*, he had an *Estate* of between 5 and 600 *l. per An.* he had besides an *Office* for Life of 250 *l. per An.* he kept his *Coach*, and then lived in *Reputation*: However, I must confess, that in further Proof of his *great Integity*, this Gentleman has deposed, that *Part* of his Estate was then *Mortgaged for more than it was worth*. I should upon this

this

this Occasion put your Lordships in mind of what happened upon this Gentleman's *Confrontation*, because he has been *singular* in his Evidence on more Facts than *one*; but we shall take another Opportunity of displaying this *Worthy Person's Veracity*, that your Lordships may know *how much Regard* to pay to *him*, by seeing *how little Regard* he has for *Truth*.

As to the *Schedules*, the Neglect of which is made so *Criminal*, it would be enough to say, that the taking them could not prevent the *Fraud* complained of; for what would be the Difference in *deducting* the *Sum agreed on for the Purchase upon the transfer*, or *repaying it the minute after*? And if the new Master is *really able and sufficient*, where is the *Injustice* done in either Case? But we submit whether such Schedules must not be made between master and master: For without them their Accounts cannot be settled; and as it is for the *Interest* of him who *succeeds*, so is it for the *Security* of the other who *resigns*. But supposing the Practice to have been as charged, and their *Transfers* were not *complete*, the only Consequence I see is, that *both* masters are *bound*, and the Suitors have by it a *double Security*. It has happened so in the Cases of both Mr. *Hiccocks* and Mr. *Rogers*; they imprudently *retaining* the Effects of the Court, for the Sale of their Offices, have thought it proper to petition the Lords Commissioners to *repay* the money: So that some good Fortune has attended this Practice, ill as it is, the Suitors have by it got so much money more, than what otherwise they would have had.

My Lords, when *Dormer's* Affair (tho' sufficiently unfortunate) is considered by your Lordships, I hope that the noble Earl will not be thought to have acted otherwise than as *became* his Character: Upon the first notice of the misfortune, the Earl took all possible Care both to *save the Effects*, and *secure the Office*; he sent the two senior masters to *search his Chambers*, and to *stop the Transfers* of all Stock, which stood in his Name, in any of the publick Companies. My Lords, had the Earl had that *Eye on Gain*, had he had *that Apprehension of Discovery*, which is represented, he would scarce have taken *this last Step*, which must and did make a *Suspicion* of the Office publick: When Mr. *Dormer* was returned, and upon *such Terms* as the Managers themselves can't say were unreasonable to grant to one, whose Person was out of reach, and whose Effects and Accounts were in the greatest Confusion: His Liberty was all he asked, and that upon Condition only of a *full discovery* and a *fair Assignment of all he had*. I say, my Lords, when Mr. *Dormer* was returned upon these Terms, which we hope he has honestly performed, his Office was sold, and every Thing done, *not to conceal*, but to *supply the Deficiencies*. I would not enter too minutely into the *Composition* with Mr. *Wilson*: It will, I conceive, be a full and satisfactory Answer to the Charge, to observe that as the Suitors were not *Parties* to it, they can no ways be *injured* by it. If the *Composition* be *precarious, trifling, and unjust*, the Suitors are still at *Liberty* to proceed: If *more* could be had, they still may have more; but till *more* is *recovered*, it must be admitted that the *little*, which is *gained*, is *owing* to the *Composition*. Had the Suitors been *Parties*, the *Order* so much com-

plained of for its Irregularity would not have been made *without a Notice*; but as Mr. *Wilson*, whose particular Interest it was to have them Parties, did not desire it, we apprehend the *Order* to be in the *usual manner*. My Lords, the masters (as is in Evidence) having in some measure *engaged themselves* to make good the Deficiencies, if any should happen, the Earl could have no reason to doubt the Justice of the *Proposal* of Mr. *Wilson*, after Mr. *Hiccocks* had reported it, and Mr. *Edwards*, the Successor in the Office, had *prayed* the Earl to *order him to accept it*.

It seems, my Lords, a very forced and unkind Construction, which the Articles put upon the *Accounts* his Lordship had *required* of the masters; but the worthiest Behaviour may be thus misconstrued. The masters themselves had *made the Proposal of contributing*, and it will appear that they all (except Mr. *Lightboun*) did pay their Money *voluntarily*. What occasion then for such Methods as are suggested to *terrify and oblige them to this Contribution*? Is it in Proof that the requiring the Accounts did *influence one single master*? No, my Lords, but, on the contrary, you will find that the *Payment* by the masters did not prevail on his Lordship to desist; for it will be in Evidence, that the Earl *still persevered*, and that by the Earl's direction a *Letter* was wrote to the masters, *after the several Payments* were made, complaining of their Delay, and requiring their Accounts. The Earl, indeed, upon Representations, did afterwards think the method *impracticable*, which he is the better justified in saying, because the very *same method* has been *since* found so by the *Honourable Committee for inspecting their Accounts*, and departed from *as such*.

Upon this Subject of *Dormer's* Deficiency, I must beg leave to remind you of what Mr. *Edwards* told your Lordships. He said, "*That they were all of Opinion, that the Deficiency would be made up; and unless he had believed it, he would not have entred into the Office.*" If Mr. *Edwards*, who was so much concerned, was in this Persuasion, why might not the Earl too with Innocence? And, my Lords, this Persuasion, this Expectation, is, I humbly conceive, a very satisfactory Reason, why the Earl, had he been obliged to have declared an Average *ex officio*, in common Cases, might be excused the doing it *in this*.

As to the Cases of *Chitty* and *Harper*, when the Circumstances which attend them, are laid before your Lordships, the Inferences drawn from each will appear equally unreasonable: For the Earl can no more be supposed to have intended a *Concealment* of *Dormer's* Deficiencies by the *Order* he made, *after* he had expressly mentioned in *open Court* the *several Accidents*, by which they had happened, than he could by the *Payment* of 1000*l.* to Mr. *Lockman*, when he told him, *that it would be the last Payment Mrs. Chitty was likely to receive, the residue being in great danger from Dormer's Deficiency*. But when we prove to you the very great distress Mr. *Lockman* represented himself to be in, your Lordships will be convinced that the money was by the Earl advanced from *no other motive*, than a *generous and compassionate Regard* to him: This at *that time* was Mr. *Lockman's* own Sense of it; this he has *often since acknowledged*, tho' upon his Examination he was pleased to *claim it as his Right*, and *own no Obligation*.

I think

I think it will be (I should say, it is already) very full in Proof, that the Earl desired a *thorough Reformation of his Court*; and tho' Difficulties have obstructed it, yet surely, my Lords, it can't be imputed to any omission of his, in the light the Charge would place it. There were *Difficulties*, not only with Regard to the *Masters and their Accounts*, but to their *Jurisdiction and Privileges*: *Difficulties* of such a nature, that one of the Witnesses thought they required the *greatest Resolution* to surmount them. If the noble Earl had not a *Resolution quite sufficient*, it might perhaps be his misfortune, but surely not his Fault. But what *Proposals of Security* the Masters could possibly make, which they esteemed *useful or convenient to themselves*, and the Earl should refuse, I can't conceive. I imagined from the *Scheme* on which the Charge is founded, that *their Interest* had been the same, had been *one*, and what served *their purpose* must have served *the Earl's*; and yet now we are told the contrary.

How the learned Gentlemen have made out the several *Deficiencies*, must be considered, when we are upon their Evidence to that Article: I will only observe, that no *permission or encouragement* of the Earl's has been proved, by which they are *increased*; that no *Money* has been *compelled* into court, by any *Order* he has ever made, to *advance* their Offices, nor any *Countenance* given by him to any one *ill Practice*.

How far the Earl is guilty of *obstructing the inquiry his Majesty had directed*, or how far he was instrumental in *deceiving the Council Board*, we submit upon their own Evidence: It appears, that at the meeting at Mr. Edwards's House, all of them declared they were able to answer their several Ballances; and when the Subscriptions were Signed, they were believed to be as they had declared themselves: If they were, where was the *Fraud* in the Proposal to *assist each other*? Or how could it be understood to make a *false Appearance* with Propriety of Language, or common Justice? But it is remarkable, that this *Advice*, however fair and honest, was not given by the Earl, but by Mr. Cottingham, and without his *privity or knowledge*, and occasionally in Conversation with the Masters: And as to the *Subscription*, which they added; did the Earl use any Arguments to persuade them to it? Did he press them, or even *desire* them to Sign it? No, they themselves confess, that he but *barely recommended it*, as being *what their senior Master had made, and better in Form than some others, which were then produced*. He used no Arguments, he pressed them not; and they, *honest Men* (as they themselves have deposed before your lordships) made no Scruple or Objection to it. I beg Pardon: I should do Justice to Mr. Thomas Bennet, who I think had *his Scruple* to the Word *Demonstration*. So that if *false Representations* have been made, they who have made them are the guilty; they have *deceived* the Council-Board, and not the Earl; the Action was their own, free and unsolicited.

But, my Lords, not to detain your Lordships longer; one of the learned Managers seemed sensible of the force of *one Evidence* we have

to offer in Vindication of the Earl from the Charge of *Avarice*; and therefore, without denying a *publick Fact*, he was pleased by his *Eloquence* to try whether he could not bring *Charity itself* under suspicion: Whether he could not *confound* the difference between the *most worthy Generosity*, and the *Luxury and Debauchery*, and the *Riots of a CATILINE!* What innocence is *secure* against the *Power of such Eloquence*? My Lords, had he not thought *this* a Defence against the *very Foundation* of the whole Charge, he would not have *surprised* us with such an Answer: He well knew that the Earl could have *Orphans and Widows, the poorer Clergy, and the Youth of the University*, to appear and acknowledge their *Obligations* to him: *Obligations* made *greater* by being *unasked*; I cannot say *unexpected*, because every Object in distress within his Knowledge, had Reason to expect Relief. I would ask the learned Gentleman, whether Expences of *this kind* were part of *CATILINE's* *Profuseness*?

This, my Lords, will be an Answer to their oft repeated Imputations, and must clear the Earl from all *suspicion* of ever having acted from such *fordid motives*, or from any *thirst or impotence of Gain*. Is it likely that he should *incourage the highest Villany* to raise a Sum, and then *apply* it to *relieve the Poor and the Distress*? Is it credible, at the same time, that *Virtue and Baseness* should thus *jointly govern* him? Hard indeed is the Condition of the Earl, when *his very Virtues*, when *his most commendable Actions*, are turned to his *Disgrace and Injury!* But under all, it is a great Satisfaction to him, that your lordships are his Judges; and he submits his whole Conduct to your Justice.

Mr. Lingard, Common Serjeant.

My Lords, the Gentlemen that have gone before me upon this Occasion, have so fully opened the Nature of the noble Earl's defence in general, that I shall not presume to take up any more of your lordships Time, by following them in that Method; but shall confine myself to the 5th, 6th, 7th, 8th, and 9th Articles; and shall beg leave to inform your lordships what we have to lay before you, in relation to the Matters contained in those Articles. But before I proceed, I shall beg your lordships Permission to go out of those Articles, so far as shortly to observe, that in the Preamble to the Articles of Impeachment, where the several Favours and Advantages, which the noble Earl at the Bar received from the Crown, are enumerated, those which were the peculiar Marks of his Majesty's Royal Bounty to him, and those which were the ordinary Benefits and Allowances, which the Earl enjoyed in common with his Predecessors in that Office, are so blended together, and set in such a light, that at least it gives an occasion to mistake some of the latter Sort, for those of the former; if it does not amount to an Insinuation to that Purpose, in order to enhance the particular Advantages which the noble Earl has received, above what they really were.

My Lords, I should be injurious to that noble Lord, who is possessed with Sentiments of the deepest Gratitude to his Majesty, should I endeavour to lessen the Instances of his Royal Munificence towards him: And I purposely omit mentioning any thing of the noble Earl's Merit upon this Occasion (tho' I humbly apprehend that I should be thought very excusable in so doing) because I am sensible, that he chooses to owe every thing purely to his Majesty's goodness: Yet as he has (very properly as we humbly apprehend) in his Answer, set one of those Matters in its true Light; by informing your Lordships that the Annual allowance of 4000 *l. per Ann.* mentioned in the Preamble to the Articles, and which he admits to have been granted to him, during the Time he should continue Lord Chancellor, is no way particular in his Case; but that the same has, for many Years past, been constantly granted to, and enjoyed by his Predecessors; give me leave, my Lords, for a Proof of what is so insisted on; to refer your Lordships to what appears upon your own Journal, in the Case of the Lord *Somers*, upon the Impeachment exhibited against him by the House of Commons, for high Crimes and Misdemeanors; where, in the Introduction of the Charge in the 8th Article, this Appointment of 4000 *l. per Ann.* to him is alledged in Aggravation of that Charge against him. His Lordship, by his Answer thereto, admits, that during his Custody of the great Seal, he did receive the Profits and Perquisites thereto belonging, which before his Time were become very inconsiderable; and that he did also receive an Annual allowance from his then Majesty, of 4000 *l. per Ann.* being the like Pension that had been allowed to several of his Predecessors. This, we humbly apprehend, plainly shews both that this allowance has been usual, and likewise the Reason of making such allowance; which is the inconsiderableness of the ordinary Profits and Perquisites belonging to that high Station.

I shall now proceed to the Articles I proposed to speak to; in which the Matter, which is charged as Criminal upon the Earl, is, That he did illegally, corruptly, and extorsively, insist upon, take and receive, the several Sums of Money therein respectively mentioned, for the admitting the several Persons named in the 5th, 6th, 7th, and 8th Articles, to be Masters of the Court of *Chancery*; with a small variation in the 8th Article, by way of Aggravation, that there was a deficiency in that Office; which is there taken notice of: And for permitting *Thomas Bennet*, as it is alledged in the 9th Article, to resign his Office of Clerk of the Custodies; which is agreed to be a Charge much of the same Nature with that in the four preceding Articles; and is alledged to be against the good and wholesome Laws and Statutes of this Realm.

It has been strongly insisted on, by the Gentlemen appointed to manage this Prosecution, that this is a Matter which is *Malum in se*, and consequently a Crime at Common Law, as well as expressly against the Statute of 12 *Rich. II.* and 6th of *Edw. VI.* and no Means,

that could be thought of, have been wanting to represent it under all the most aggravating Circumstances, and in the most odious and frightful Appearance, that the blackest Colours could give it.

My Lords, The Earl, by his Answer, denies that he did at any time insist upon the Sum of 105 *l.* or any other Sum of Money, to permit or accept of the Resignation of *Thomas Bennet*, mentioned in the 9th Article; or did refuse to permit or accept thereof, until the said *Thomas Bennet* had agreed to pay the same, or any other Sum of Money on that Account: Which is a denial of that, which is properly the Charge in that Article: He does indeed admit, that he did receive a Present from *Thomas Bennet*, under the Circumstances mentioned in the Answer to that Article; and likewise that he accepted the Presents, which were freely and voluntarily sent to him, by the several Persons mentioned in the four preceding Articles; in two of which Instances, all, and in the other two, great part of what he so received, has been returned. But his Lordship very rightly (as we humbly apprehend) insists upon it in general, that the acceptance of Presents upon such Occasions has been long used and practised by his Predecessors; and that they have been reckoned as the antient and known Perquisites of the said Office: That it is not Criminal in itself, or by the Common Law, or against any Statute of this Realm; or subject to any Judgment, which can be prayed in this Prosecution.

The Gentlemen of the House of Commons, my Lords, in order to support what they have insisted upon, and to make it appear that such an Acceptance of Presents is Criminal, have caused the Statute of 12 *Richard II.* to be read to your Lordships; and have produced Mr. *Ayres*, to give an Account of the Ceremony, which is annually practised upon the Occasion of Nominating of Sheriffs.

I won't presume to act the Casuist, or trouble your Lordships with any Niceties, by questioning, whether what passes upon that Occasion ought to be esteemed an Oath or no; but, my Lords, I hope I may venture to say, that it is very plain, is no Oath of Office in general, for this Reason, because if it had been so, the once taking it had been sufficient; and there would have been no occasion of repeating it Annually, in the slight Cursory manner Mr. *Ayres* has given an Account of, upon one particular occasion; which likewise shews, that what is then done, is confined to that matter only, which is then transacting, and not intended to be generally obligatory in other Things.

If the accepting of Presents, upon occasion of recommending, or admitting Officers to Places, had been understood to be Criminal, in the Eye of the Common Law, or against the Statute of 12 *Rich. II.* no doubt, but in so great a length of Time, Precedents might have been produced, where Persons had been censured, or punished, for a Practice, which has been represented to your lordships as the most vile, and pernicious Sort of Bribery and
Corrup-

Corruption; and yet, notwithstanding the many marks of the Severity of the Government against Bribery and Corruption, which have been taken Notice of, the Gentlemen of the House of Commons have been pleased to acknowledge, that there is no Precedent, no Judgment to establish and warrant what they assert to be Law in this Point.

My Lords, I beg leave to say, that a stronger Argument than this, can hardly be thought of, to prove that this Behaviour is not illegal: It is a method of reasoning in our Law, and, I conceive, consonant to the general reason of Mankind; That where a Thing never has been done, it is to be supposed there is no Ground or Foundation for the doing it. Nor can this Way of Reasoning be avoided, but by supposing that there never have been any Instances of this Nature before, or those so rare, and private, that the Government had no Opportunity of taking notice of them: A Supposition, my Lords, so extraordinary, that there is hardly room to admit of it: And therefore, when we shall, with your Lordships Permission, lay before you, Instances of this Thing having been frequently and openly done; it will not be so much in order to prove the contrary of such a Supposition, as to give an opportunity to your Lordships, and to intreat you to reflect on the great Abilities, and unquestionable Integrity of those excellent Persons, who have acted in the same Manner; the Notoriety and Openness with which this has been transacted, and the perfect Silence of the grand Inquisitors of the Nation, and the whole Legislature in Regard thereto: And then to consider, the Clearness and force of such a Comment upon the Law, both from the Actions of those, whose Characters will not allow of a Suspicion, that they would act contrary to what they apprehended to be the Law: And from the Silence of those, who should and would, no doubt of it, have taken severe Notice of it, if it had been thought to have been so.

But suppose, after all that has been said, that this was still a doubtful Point, would it not, my Lords, be extremely hard to rouse up an old antiquated Law, which for so many Centuries has quietly slept, without exerting it self, without fixing any mark, or leaving any Traces of its Force and Vigour, to point out the Danger attending such a Practice; a Practice that has been owned and countenanced by such great and unexceptionable men, and objected to by none; and which from thence, might well receive the Appearance of being fair and innocent: Would it not, I say, my Lords, be very hard, without some previous Notice of the Danger, to put this Law in Execution, to unsheath this rusty Sword, to wound this Noble Earl with? We hope your Lordships would think so, if it were capable of hurting him, which we humbly apprehend it is not; and that, if there is any Doubt remaining with your Lordships, as to the legality of the Earl's Behaviour in this Point, that the Statute of 6th. of *Edw. VI.* will clear it up beyond question; and that it will manifestly appear by that Statute, that accepting of Presents is neither *Malum in se*, against the

Common Law, or the Statute of *Rich. II.* and that this Statute of *Edw. VI.* must be looked upon as a declarative Law in those Points, or otherwise, it must be allowed (which none sure will suppose) that the Legislature of this Kingdom has made a Provision to sanctify a moral Evil; (for that is the Import of *Malum in se*) to allow, permit, and even encourage, contrary to the Statute and Common Law, a Practice not only immoral, and vile, but of the most pernicious Tendency and Consequence, if the Representation made of it by the Gentlemen of the House of Commons is to be regarded.

My Lords, I shall pass by the fourth Paragraph of that Statute, whereby it is provided, that the said Act should not extend to Offices of Inheritance; tho', I presume, the Largeness of the Estate can hardly be thought to alter the moral Nature of the Action. By the 6th Paragraph, there is a Saving for all Bargains, Sales, Promises, and Agreements, of or for any Office, made before the first of *March*; and such Bargains, Sales, and Contracts, are exempted out of the force of that Act. Your Lordships will be pleased to observe, This Session of Parliament began the 23d. of *January*; so that this saving Clause makes a Provision for Futurity. My Lords, this would be to establish Iniquity by a law, if the accepting a Present on Occasion of admitting a Person into an Office, was immoral and criminal, as has been asserted. But if it were so, and likewise against the Statute of 12 *Rich. II.* and contrary to the supposed Oath, taken in pursuance of that Statute; what, my Lords, must be thought of the last Paragraph, which provides, that the Act should not extend to the Chief Justices, or Justices of Assize, that then were, or thereafter should be? These all Annually take the same Oath (if it is to pass as such) upon the same Occasion of nominating of Sheriffs, as Mr. *Ayres* has informed your Lordships; and are consequently, by Virtue thereof, under the same Obligation in this respect, as a Lord Chancellor: And can your Lordships suppose that so many Reverend and Learned Persons, who, from their known Duty of Attendance, must be presumed to be present in your Lordships House, whilst this Law was there under Consideration, would have forborn informing their then Lordships, how contradictory those Parts of this Statute were to the Common Law, and the Statutes of this Realm, especially that of *Richard II.* Can it possibly be conceived, that the whole Legislature would pass a Law, not only to allow, in several Instances, the Practice of what was so contrary to the Law of Reason, as well as the Common and Statute Law; but even to give a Licence, and Encouragement, to break an Oath prescribed by Statute, and Annually repeated? And that no Body should ever scruple the doing so, or discover the Illegality of this Practice, but upon this unfortunate Occasion? And yet, my Lords, monstrous as these Suppositions are, they must (as I humbly conceive) be allowed of, or it must be granted that such Acceptance of Presents is not *Malum in se*, or contrary to the Statute of *Richard II.*

II. And I hope it is plain, that this Statute of *Edward VI.* is in effect a declarative law in those Points.

My Lords, The Gentlemen of the House of Commons seemed sensible of these Difficulties; and therefore they have with great Industry, endeavoured to distinguish what the Earl has done, from the common and ordinary way of accepting of Presents, upon such Occasions. They have told your Lordships, that his method was Haggling and Extorsive; and have given it abundance of other hard Names: They have, to confirm it, informed your Lordships, that the Prices lately given, have been higher than those formerly accepted upon the like Occasions: Tho' they have not condescended to attempt the Proof of it.

My Lords, As the manner of the Earl's taking of Presents will depend in a great measure upon the Evidence, which has been offered to your Lordships, upon these Articles; I shall beg leave to take some short Notice of it. As to the 9th Article, *Mr. Thomas Bennet* has been pleased to inform your Lordships, that he did desire to have the Earl's Recommendation of *Mr. Hamersly*, to succeed him as Clerk of the Custodies; and that being told at the second meeting with *Mr. Cottingham*, that a Present would be expected, he said it was a very hard and unreasonable Thing to expect a Present from him, who had so lately paid a large Sum, upon his being admitted into his other Office: But upon its being insisted on, that 100 Guineas should be paid, he was forced to comply therewith, and agree to pay it.

My Lords, I humbly insist upon it, that if an entire Credit were to be given to what *Mr. Bennet* has said upon this Occasion, it would not amount to a Proof of the Charge contained in this Article: The Corruption and Extortion therein complained of, being restrained to the Consideration of permitting and accepting the surrender of the Office there mentioned; all the other Parts of that Article being only introductory to, or in Aggravation of that supposed Offence. But *Mr. Bennet* has not mentioned to your Lordships one Syllable of the Earl's having refused to permit or accept a surrender of that Office, or of his having received any Sum of money in Consideration of his permitting or accepting *Mr. Bennet's* Surrender thereof.

But, my Lords, we must beg leave to submit it to your Lordships Consideration, what Credit is to be given to *Mr. Bennet's* Evidence, so far as it does go, for this Purpose. The Gentlemen of the House of Commons have thought fit to call *Mr. Cottingham*, as a Witness to this Article; who owns that in his first Discourse with *Mr. Bennet* upon this Occasion, he told him, he believed a Present would be expected to the Great Seal, and that *Mr. Bennet* freely offered 100 Guineas, before *Mr. Cottingham* spoke to the Earl about that Affair. He expressly contradicts *Mr. Bennet* in what he said of *Mr. Cottingham's* insisting upon 100 Guineas, and *Mr. Bennet's* Agreement to give that Sum at the second meeting, *Mr. Cottingham* swearing, that the offer of 100 Guineas was voluntary on

Mr. Bennet's Part; and that it was at their first meeting. There are several other Contradictions in their Evidence; but I shall only take Notice of that, where *Mr. Bennet* pretends, that *Mr. Cottingham* asserted he did not know *Mr. Hamersly*, his next door Neighbour. This *Mr. Cottingham* denies, and *Mr. Bennet* is forced in some measure to retract what he had so positively sworn; and comes down to a Belief only, that *Mr. Cottingham* said so, but will not be positive.

It is something surprizing, that after they have done *Mr. Cottingham* the Honour to call him as a Witness, and given him a Credit by so doing, Hints should be flung out, that *Mr. Cottingham* knows no body, except where there is Gold in the Case; that Gold is a great clearer of the Eye-sight, and the like Insinuations, to the lessening his Character. But why then did they call him as a Witness? Surely, my Lords, if he is a Person not to be believed, it was not altogether so proper to produce him as a Witness before this August Assembly. But, my Lords, we shall ease them in that matter, by thoroughly establishing *Mr. Cottingham's* Reputation; tho' it is something unusual to support the Reputation of a Witness produced by the other side: And we hope your Lordships will then find no difficulty in determining whether *Mr. Bennet* or *Mr. Cottingham* deserves most to be credited.

In support of the 5th Article, *Mr. Kynaston* is called as a Witness. I shall take no notice of any part of his Evidence, but what relates particularly to the Charge in this Article, the money paid upon his Admittance, and the Circumstances of that Transaction. *Mr. Kynaston* indeed has said, that he would willingly have paid but 1000 *l.* upon his Admittance; and accordingly offered that Sum, which *Mr. Cottingham* would not hearken to; and therefore he submitted to pay 1500 Guineas; but he owns at the same time, that he has not a very exact Remembrance of what passed upon this Occasion. *Mr. Baily*, to whom *Mr. Kynaston* refers, and who was his Agent in this Business, in his Evidence has given your Lordships an Account, that *Mr. Kynaston*, when he understood that 1500 Guineas was apprehended to be the Present he intended to make, said, that he thought it was only 1500 *l.* but mentions nothing of the Offer of 1000 *l.* It is very strange, if that had been the Case, that he should not have taken notice of that likewise. But *Mr. Cottingham*, who is again called as a Witness, shews the reason why no notice could be taken of such an Offer; and that is, because there really was none such. He denies that *Mr. Kynaston* offered 1000 *l.* and swears that the Sum offered by *Mr. Kynaston*, was 1500 Guineas, and withal declared, that he would acquiesce under what the Earl should think fit in that matter; and informs your Lordships, upon his being interrogated by the Gentlemen of the House of Commons to that Purpose, that he never did acquaint the Earl with what passed upon that occasion till the whole thing was agreed and settled; and that, when he was informed of it, he expressed himself to be well satisfied therewith. Surely, my Lords, here are no extraordinary Endeavours or Artifices used to enhance the Price; no haggling, by first naming one Sum, then another,

ther; but at once the matter is proposed, and at once agreed and concluded.

To prove the 6th Article, my Lords, Mr. *Thomas Bennet*, is called again; and here again the like misfortune happens as before; Mr. *Bennet* differs widely from Mr. *Cottingham*, who is called upon the same side to prove the same Article. Mr. *Bennet* says, that he acquainted Mr. *Cottingham*, that he thought 1000 *l.* was enough to give upon his Admittance, and with his Reasons for such Opinion; but that, however, he was willing to give 1000 Guineas. Mr. *Cottingham* has Sworn that no such Offer was made, that nothing of that Nature passed; but that Mr. *Bennet*, upon being informed what had been done before upon the like occasions, freely offered fifteen hundred Guineas.

My Lords, The very nature of the Thing, upon the Circumstances agreed on all Hands, speaks strongly in favour of Mr. *Cottingham*, and in contradiction to Mr. *Bennet*; as to what is asserted by each of them upon this occasion. Your Lordships observe what condition the Earl is agreed to be in at that time; had Mr. *Bennet* apprehended that he had so very hard terms put upon him, as he would not have your Lordships believe he did: Would he not have staid some little time, to have seen the effect of so violent a distemper, as a Pleuretic Fever, which his Lordship then laboured under in a very high degree? especially when Mr. *Bennet* appeared at the same time to be in no very good State of Health himself; of which he was reminded by Mr. *Cottingham*; who was so far from acting the rapacious part, in behalf of the Great Seal (which was not in a way to suffer, by the admission of a Person likely to make a new vacancy by Death) that perceiving Mr. *Bennet* to look yellow, and out of order, he desired him to consider what he was going to do, when he took a Place for Life in his Condition. Mr. *Bennet* told him, it was only a Cold; and that therefore he would proceed. This Gentleman, who was so cautious, as he pretends, as to the Sum he was to give upon his Admittance, and which he then thought to be so unreasonable, hurries on this Affair, under these Circumstances of his own, as well as the Earl's State of Health; and tho' out of order, as he himself owned, presses an extorted Sum of 1500 Guineas, into the Hands of, probably, a dying Chancellor. Will not your Lordships think it more likely, that Mr. *Bennet* apprehended, that as the Price of Things then went, he might not, under a new Chancellor, come into the Office upon so easy Terms as were then offered him; rather than that he thought himself to be hardly used upon that Occasion? And here, my Lords, I beg leave to take Notice of what has been urged, to induce your Lordships to look upon this Acceptance of Presents, by the Earl in particular, to be extorsive; which is, that the Sums of money given upon these, and the like Occasions, are lately greatly increased. Your Lordships will be pleased to observe upon what has hitherto appeared, that the Sums taken by the Earl upon the Admission of a master into the Room of one deceased, have been constantly less than what the masters, who have resigned, have had as a Consideration for so doing. And it is very easy to account for the late increase of the Sums given upon these Occasions, without any Extortion in the matter. As personal Estates have vastly increased within these few Years, and Settlements, and Provisions for Families, have been made out of the Publick Stocks and Funds, the

Business of the Court of *Chancery* hath increased proportionably; and consequently, People would be more desirous of, and give more money for the Purchase of these Offices, which were improved by such increase of Business. And as the common Interest of money is grown lower; it is natural to suppose, that People would be the more ready to invest their Fortunes in those Things, which were likely to produce a better Income, even in Proportion to the risque that was run upon their Lives, than could be made of money in an ordinary way. But whether that, which I have mentioned, or whatever else may be the Cause of it, it is so plain and notorious that all Places and Offices have of late Years increased in their Value, that it would be mispending your Lordships time to enter into the Proof of it.

My Lords, As to the Admission of Mr. *Elde* into his office, and the Acceptance of a Sum of money upon that occasion, which makes up the Charge contained in the 7th Article; and as to so much of the 8th Article, as relates to the like Transaction with Mr. *Thurston*; there is not the least Colour or pretence from the Evidence, which has been given to support those Charges, to ground a Supposition of Haggling, or driving a Bargain. On the contrary, from that very Evidence it appears, that what was done by Mr. *Elde*, and Mr. *Thurston*, was perfectly free and voluntary; and attended with a good deal of Solitude and Uneasiness in the latter, lest his Offers should not be accepted; the Circumstances of which I shall not trouble your Lordships with repeating. And tho' from the Troubles he has since met with in that Office, he has something altered his opinion of it, your Lordships will be guided by what he then thought, and acted. Your Lordships will be pleased to observe from the same Evidence, that great part of the money presented by those Gentlemen, has been returned to them again; and tho' it is some time afterwards before it was done, it was plain, there was a much earlier Intention of doing so. Mr. *Elde* has informed your Lordships, that in *May* following his Admission the Earl intimated to him, that he would return part of the money; And Mr. *Thurston* received several messages, which plainly appeared to be in order to a Return of part of the money which he had given; tho', on occasion of his being out of town, it was some time after before he knew the meaning thereof, or had the money returned.

My Lords, There is one particular Circumstance in the 8th Article, which has taken up a great deal of your Time; that, I mean, of the Deficiency in Mr. *Borret's* office. Why that matter was inserted there, and why it has been so much laboured, and your Lordships troubled with so much Proof about it, I must own myself at a loss to conceive; unless it be allowed and admitted, that the taking of money, upon the Admission of a Person to the office of one of the masters of the Court of *Chancery*, is not purely and simply *Malum in se*, illegal, and contrary to the Statute of *Rich. II.* but that, if it be done to raise money to make good the deficiency in the office, as was done in the Case of Mr. *Edwards*, which your Lordships have upon this occasion heard of, it is right and well. How otherwise can the Deficiency in the office be an Aggravation of the supposed Crime of taking a Present upon the Admittance of a Person into it? Is it unreasonable to admit a new master into an office wherein there is a deficiency? Is it not as necessary to fill up that Vacancy as any other?

Certainly more so, in order to have one, whose Duty obliges him to a more particular Care of the Affairs thereof, which seem more to want it. The Aggravation then of the Fault, or rather the Fault itself, must consist in the not applying the money received, towards the discharge of the deficiency. But how can it be a Fault not to do so, unless there had been an obligation so to have applied it? And how can there be an obligation to make such Application of the money, where there is so strong an obligation, as has been insisted on, not to raise any money at all by such means? My Lords, we humbly apprehend, that the endeavour to aggravate what is charged as a Crime in this Article, has weakened, at least, what is laid as the Foundation for its being a Crime; and this with little or no Success in the Proof, attempted to be made of this matter; so far, I mean, as relates to the Earl's Knowledge of the Deficiency, or his want of Care to be informed of the State of that office.

I won't repeat what Mr. *Godfrey* has said upon this occasion; your Lordships perceive that he and Mr. *John Bennet* were thought the fittest Persons to inspect the Affairs of Mr. *Borret*, after his decease; and were accordingly appointed to do so: And upon having examined Things, as well as they then could, were both of opinion, as Mr. *Godfrey* says, that there was no likelihood that there would be any Deficiency; and with this the Earl was acquainted. Mr. *Bennet* indeed, differs something from Mr. *Godfrey*, as to the Account which he gave of this matter; but not so much, tho' his Account was to be taken, as would answer the purpose for which he was called; the aggravating the Charge in this Article against the noble Earl; who, there is no Room to doubt, would have acted as generously in this Case, as he did in the Case of Mr. *Edwards*, upon his coming into *Dormer's* office, if the Circumstances, as represented to him, had been in any near degree alike.

My Lords, I have thus stated the matter of these several Articles, to the best of my Remembrance, in its true light, as it stands upon the Evidence already given. We shall beg leave to call some Witnesses to prove, that several noble and great Persons have taken Presents upon these occasions; men of excellent Characters; some of whom several of the Gentlemen of the House of Commons have taken such Notice of, that I may safely venture to say, they will concur in the Opinion, that they were Persons of so much Integrity, that they would not have taken such Presents, if they had thought it illegal so to have done; and of so great Abilities, that their Judgment must be of the greatest weight in this Point. We shall further trouble your Lordships to explain the nature of the Payment of 64 *l.* which Mr. *Thomas Bennet* told your Lordships he made, over and above the 100 Guineas, paid by him on Account of the Office of Clerk of the Custodies. He might, no doubt, if he had pleased, have informed your Lordships, that the most part of this 64 *l.* was either paid to the Clerks of the Office, or belonging to other Officers, and that not above 33 *s.* came to the Great Seal; and we apprehend that to have done so, would have been more agreeable to the Sincerity, with which a Witness ought to speak, than to have left it in that general manner, where it might look like another Payment to the Earl. And I hope your Lordships will excuse my observing upon this Occasion, the unhappy Circumstances of the noble Earl at the Bar: If he takes a small Sum, as this of the 100 Guineas for Instance, it is poor, pitiful, and a Prostitution of his

Honour; if a larger Sum is taken, he is avaricious, greedy, rapacious, and I don't know what: Tho' your Lordships will observe, the Sums accepted are regulated according to the Nature of the Office, on Account of which they are given. My Lords, his very Care in other Instances is made his Fault, his Actions must be all supposed to be done with corrupt Views; and yet his not Acting is equally blamed; it is Carelessness, and Neglect. This is the Light in which his whole Behaviour has been set before your Lordships, and that with all the Aggravations and Vehemence imaginable. But it is your Lordships, who, in a superior and calmer Station, are to weigh and judge of these matters. It is from you the noble Earl is to expect Judgment; and it is his Happiness, that it is so. And in order thereto, when we have laid this Evidence before your Lordships, together with an Order, which shews the Payment of the monies received from Mr. *Thomas Bennet* and Mr. *Kynaston*, into the Court of *Chancery*; we shall submit the matter of these Articles to your Lordships. And notwithstanding all the severe Things which have been said upon this Occasion, we humbly hope your Lordships will be of Opinion, that the noble Earl at your Lordships Bar, is not guilty of any of the Charges contained in these Articles.

Mr. *Serj. Probyn*. My Lords, we now proceed to call our Witnesses, and to prove the several Facts we have opened; and we beg leave to proceed in the same method as the Gentlemen, who are the Managers for the House of Commons, have done. As they began with the 9th Article, so we in our Evidence shall likewise begin there; and shew that Presents have constantly been made to the Great Seal upon all Admissions into the Office of the Clerk of the Custodies; and that in many other Offices under the Direction of the Great Seal, Presents have been usually made by the respective Officers on their Admissions; and this hath been the known uninterrupted Usage; and every Chancellor hath taken them as customary Presents. We desire, in the first place, that Mr. *Roger Lewis* may be called.

Mr. *Roger Lewis* sworn.

Mr. *Serj. Probyn*. We desire he may be asked, how long he hath been concerned as a Deputy in the Office of the Clerk of the Custodies?

Mr. *Lewis*. I have assisted as Clerk of the Custodies of Lunatics and Idiots, for the space of about 35 Years.

Mr. *Serj. Probyn*. I desire he may be asked, who was the first that came into the Office of Clerk of the Custodies in his Remembrance?

Mr. *Lewis*. Mr. *Henry Wynne* was the first that came in after I was Clerk there.

Mr. *Serj. Probyn*. Who succeeded Mr. *Wynne*?

Mr. *Lewis*. Mr. *Roger Thompson*?

Mr. *Serj. Probyn*. I desire he may be asked, whether Mr. *Thompson* be now living or dead?

Mr. *Lewis*. Mr. *Thompson*, as I have been informed, hath been dead about these 9 or 10 Years past.

Mr. *Serj. Probyn*. I desire he may be asked, whether any Present or Compliment was made to the Great Seal on Mr. *Thompson's* Admission?

Mr. *Plummer*. My Lords, I object to the Answering of that question; and desire to know, whether your Lordships will have Evidence against Gentlemen that are dead, who are no way capable of Answering for themselves before your lordships here? If my Lord can shew any Title or Right he had to sell this Place, we are ready to hear him; but to give Evidence against a Person that is dead, and cannot speak for himself; I submit that to your Lordships.

Mr.

Mr. *Lutwyche*. My Lords, this matter is very proper to be objected to now, and it is very necessary for your lordships Determination in the Beginning of this Affair. I see by this Question, and their Opening, what large Compass the Gentlemen have taken, not only as to these Offices, but as to many other Offices for which Presents were given. I take the proper Question before your lordships to be, Whether this be lawful by the laws and Statutes of the Realm? and if that be the Question, I submit it whether it is material to give an Account what other Persons have done? Whether, when a Person is brought upon a Prosecution for an Offence against the Law, it be material for him to say, that other Persons have been guilty of the same Crimes? This is a Question at Law upon the Construction of the Statute; and they say it is necessary for them to give these Instances, to shew the Judgment of those great Persons upon the Act of Parliament; but sure I am, it was never yet attempted to give in Evidence the Actions of other Persons in order to expound a Statute. The Exposition of a Statute must be founded on the Words of the Law, and not on the Actions of other Persons. In all the Experience I have had in cases of Prosecutions for Crimes founded on the Common Law, or on Acts of Parliament, Gentlemen argue from what the law is, what Authorities have been in those Cases, and what the Construction hath been in former Judgments. My lords, this is a matter of great Consideration to your Lordships, not only upon the Account of the Precedent, but also upon the Account of the Time that your Lordships are like to spend, if you are to go through all the Offices of the law, to shew how many great men have accepted Presents. It will take up a great deal of Time, without any Fruit at all. But, my Lords, there are other Considerations which will prove it unreasonable to admit of this Evidence: At present your lordships have under your Consideration the Case of this noble Lord within your Bar; but would they in Defence of him impeach others, not here to defend themselves? Many of them are dead, others are living: Will you try Persons not accused, and without being present to answer for themselves? But, my lords, with respect to ourselves, is it reasonable for us to take upon us the Examination of several Facts, without knowing who the Persons charged are, what the Circumstances of the Case were? Are we to shew the Difference, or state the Circumstances? It is impossible for us to do it. My Lords, this being the Nature of the Case, it is a matter for your lordships Judgment, now in the Beginning, that your lordships may see the Extensiveness of the Evidence they have hinted at, and intend to produce. That which we insist upon is two things, that it is not material, and that there is no manner of Notice for the Persons so charged to make any Defence, or to shew how the Circumstances of the Case were. So, my Lords, we must beg leave to have your lordships Judgment in this matter.

Mr. *Sol. Gen.* My Lords, if the noble lord produceth any one to make out his Innocence, we do not oppose it. But if the noble Lord endeavours to shew what the law is, from the Practice of other People, it is altogether improper. It is impossible that the law can be judged of by the Practice of other People in committing the same Facts. That can't have the Weight of the Opinion of a great Man. The Opinion of a learned Person, not con-

cern'd in the Question, is an Opinion of weight; but the Opinion of a Person concerned in the Question, is not to be look'd upon as of any Authority. If the noble Lord makes use of this kind of Evidence, by way of mitigation, or of lessening his Offence, in that View it can be of no Significancy: Because the Aggravation or Mitigation of the noble Lord's Offence must arise from the particular Circumstances, Manner, and Facts of his Offence. We must submit it therefore to your lordships Consideration, whether this is a proper Inquiry or no.

Mr. *Serj. Probyn*. My Lords, we beg leave to insist upon it, that this is a proper Question, and very material for the noble Earl's Defence. He hath insisted in his Answer, 'That what is objected to him in this Instance, hath been long used and practised in the Time of his Predecessors; and that such Presents have been reckoned among the ancient and known Perquisites of the Great Seal; and the making and accepting thereof hath been notorious to all the World, and never before looked upon to be criminal, or complained of as such; and that he humbly hopes, that the giving or receiving of a Present on such an Occasion, is neither criminal in itself, nor by the Common Law of this Realm; and that there is not any Act of Parliament, by which the same is subjected to any Punishment or Judgment, which can be prayed in this Prosecution; and the said Earl further hath said, that he thinks himself obliged humbly to lay this before your lordships, not only in his own Defence, but in Vindication of the Honour of so many great and excellent men, who have been his Predecessors in the same Office, and have all along done the same, for which he is now complained of; and also of others, who have been Lord Chief Justices of the King's Bench, and Common-Pleas, Masters of the Rolls, and Judges, who have likewise received Presents in money, upon the Admission of the several Officers under them in the respective Courts of Justice wherein they presided; and who, the said Earl is assured, never apprehended themselves to be guilty of any Crime against any the good and wholesome Laws or Statutes of this Realm: And therefore we take it to be our Duty to give proper Evidence to support this Part of the noble Earl's Answer.' But, my Lords, it is objected by the Gentlemen that are Managers for the House of Commons, that they are not prepared to enter into this Proof, because they had no Notice that such Evidence would be given: In Answer to which we humbly submit it, that the Answer the noble Lord hath given, that several presiding Officers in the Courts of Law and Equity have always received such Presents, is sufficient Notice to them to be prepared to answer such Evidence as might be offer'd to support this Allegation. My Lords, as to the other Objection, that the Opinions of great men are not Evidence in their own Cases, we submit it that in this Case it is a material Circumstance. Though the Precedents of great men, (whose Names they are unwilling to hear) who have taken Presents in like Cases, and not thought it criminal, may not controul your Lordships Judgment in this Particular, yet I humbly apprehend that such Instances cannot but have great weight in the Event of this Case. They are material Circumstances, strong Inducements to incline your Lordships to believe, that this noble Lord had

had no avaricious, no corrupt Design, in accepting the common customary Presents that were voluntarily tendred to him. And since it is made so material a Part of his Defence, and that he might well think himself innocent and secure in following the Examples of so many honourable and learned Persons, of which we are prepared to give your lordships many Instances in Evidence; and since they have Notice of it, and that the noble Lord hath insisted upon it in his Answer, we humbly beg your lordships will admit us to give the several Instances in Evidence.

Mr. *Com. Serj.* My Lords, I beg your lordships Patience. My Lords, we humbly apprehend this is very proper and regular Evidence. I think there can be no Evidence more proper. If the noble Lord should have the Misfortune to be thought culpable, will he not appear under another View to your lordships, when he hath had the Concurrence of several great Persons, of whose Integrity, Honour, and Knowledge, no Question hath ever been made? If he himself hath introduced this Practice, and set it up by himself, it will then most certainly be an Aggravation; if he hath done no more than others have done, it will be an Extenuation. My Lords, taking it in that light, there is no Reason why this Evidence should not be given. But, I hope your Lordships will further consider of the present Case: Here is a law insisted upon, of several Hundred Years standing, that makes this Criminal: It is owned that there hath been no Determination or Judgment at Law that this is Criminal: Practice, especially in Respect of old Statutes, hath oftentimes been allowed and admitted to explain the Sense and meaning of those Statutes. There are no Records preserved of this, and therefore we are under a Necessity to confine our selves to such Evidence as we can produce of living Witnesses, and therein we apprehend we are proper, as it is Part of the matter in Issue before your lordships. Your lordships are as well to try the Earl's Answer, as the Commons Articles. Another Circumstance they are pleas'd to mention against receiving this Evidence, is, the taking up of your lordships time. Your lordships have had the Goodness and Justice to hear, with great Patience, a very long Evidence, with repeated Observations and Openings of the Articles, in order to prove a noble Peer, one of your own Body, to be Guilty: Can it be supposed that your lordships will not have that Patience, which is due to all People in Favour of Innocence, and when one of your own Body stands impeached? For these Reasons we humbly hope that this Evidence shall be admitted; and that the noble Earl shall have the Benefit of this Explanation, what the Sense of so many great and excellent men hath been of this old and doubtful Statute.

Mr. *Robins.* My Lords, we apprehend your lordships will not be of Opinion, that this will be to defend the present Impeachment, by the Impeaching of others. We lay it down as the Foundation of our acting, that our Predecessors have done the same, notwithstanding this Statute of *Edward* the VIth, and therefore it is a reasonable Inference, that this was not taken to be within the said Statute. We apprehend it cannot reflect upon any that are either Dead or living; and that, as we are in Defence of this noble Lord, we are at liberty to examine Wit-

nesses, to prove that other Persons, his Predecessors, have done the same.

Mr. *Strange.* My Lords, I apprehend we have the same Right to justify our selves by Precedents, as they have to accuse us by Precedents. What the noble Earl's Predecessors in other Instances have done, hath been mentioned by way of Aggravation. The Case of Dr. *Eddisbury* hath been mentioned over and over by the Gentlemen of the House of Commons; and they have aggravated the Offence of the noble Earl, for not following that Precedent; and as they had a Right to aggravate the Earl's Offence, by not following the Precedents of his Predecessors, so we think we have the same Right to shew in other Instances, that we have followed the Examples which have been set us by our Predecessors. But they say, this is against law: Whether that is so, or not, is the Question; and it will be material for the Decision of that Question, to take into your Consideration, what hath been the Opinion of great Men in all Ages, upon this Act of Parliament. Continual Usage, from time to time, even from the making of the Act of Parliament, is the best Exposition of that law. Contemporary Usage, or the Opinion of those, who were at the Time of the making of a law, hath always been esteemed the best Interpretation of that law; and therefore, as we shew the Usage to be conformable to what we now insist upon, I humbly hope it will have a great influence upon your lordships, as to the Exposition to be now put upon this Act of Parliament: It hath been said, This Way of Proceeding tends to accuse great Persons of Honour, &c. some that are dead, and some that are now living; we shall not enter into so nice a Debate: it is sufficient for us that it is proper and necessary Evidence for the Defence of our Client. It is a material Evidence in this Case, whether other Persons have disposed of these Offices, and have incurred any Penalty; if they have done it, I humbly apprehend that no Objection remains against our entering into the Evidence of that Kind. Whatever is your lordships Judgment in Point of law, it is material for your lordships Consideration, whether this noble Lord hath set this on foot of his own Accord, or hath not trod in the Paths of his noble Predecessors? Your lordships will take it into your Consideration, and whatever the Point of law may happen to be, it must be said, that if this noble Lord did err, he erred with his Predecessors.

Earl of *Macclesfield.* My Lords, I would not trouble your lordships, if I did not think it necessary to insist upon your lordships admitting this Evidence: Indeed, if I thought it would impeach the Character or Reputation of any of the noble lords, who have been my Predecessors, whether they be now dead or alive, I would undergo any Punishment rather than do it. But I hope it was innocent, both in them and me; and that its being done by Persons of such unblemished Honour, will be one strong Argument of its being so; and, my Lords, I protest their Example was the single Reason with me for doing of it; and if it had not been done before, I would not have done it: This was the true Ground of what I have done. For what these Gentlemen say, my Lords, that this is not material, and that the law must be proved by law Books and Judgments, I thought the common law

Law was common Usage, and that which hath constantly and openly been done without being censured or blamed, cannot be contrary to common Law. If this be not allowed, I am highly obliged to these Gentlemen, that they have not accused me for taking money in many other Instances, relating to my Office; to instance in one only, upon the passing of every Patent there is a small Fee due, and constantly paid to the great Seal; if they had accused me of this, and called it criminal, I know not what to have said to it, unless Usage and Custom had justified it; I claim it as a Right, and unless Usage will prove the Right, I know no other Way. I own this is something different: In that Case, I insist on a particular Sum by Usage: I do not insist in this Case that there is a particular Sum due as a Fee, but that I had a Right, or Liberty, to accept of such a Sum as the Party should give: But, say the Gentlemen, this Evidence is to make other Persons Criminal; That is very true, if this be a Crime. These Gentlemen take it for granted; but whether it be a Crime or no, will be for your Lordships final Determination: And I hope your Lordships will not be of Opinion, that it is a Crime. If it should come out to be in your Lordships Judgment a Crime, it will be a great Censure upon my Predecessors, who all, as it is well known by every body, did the same Thing. But if this be understood to be a matter, that is admitted to have been practised, and to need no formal Proof, I had rather let this Examination alone: It is uneasy to me, to enter upon any thing that can draw a Reflection upon any Person: Therefore I submit it to your Lordships.

Mr. *Serj. Pengelly*. My Lords, The managers are accountable to the Commons for any Thing they admit without their Direction; therefore, unless they are satisfied and convinced that they ought to admit it, it is not to be expected for the managers to do it. It is said, that the Things offered are in Extenuation: That it would be a greater Guilt, if there were not former Examples to justify it: I apprehend for that Reason it is an improper Time to insist upon this now: Because matters of Aggravation or Extenuation must come subsequent to your Lordships Determination on the Articles, and will be the Consideration of your Lordships, when you come to consider of the Judgment that is to be given. I have known by frequent Experience, in Prosecutions of a Criminal Nature, that where the Defendant hath been convicted, he hath been allowed to lay Circumstances before the Court, in mitigation of the Punishment: And if, hereafter, this comes to be considered of in this manner, the managers will have an Opportunity to give a proper Answer thereto. If in this Answer he had insisted on it as an established Fee supported by Custom, and had claimed it as of Right, it had been proper to have examined Witnesses in Support of that; but when he insists upon it as a matter of Discretion, and

of Explanation of an Act of Parliament, we cannot admit it. It is not proper to give, in Evidence, that which doth not make good the Defence in Answer to the Articles. We cannot admit a Thing of this Nature, which may be attended with great Inconveniencies. We do not know what may be grafted on such an Admission; therefore we beg Leave to submit it to your Lordships Determination.

Mr. *Lutwyche*. My Lords, It is said very roundly, That this is an old doubtful Statute, and therefore you ought not to take Notice of it. As to the doubtfulness of it, I believe it is too plain; as to the Obsolescency of it, it is a Statute that is read every Year in the Court of Exchequer. And therefore whatever Doubts may be of this matter at the Common Law, yet this Statute makes it plain. And I desire the Counsel for the Noble Lord to tell us, where any Statute is more plain and positive; and wherein they have shewn the least Doubtfulness in the World, but rather object that it hath gone too far. Doth any Judge, in Point of Evidence, on an Indictment for Breach of a Statute-Law, permit Persons to give Evidence, that others have been guilty of the same Facts, and that therefore it is no Breach of the Law? Suppose this is to be considered as doubtful, on Construction of the Statute, what then is the common ordinary method? It is well known, that the Jury find the Fact specially, and it is referred to the Court for their Opinion on the Law. My Lords, give me Leave to mention how this matter is; here is an Act of Parliament, a general Act, the Judges are to take Notice of it, it is plain and positive; the Counsel make a Doubt on the Construction of this Statute; it is insisted upon, that other People have done it, and have not been punished; and would such a Thing be ever permitted to be found by a Jury, or would any Regard be had to it if found? I apprehend the noble Lord, who hath been a great master of Evidence in his Time, would not have permitted it to be done: They have shewn no Precedent for it: In its own Nature it is unreasonable. Are we to examine into the particular Manner and Circumstances of every particular Case of the several Persons that are now either Dead or Living? It is unreasonable, it is unprecedented, to offer such Evidence; and I hope your Lordships will not admit of it.

Mr. *Plummer*. My Lords, the Counsel for the noble Lord take that for granted which we deny. The admitting these Witnesses to be examined, is admitting that it is not a Crime. Reputation is of great Value, and great Care ought to be taken of it; and we are willing to take Care of the Reputation of the noble Lord's Predecessors. I am not a Lawyer, but I never heard that that was not a Crime, which an Act of Parliament says is so. And that this is a Crime, I beg Leave to remind your Lordships, that he himself declared so to the

masters in Chancery, that they had bought their Places against Law. I take that to be a fair Confession that his Opinion was, that it was a Crime.

Lord *Lechmere*. Before the Counsel withdraw, I would have this Question explained to me by the Counsel of the noble Lord, Whether this Practice be insisted on as a Proof of a Right in the Great Seal to take this as a Perquisite, or whether it be offered as an Extenuation?

Mr. *Serj. Probyn*. My Lords, we insist upon it in both Respects.

Then the Managers and Counsel were order'd to withdraw; and after some Time, being called in again,

Lord *Chief Just. King*. Mr. Serjeant *Probyn*, It is their lordships Judgment that you are at liberty to proceed in your Evidence, as you were going on.

Mr. *Serj. Probyn*. My Lords, we desire Mr. *Roger Lewis* may be called again.

Mr. *Lewis* called.

Mr. *Serj. Probyn*. My Lords, I desire this Witness may be asked, how long he hath been a Deputy in the Office of the Clerk of the Custodies?

Mr. *Lewis*. About five and thirty Years.

Mr. *Serj. Probyn*. Who was then in the Office?

Mr. *Lewis*. Mr. *Henry Wynne*.

Mr. *Serj. Probyn*. How long did he continue in that Office?

Mr. *Lewis*. About Twelve months.

Mr. *Serj. Probyn*. Do you know who succeeded him?

Mr. *Lewis*. Mr. *Roger Thompson*.

Mr. *Serj. Probyn*. My lords, I desire he may be asked, whether any Present was made by Mr. *Thompson*, on his Admission into the Office?

Mr. *Lewis*. I do not know of any Present made by Mr. *Thompson*.

Mr. *Serj. Probyn*. By Mr. *Wynne*, or Mr. *Thompson*?

Mr. *Lewis*. No; but Mr. *Wynne* told me—

Mr. *Serj. Probyn*. Is Mr. *Wynne* living or dead?

Mr. *Lewis*. He is dead.

Mr. *Serj. Pengelly*. My lords, we beg leave to object to this: What a particular Person told him is not Evidence, we hope this shall not be admitted.

Mr. *Lutwyche*. They know this was never allowed.

Mr. *Serj. Probyn*. If the man be living, the Objection is good, but now he is dead, we hope it may be allowed.

Mr. *Com. Serj.* The Gentlemen object, that we are not at liberty to ask what hath been declared concerning that matter by a Person that is now dead; we humbly apprehend it is within the Rule of Evidence, and I must appeal to the Memory of your lordships, whether it is not good Part of the Evidence that hath been given by the managers.

Earl of *Macclesfield*. My lords, what we are giving Evidence of, is of a Thing transacted thirty five Years ago; the Parties are

all dead: He is about to give you an Account of what he did, and was said to him at that Time by his master, in his transacting that Affair. If the Person that said it were now alive, to be examined to it himself before your lordships, it would not be Evidence without examining him; but if dead, what he said concerning this Fact may be given in Evidence, it is concerning the Party's own Act, and what he told him at the Time it was doing. Therefore we hope they will not oppose this Evidence, which in the Nature of the Thing is all that possibly can be now given.

Mr. *Soll. Gen.* My Lords, I hope this is what your Lordships will not suffer to be done. I never knew the Sayings of a dead man given in Evidence to prove a particular Fact: They have been only admitted in Proof of general Usages and Customs; but as for a particular Fact, lying in the Knowledge of a particular Person, by his Death you have lost your Evidence.

Earl of *Macclesfield*. My Lords, if they will insist upon it, we must withdraw.

Mr. *Plummer*. This man here is upon his Oath; but the Evidence that he must give of the Saying of another, must be of a Saying not upon Oath.

Lord *Trevor*. If there be a Difference in Opinion between the noble Lord and the Managers, they must withdraw. But I don't see any Reason to withdraw. I will tell my Opinion, that such an hearsay Evidence is no Evidence.

Mr. *Com. Serj.* I desire he may inform your Lordships, whether he knows any Thing as to the Transaction, of his own Knowledge?

Mr. *Lewis*. I know that Mr. *Wynne*, whether he had surrendered, or was going to surrender, I don't remember, but he told me—

Mr. *Serj. Pengelly*. My Lords, they are going on again in the same Way.

Mr. *Serj. Probyn*. Do you know any Thing of your own Knowledge?

Mr. *Lewis*. I had money in my Hands of Mr. *Wynne's*. He told me—

Mr. *Serj. Pengelly*. Evidence of this Sort is by your Lordships Judgment not to be permitted.

Mr. *Serj. Probyn*. He informs your Lordships, that he hath known this Office thirty five Years. Now, I desire that he may declare what hath been the Usage on Surrenders and Admittances into this Office of Clerk of the Custodies, whether any Present, or Gratuity, hath been made to the great Seal?

Mr. *Serj. Pengelly*. This is the same Thing again.

Mr. *Soll. Gen.* If Gentlemen put this general Question with no other View but to draw out what your Lordships have determined to be no Evidence, we must oppose it. It is a plain Question, Whether he knows of his own Knowledge that any Money was given? And we desire he may be confined to his own Knowledge.

Earl of *Macclesfield*. The Gentlemen say, that as to matters of Usage, it is usual to enquire what old Men have said and declared. I apprehend this is a matter of Usage we are now

now inquiring after; but if your lordships are of Opinion that this should not be asked, I believe he doth not know any Thing of his own Knowledge of the money being actually paid to the Great Seal.

Mr. *Serj. Probyn*. My lords, we desire that Mr. *William Oaker* may be called.

Mr. *Oaker* sworn.

Mr. *Serj. Probyn*. My lords, we desire that Mr. *Oaker* may be asked whether he knows of any Demand, or Claim, made upon the Admission, or Surrender, of the Clerk of the Custodies, and by whom?

Mr. *Serj. Pengelly*. My lords, this Question is contrived in an odd manner. The Question must arise upon the Fact, not antecedent to the Fact. The Question of any Claim before, should be whether he knows of any money paid, and in what manner.

E. of *Macclesfield*. It is the stronger, if it is claimed and paid: But I apprehend, if it were only claimed, it is Evidence.

Mr. *Oaker*. I don't well understand the Question as it is put, but I remember in my lord *Cowper's* first Time, in the Year 1710, that Office was transferred from Mr. *Thompson* to Mr. *Edwards*; I was then Secretary of the Lunaticks, and I remember I inquired of one or both of those Gentlemen, if any Present was made to my lord on that Occasion, and was answered, that nothing had been usually given in the Case of that Office, and that they had satisfied my Lord thereof. Afterwards, when my Lord *Cowper* had the great Seal again, and I was again Secretary of the Lunaticks, his Lordship was pleased to observe to me, that he had suffered himself to be imposed upon in several matters, when he had the Seal before, and instanced particularly in the Affair of transferring the Office of Clerk of the Custodies; and said he was very well satisfied those Gentlemen had imposed upon him, by assuring him that nothing had usually been given on transferring that Office; for he was well assured there had been Presents on that Occasion, and did not see any Reason why there should not: And his lordship ordered me to enquire, as particularly as I could, what had been given, and by whom, that he might know what to do if a Thing of that Kind should happen again.

Mr. *Plummer*. My lords, I believe this Gentleman was Servant to my lord *Cowper*, when he was Chancellor last; I desire to know if any Vacancy of this Office happen'd in the last time that he was Chancellor.

Mr. *Oaker*. There was a Vacancy in the last Time. I don't know what Sum of Money was given for it?

Mr. *Plummer*. My lords, I desire this Witness may be asked, if ever he knew that my Lord *Cowper* did take any Thing for the Surrender of this Place?

Mr. *Oaker*. I don't know, I believe he had nothing the first Time, but he thought himself imposed upon in it, and bid me inquire about it. As to the second Time, I never could inform my self what was done in it.

Lord *Lechmere*. I desire he may be asked, Who it was that surrendered this Place of Clerk of the Custodies, and to whom? Name them.

Mr. *Oaker*. The first was Mr. *Thompson*, who surrendered to Mr. *Edwards*, he surrendered to Mr. *John Bennet*, and Mr. *John Bennet* surrendered to Mr. *Thomas Bennet*.

Mr. *Onslow*. My lords, I desire, before Mr. *Oaker* goes, that he may explain himself which of those two Times it was that my Lord *Cowper* said, he was imposed upon?

Mr. *Oaker*. It was the first Time.

Mr. *Onslow*. I desire to know if he took any Thing at either Time?

Mr. *Oaker*. I don't know, otherwise than as I have before declared.

Mr. *Serj. Probyn*. My Lords, we desire that Mr. *Edward Dupper* may be called.

Mr. *Dupper* sworn.

Mr. *Serj. Probyn*. My lords, I desire that Mr. *Dupper* may be asked, whether he knows of any Sum of money that hath been paid, or received on the Surrender, or Admission, of any Clerk of the Custodies?

Mr. *Dupper*. I did not see any Money paid. I did give my Lord *Macclesfield* an Account that there had been 250 Guineas paid upon a former Surrender of that Office before this Mr. *Hamersly* was admitted.

Mr. *Serj. Probyn*. From whom had you that Information?

Mr. *Dupper*. My Lords, I don't know how far I may be permitted to name that Person's Name.

Many Lords. Name him.

Earl of *Macclesfield*. Was it from one that had the Custody of the great Seal?

Mr. *Dupper*. Yes, my Lords.

Lord—Who was it from?

Mr. *Dupper*. I had it from my Lord *Harcourt*. My lords, I cannot say I saw the money actually paid; neither can I say, that his lordship received this money. But I was a Servant to my Lord *Harcourt*, and his Lordship kept an Account of the Profits of the Office of Lord High Chancellor in his Time, in his own Writing; and I made two Copies of that Account in a large hand-writing for his lordship's Use; and I generally made two Copies of each, for fear one should be lost or mislaid when wanted. One of these Copies I kept by me, which I have here; in it is an account of the yearly Profits of that Office, and there is this particular *Item*, of 250 Guineas received for the Surrender of the Office of Clerk of the Custodies, which I copied from a *Memorandum*, or Account of his lordship's own hand-writing.

Mr. *Serj. Pengelly*. My lords, I don't know what he is going to do. I hope there is very little notice to be taken of what he hath said. A man tells a Story that is a Servant: I hope no Credit will be given to what he says.

Mr. *Com. Serj.* My lords, I desire he may inform your lordships, when it was that he gave an Account to the Earl of *Macclesfield*, that so much money had been paid, and upon what Occasion it was?

Mr. *Serj. Pengelly*. Give an Account! he knows nothing.

Mr. *Com. Serj.* My lords, I hope you will not think it an improper Question. He says, that he gave an Account, I desire to know what he

he gave an Account of, and if he knows upon what Occasion it was?

Mr. *Dupper*. My Lords, the Reason of my giving this Account was, There was a Discourse between Mr. *Cottingham*, who was my Lord *Macclesfield's* Secretary, and my self, about the Office of Clerk of the Custodies. Mr. *Cottingham* told me, that Mr. *Bennet* was going to surrender his Place of Clerk of the Custodies: I asked him, to whom? He told me, it was to his Neighbour Mr. *Hamersly*. I answered, I am very glad to hear it; there will then be a piece of money for my Lord Chancellor. Mr. *Cottingham* said, That is more than I know; was there ever any money paid upon the Transfer of this Office? I said, Yes, I remembered there was, and I never knew any Offices or Places under the Great Seal transferred without an Acknowledgment paid to the Great Seal. He asked me what? I told him I had a Copy of the Account of the Profits of the Great Seal, kept by my Lord *Harcourt* in his Time, and that I would look into that Copy, and tell him what had been paid on the Surrender of that Office. I did look into that Copy, and the next day I told Mr. *Cottingham*, that 250 Guineas had been paid on the Surrender of that Office. And afterwards, and before the Transfer, I told my Lord *Macclesfield* of it.

Mr. *Strange*. When Mr. *Hamersly* was named I desire to know if Mr. *Cottingham* did not at that time call him his Neighbour?

Mr. *Dupper*. I did not know Mr. *Hamersly* at that time; but Mr. *Cottingham* called him his Neighbour.

Mr. *Plummer*. My Lords, I desire he may be asked, if he told my lord *Macclesfield* of this before Mr. *Bennet* resigned to Mr. *Hamersly*?

Mr. *Dupper*. Yes, I did my lords.

Mr. *Lutwyche*. My lords I desire to ask him one Question. I think he is pleased to say there is no place under the Great Seal, but what an Acknowledgment is taken for: I desire to know whether he himself hath not a Place given him by that noble Lord for his Life?

Mr. *Dupper*. No, my Lords.

Mr. *Lutwyche*. Had you no Place at all given you?

Mr. *Dupper*. I have the Reversion of a Place, which is not fallen as yet.

Mr. *Lutwyche*. What Place is that?

Mr. *Dupper*. The Sealer's Place.

Mr. *Lutwyche*. Do you enjoy that Place?

Mr. *Dupper*. No.

Mr. *Lutwyche*. Was there any money given for that Place?

Mr. *Dupper*. No, Sir: It is what I had for fifteen Years Service. I was his Clerk, and I acted as his Steward, in Town and Country, a great many Years; and his Lordship was pleased to give me that Reversion as a Reward for the Labour and Pains I took in his Service.

Mr. *Serj. Pengelly*, My lords, I desire he may be asked, how long after it was that he carried this Account to Mr. *Cottingham*, that he speaks of, how long after he had found it?

Mr. *Dupper*. I don't exactly remember: But as near as I can guess, it was the next Day, the first time that I saw him afterwards.

Mr. *Serj. Pengelly*. I desire he may be asked, whether at that time he gave Satisfaction to Mr. *Cottingham*, that it ought to be insisted upon?

Mr. *Dupper*. I told him so much had been given for the Surrender of that Office, and I never knew of any Office under the Great Seal transferred without money.

Mr. *Lutwyche*. I desire Mr. *Dupper* may acquaint your Lordships what the yearly Value of that Office is, that was given to him?

Mr. *Dupper*. I never was in Possession of it.

Mr. *Lutwyche*. Do you know what is the yearly Value of it?

Mr. *Dupper*. No.

Mr. *Lutwyche*. Can you give no Account of it?

Mr. *Dupper*. No: The man hath been in Possession of it, I believe, these threescore Years, and I believe he will live these threescore Years longer.

Mr. *Serj. Probyn*. My Lords, we desire that Mr. *Laiton* may be called.

Mr. *Laiton* sworn.

Mr. *Serj. Probyn*. I desire he may be asked, whether he was not formerly a Curfitor?

Mr. *Laiton*. I was a Curfitor almost three and forty Years.

Mr. *Com. Serj.* I desire that he will inform your Lordships, whether any money was paid, either by him, or any other?

Mr. *Serj. Pengelly*. My Lords, we beg leave to understand your Lordships Resolution, whether it extends to allow an Examination as to the selling of any other Offices not contained in the Articles?

Mr. *Serj. Probyn*. My Lords, we shall endeavour to prove that Acknowledgments have been anciently and usually paid upon Admissions into all Offices under the Great Seal. And this is Part of this noble Lord's Defence, That it is usual for the Great Seal to take money for the transferring of those Offices. This Witness was one of the Curfitors in the Court of Chancery; therefore I hope it is proper to give Evidence of money given for those Offices, as being Offices under the Great Seal. Therefore my lords, I desire he may be ask'd, whether he hath known of any money paid to the Great Seal upon the Surrender, or Admission of any Curfitor?

Mr. *Lutwyche*. My lords, I submit it whether it is proper for your lordships to let them into this Evidence. I take it that the immediate Questions before your lordships are only upon two sorts of Offices, one of the Clerk of the Custodies, the other the masters in Chancery. Now whether Your lordships will let them into an Evidence of all the Offices of the Kingdom, which is very extensive, I submit to your lordships Consideration.

Mr. *Plummer*. Your lordships observe, that we have not gone upon the 10th Article, where we have laid that he sold several other Offices: Considering the great Extensiveness of it, and that it would draw this Trial into a great length, we have waved it; and therefore submit it to your lordships Consideration, whether he shall make his Defence to any thing we have not yet given Evidence to.

Earl of *Macclesfield*. This would be to put a great difficulty upon me. The Charge against me being founded upon a Supposition, that the taking

taking money upon admitting Persons into Offices in the Court of Chancery is criminal; part of my Defence is, that the constant practice of my Predecessors shews the general Opinion to be otherwise, and therefore I have by my Answer insisted upon it generally, that not only for the one particular Office of the Clerk of the Custodies, or masters in Chancery, but for all other Offices under the Great Seal, money hath been given; therefore whether the Office for which I prove the money to be given, be one of the Offices charged in the Articles, and proceeded upon, or another not charged, or charged and waved, it will be the same thing. The Argument is the same with respect to the foundation of the Accusation, if in all other Offices, of which Persons now living can give an Account, monies have been taken without Crime, and without Blame; by parity of Reason it may be taken in these. I offer this Evidence, not to shew I am not criminal with respect to the Curfitors Offices; their waving that general Article which comprises them, admits it; but to make out that Branch of the Induction, in order to infer from the whole my not being criminal in the Particulars they do proceed upon; for if it was no Crime to take money from the Curfitors, and all the rest, besides the masters in Chancery and Clerk of the Custodies, it is no more so to take it from them: If this Objection be allowed, the Proof, which in its full latitude would be of great Extent, and go to all my Predecessors within 50 or 60 Years, will be confined to a very narrow Compass, when restrain'd to what Account can be given in only two Sorts of Offices, by Persons who saw the money paid, and happen to be still alive. Besides, for strengthening that Argument from other Instances, I have in another Part of my Answer insisted, that other Persons of great Wisdom and Honour, have likewise without Scruple, and without Censure, disposed of other Offices for money; that this hath been constantly practised in the Disposal of all Sorts of Offices in *Westminster-Hall*, money hath been taken for them all along; this Proof I must be cut off from too, if I am to give Evidence only of what was done in the case of those Offices for which they proceed against me: I hope therefore the Gentlemen will not oppose the going on to make the Proof proposed by my Counsel.

Mr. *Serj. Pengelly*. My Lords, if it be put in this general manner of all other Courts, and in all other Instances, we apprehend it will be a very extraordinary Examination. A Person is charged with a particular Charge of one Fact, and he would examine to another, with which he is not charged. This is beside the Issue, and not before your Lordships. Here is a Charge by the Commons of *Great Britain*, and an Answer and Defence to that, which can go only to those particular Offices charged. Now, to introduce an Evidence of this Nature, is exceeding any Rule or Instance that hath been ever heard of. If they apprehend by proposing and insisting on it in this High Court of Judicature, they shall be allowed to proceed in a method wholly new, we can't tell the Consequence of such an Allowance; and it is to no purpose for the Managers to come prepared to examine to a particular Fact stated between us, when there may be ten thousand things insisted on that are not in Issue.

Lord Viscount *Townshend*. I can't say this is within the Rule your Lordships laid down. If it is insisted upon, the Counsel must withdraw.

E. of *Macclesfield*. My Lords, I don't know whether this will not go through a great Part of my Defence, which will be to shew that other Offices have been disposed of by the master of the Rolls, the Chief Justices, and other Judges. This is in my Answer: The Commons had Notice of it; and they have joined Issue upon it. I wonder to hear it said they have not joined Issue, when in the Answer it is insisted upon, and they have replied thereto. This is a Thing that these Gentlemen are very well aware of; it is so general and universal a Thing, that every Body knows of it. I don't know whether it is intended to make any Distinction between this Case, and what is done in other Cases; if they do, I would be glad to hear it; if they do not, then I would beg your Lordships Determination upon it.

Mr. *Serj. Pengelly*. My Lords, we are not to declare our Opinion, whether there is any Difference, or not; the Question is in Point of Evidence.

Mr. *Soll. Gen.* My Lords, I don't apprehend that we have joined Issue on every Thing that the Noble Earl hath thought fit to put in his Answer. The Commons have charged him with several Crimes: He hath answered to those Crimes: The Commons reply, that they are ready to make good their Charge. By this, Issue is joined upon every Thing in the Charge; but not upon every foreign Thing that he hath put into his Answer. We insist that he is not to give Evidence of the Sale of any other Offices, but of those that he is particularly charged with. As to the Curfitors Office, and other Offices that he is not charged with, we say he is to give no Evidence.

Mr. *Lutwyche*. My Lords, because it is insisted upon that whatever this Noble Lord hath said in his Answer, we have replied to; I would observe that the very Replication takes Notice of this very Thing, and was one of the Things considered of by the Commons; and therefore the Reply is, "That he hath endeavoured to evade the Enquiries into his own Crimes, by insinuating Facts not material to the matters charged." And therefore, my Lords, we insist that he may not enquire into those matters which we have not charged.

Mr. *Com. Serj.* I don't know whether I may be at liberty to add, that I humbly apprehend, that what the Gentlemen of the House of Commons now insist upon, is contradicting your Lordships Resolution already taken.

Then the Managers and Counsel were order'd to withdraw, and being afterwards called in again, and returned;

Lord Chief Just. *King*. Mr. *Serj. Probyn*, The Lords have resolved, that the Counsel for the Earl of *Macclesfield* be not permitted to give Evidence touching the Sale of the Office of Curfitors, for that no Evidence hath been given in Relation thereto, by the Managers for the House of Commons.

Mr. *Serj. Probyn*. Then if it be your Lordships Pleasure, we beg leave to call one Witness more, in opposition to the evidence given by Mr. *Thomas Bennet*, in Relation to a Sum of money paid by him upon the Surrender of his Office of Clerk of the Custodies; he gave your Lordships an Account that he had paid the Sum of Sixty four Pounds, (besides the Sum of One hundred and five Pounds, which he at first agreed to give the Great Seal) upon his Surrender of that Office. Now, my Lords, we shall shew your lordships, that no part

of that Sum of Sixty four Pounds was really paid to the Great Seal, as Mr. *Bennet* seems to insinuate, but was all laid out in the Fees and Expenses of passing his Patent through the several Offices that are proper upon that Occasion. And to this End we desire that Mr. *Tench* may be called.

Mr. *Tench* sworn.

Mr. *Serj. Probyn*. My lords, we desire Mr. *Tench* may inform your lordships, if he was employed in taking out the Patent for Mr. *Thomas Bennet*, upon his Surrender of the Clerk of the Custodies?

Mr. *Tench*. My lords, I was employed by Mr. *Thomas Bennet* to sue out the Patent, and I paid the Fees of every Office of passing the Patent, which comes to between 60 and 70 *l*.

Mr. *Serj. Probyn*. We desire he may tell us what Officer he is?

Mr. *Tench*. I am Clerk of the Patents to the Attorney General, and Deputy Clerk of the Patents in Chancery.

Mr. *Com. Serj.* I desire he may be asked, what part of those Fees are paid to the Great Seal?

Mr. *Tench*. There is a Dividend of the money arising from the Patents, of this 1 *l*. 8 *s*. 4 *d*. and 3 *s*. went to the Great Seal.

Mr. *Com. Serj.* I desire he may be asked, whether any more came to the Great Seal out of the 64 *l*. than 1 *l*. 11 *s*. 4 *d*?

Mr. *Tench*. I don't know that there is any more of the Dividend of the Patent. The rest went amongst others for their several Fees at the several Offices.

Mr. *Com. Serj.* I won't trouble your Lordships to ask to whom the rest of the money belongs, but whether the Remainder is paid over to other Offices?

Mr. *Tench*. I don't know that any thing is paid to the Great Seal, upon passing the Patent Office, but the Dividend of 1 *l*. 11 *s*. 4 *d*.

Mr. *Com. Serj.* I desire he may inform your Lordships, whether the Remainder is paid to other Offices?

Mr. *Tench*. Yes, to other Offices, to the Hanaper Office, the Secretary's Office, the Signet and Privy Seal.

Mr. *Serj. Probyn*. My Lords, we shall trouble your Lordships with no further Evidence on this Article: But beg your lordships Favour to begin our Evidence on the 5th, and other Articles.

Mr. *Sandys*. My Lords, I desire he may be asked, where he found the Warrant for passing the Patent at that Time?

Mr. *Tench*. I had the Warrant from the Secretary's Office.

Mr. *Sandys*. I desire he may be asked, if he knows how it came there, and by whose Direction, if he knows who procured it?

Mr. *Tench*. My Lords, I drew a Petition by Mr. *Bennet*'s Direction, to the Secretary of State; upon that the Petition was referred to the Attorney General, and upon his Report, there was a Warrant. I know of no other Proceedings relating to it.

Mr. *Sandys*. My Lords, I desire he may be asked, at whose Instance he drew up that Petition?

Mr. *Tench*. I drew it up at Mr. *Thomas Bennet*'s Request.

Mr. *Sandys*. To what Purpose was that Petition?

Mr. *Tench*. The Petition recited that the Patent was granted to his Brother, and that upon his Brother's surrendring, it might be granted to him.

Mr. *Sandys*. It is the last Petition we desire to be informed of, what the Purport of that was; not the Petition of Mr. *John Bennet*, when he surrendered to Mr. *Thomas Bennet*, but the Petition of Mr. *Thomas Bennet*, when he surrendered to Mr. *Hamersly*?

Mr. *Tench*. It was a Petition reciting the Grant to Mr. *Thomas Bennet*, and that he might resign to Mr. *Hamersly*'s Use, who was a Person well affected to his Majesty and the Government.

Mr. *Serj. Probyn*. My Lords, we now proceed to the other Articles, which relate to the Presents made by the masters in Chancery to the Earl of *Macclesfield*.

Upon this the House adjourned to the next Morning Ten a Clock.

Thursday the 13th of May, 1725. *The Sixth Day.*

The Lords being seated in their House, and the two Proclamations being made as on the former Days.

LORD Chief Just. King. Mr. *Serj. Probyn*, you may go on with your Evidence.

Mr. *Serj. Probyn*. My Lords, we beg leave to lay before your Lordships some instances, where, upon former Admissions of masters in Chancery, Sums of money have from time to time been taken by the Great Seal. We desire Mr. *Meller* may be called again.

Accordingly Mr. *Meller* appeared.

Mr. *Serj. Probyn*. We desire Mr. *Meller* may be asked, whether he knows of any Sum of money paid to the Great Seal, upon the Admission of a master in Chancery, and what Sum?

Mr. *Meller*. My lords, I humbly apprehend, that the Subjects of *Great Britain* are not compellable in any case to give an Answer to any matter that may be to their Prejudice. I speak it with the

greatest Submission to your Lordships. For my part, I am very unwilling to do any thing that may any ways lessen the Security of the Subject, therefore I humbly hope your Lordships will not compel me to give an Answer to any Question of this Nature. I humbly submit it to your Lordships Judgment.

Earl of *Macclesfield*. My Lords, the Question he is asked is a general Question, whether he knows of any money paid to the Great Seal by any master in Chancery upon his admission. Whether he knows, or doth not know it?

Mr. *Serj. Pengelly*. My Lords, we beg leave to acquaint the House of the Circumstances of Mr. *Meller*, from whence the Objection rises. He was formerly a master, but before the late Act of Parliament he quitted that Office, and hath no Indemnification,

demnification, as the present Masters have by that Act. Therefore, as I apprehend, his Objection is, that he can't give an Answer to this Question, without subjecting himself to a Penalty, and accusing himself of an Offence against the Law.

Mr. *Lutwidge*. This general Question tends to make him accuse himself, and subject himself to a Penalty.

Earl of *Macclesfield*. My Lords, I would gladly know whether these Gentlemen object to this Question or not; if they object themselves to it, they have a right so to do, and to offer their Reasons, and they must be left to your Lordships Judgment. But they have no Right to instruct a Witness.

Mr. *Lutwidge*. I never endeavoured to instruct any Witness. It is very well known I never attempted any such thing; and that noble Lord knows it. I am now here, not as Counsel, but as one of the Managers for the House of Commons, and by their Command, and so have more Reason to take Notice of this Reflection. We do not instruct Witnesses, this is no such thing. It is an Objection which we have a Right to make. We have done it already, and have had your Lordships Determination upon it. It is not so very long ago, but the noble Lord may remember this very Question was directly asked of Mr. *Bennet*, and then refused; the next Day asked again by a side-wind, whether he knew any, and what Money had been given for the Place? and rejected by your Lordships; and then a Question was asked, How much he knew the Place sold for? and your Lordships likewise refused that: Here now is a Question asked of a Man that hath been a Master in Chancery, and not indemnified by the last Act, whether in Effect he paid any Money for his Office? Your Lordships thought this induced a Penalty, because you thought it necessary to pass an Act of Parliament to indemnify the present Masters; but it is well known it doth not extend to those who were Masters before; and therefore as there is a Penalty annexed to it, he ought not to answer this Question. Besides, for the sake of our Proceedings, it ought not to be answered, and we have a Right thus to interpose, that when your Lordships have refused the same thing in another Man, the same is not to be insisted upon again.

Mr. *Serj. Pengelly*. My Lords, it is the Duty of the Managers to take Notice of the Behaviour of the Lord impeached. Whether he apprehends that he hath a right to controul the Managers in this House, and whether that arises from the Seat he enjoys, your Lordships will consider the Consequences of this Behaviour. When the first Day we were told, that we were working up the Witnesses, and now that we are instructing them, whence could this Lord have this Imagination, but from his own former Practice?

Earl of *Macclesfield*. My lords, as to that Gentleman that thought himself reflected upon, he greatly mistakes me. I did not intend to reflect upon him as going to instruct the Witness in his Evidence; I believe him as far from it as any Man in *England*. I know him to be a Person of too much Honour; and I had not the least Thought when I spoke it, of his instructing a Witness in that Sense. But here a Witness is making some Difficulty in answering a Question, and I thought that that Gentleman who spoke first, was stating that which made the Witness's Objection; which I apprehended did not belong to the Managers to do. That is what I meant by instructing. The Que-

stion that is asked is, Whether he hath known of any Money given to the Great Seal, upon an Admission of a Master in Chancery? Say they, he was a Master in Chancery himself, therefore it may include his giving Money upon his being admitted: But be that so, he may know of other Persons besides himself that gave Money. My Question therefore is general, whether he knows of any Money given to the Great Seal on Admission of a Master in Chancery? The Question your lordships resolved was as to Mr. *Bennet* himself, and confined to his single Office; and had I asked Mr. *Meller* what he had given on his Admission to his own Office, it had been another Matter, and within your lordships Resolution. But the Question that is now ask'd, includes what he knows hath been given by other Masters; therefore he may give an Answer without charging himself. If he answers that he doth not know of any Money given by any other Master except himself; then it will come to the Question the managers would bring it to. In the mean time give me leave to say, that those Gentlemen, by being Managers for the House of Commons, have not a Right of treating Persons in a different manner than what they should do if they were not Managers. That that Gentleman should say, that what I spoke about instructing of Witnesses, ariseth from a Practice of my own, is a language unbecoming the Dignity of your lordships Bar. Is this a Way of treating Mankind? Is this a fit method of carrying on a Prosecution? Is this decent speaking before so august a Judicature as this? What I said of instructing a Witness, imported no faulty way of Instruction.—(After a short Pause) I have used a great deal of Preparation not to be disturbed at any Expressions that fall upon this Occasion. It is a faulty Way of instructing a Witness, to tell him what he shall say; but to tell him he hath a legal Objection to a Question that is asked, I know no Crime in that. My lords, I beg Pardon for taking so much Notice of this Matter; but I insist upon an Answer to this Question, whether he knows of any Money given to the Great Seal, on an Admission of a Master in Chancery? He may answer affirmatively, without at all affecting himself; and I submit, whether he ought not to do it.

Mr. *Plummer*. My lords, if the Counsel for the noble lord have done, I beg leave to reply. The noble lord says, that this Gentleman may possibly answer, and not accuse himself. But if by the Answer he may accuse himself, it is a Reason why he should not answer. The method proposed, that he may say, he doth not know of any but himself, is accusing himself. As for the other Point about instructing Witnesses, it is not our Witness, but his own Witness, who refuses to answer.

Mr. *Onslow*. The Managers cannot but observe the indecent Behaviour of this lord, and his unworthy manner of treating us. What we say here, we are ready to say any where. We do not think the lord at the Bar should be directing the Managers, as if he sat in his Place as Judge: If we do any thing unbecoming, we are subject to your lordships Judgment. We appear not here as common Prosecutors, and are not to be treated as common Counsel by him, as he would have treated Counsel in another Place. We are here Advocates for all the Commons of *Great Britain*, to demand Justice against this Earl; and submit it to your lordships, whether he is to treat us in this unbecoming manner. As for the Question, the very Reason he now gives for asking it, is the same

same that was given by him for examining Mr. Bennet, and your Lordships then over-ruled it. It is only by a side Wind asking a Question of a Witness, the Answer whereto will unavoidably charge him with a Crime: He cannot answer without charging himself. This lord hath laid a Trap for the Witness to accuse himself. He says he may answer that he knows nothing of any money given by any master but himself; which is directly saying that he himself hath given money. We hope therefore this Question shall not be asked; and we insist upon the Objection.

Mr. Palmer. In Duty to the House of Commons, I think my self obliged to take Notice of the strange Behaviour of this lord in this Instance. According to your lordships own Rule, tho' he sits within the Bar, yet he is not a Judge; and therefore I must beg for myself, in the Names of the managers, and in the Names of all the Commons of Great Britain, that no such Language or Behaviour be again used; if it should, we cannot bear it, but must retire.

Earl of Macclesfield. My lords, I desire the general Question that I have proposed may be asked; I do not know what is your lordships Pleasure; I think I have a Right to have it answered.

Mr. Plummer. I object to the Lord's going on. The Lord hath answered; we have replied; and I insist upon it he hath not a Right to speak any more.

Duke of Argyle. I hope they will withdraw.

Ordered to withdraw.

Then the Managers and Counsel withdrew, and being called in again, and returned;

Lord Chief Just. King. Mr. Serjeant Probyn, the Question proposed by the noble Earl to Mr. Meller was, Whether he knew of any money paid to the Great Seal by any master on his Admission; and Mr. Meller insisting that he had been a late master in Chancery, and was not obliged to answer the Question, because it might tend to accuse himself; the lords upon Debate are of Opinion, that he is not bound to answer that Question.

Mr. Serj. Probyn. My lords, then we desire he may be asked, whether he knows of any Sum of money paid by any other Person, except himself, upon the Admission of any master?

Mr. Com. Serj. I would not presume to ask any Question that is improper, I understand your lordships Resolution to be, that we are not to ask the general Question of Mr. Meller, because it might affect himself; this Question, we think, will not; Whether he knows of any Sum of money given upon the Admission of any other master?

Mr. Serj. Pengelly. My Lords, we submit it, whether this Question differs at all in Consequence; tho' it be not in the same Words, yet it is to the same Effect: It is in other Words to ask the same Question over again. We hope they will not give your lordships this Trouble.

Mr. Lutwyche. My lords, the Question implies that he gave money himself.

Lord Lechmere. If the Counsel would explain themselves more particularly, name the master, the Person who received it, or any other particular Fact; then it will appear whether that be a proper Question.

Mr. Serj. Probyn. My lords, we humbly apprehend, that we are at liberty to ask this Question in the Form proposed, otherwise we shall in a great measure be precluded from the just Defence of the Noble Earl. We could not presume to ask these Witnesses beforehand, who were the Persons

that gave, or the particular Persons that received; but as these Persons have been in the Office, and must know the Nature of admitting the Masters in Chancery; we hope they will explain it in their Evidence, and name the particular Persons, who either gave, or received Money upon that Occasion. We are not proper to ask more particularly.

Mr. Com. Serj. My lords, I shall be very loth to give any Distaste to this Honourable House; therefore I beg Leave to know, whether or no we have Liberty to ask this Question, and whether your lordships Resolution extends to it? I humbly take it, we are at Liberty to ask the Question, and the Witness is not obliged to answer, if he apprehends that as the Question is formed he cannot answer without an Inconvenience to himself. I would not willingly ask any Question that I thought the House would think improper.

Lord Trevor. If the noble Lord insists upon this Question, it is proper that he should name some Person, concerning whom he would ask; otherwise, it is indirectly to overthrow your lordships Resolution.

Earl of Macclesfield. My lords, I am very unfortunate in this Matter. I would ask him the Question in such a Manner, as should not carry any the least Imputation on him: but if I should first name one Master, and afterwards another, in so great a number of Masters, it would be tedious; I only ask in short, what he knows of any Money taken by the great Seal for, or on the Admission of other Masters? I don't ask him concerning himself, but only concerning other Masters; Whether he knows any thing of the Transactions of other Masters Admission besides his own? I hope your lordships will think this may be asked, with this Explanation and Declaration, that it don't extend to any thing relating to himself; but only whether he knows any thing concerning any Money paid by any other Persons? and to name them particularly.

Lord Chief Just. King. You hear the Question.

Mr. Meller. Is it your lordships Pleasure that I should answer to the Question as it is now form'd? My lords, I don't know, or remember, that ever I had a Discourse with any Master about what he gave, or what he was to give, for any Place; except I have heard Dr. Eddisbury say—

Mr. Lutwyche. My lords, we object to this as not being Evidence, but only Hearsay.

Mr. Meller. Except Dr. Eddisbury, I don't know one indeed.

Mr. Serj. Probyn. My lords, we desire that Mr. Lovibond may be called.

Mr. Lovibond called.

Mr. Serj. Probyn. My lords, we hope that Mr. Lovibond, being one of the present masters, and consequently within the Indemnity of the late Act of Parliament, may be examined, as to what happened in his Case: And we desire that he may be asked what Sum of Money was paid to the Great Seal, on his being admitted a master in Chancery?

Mr. Lovibond. My lords, as to that Transaction, it is many Years ago, above twelve Years ago, I will recollect what I know of it to the best of my Remembrance. My lords, I never had any Treaty in that Affair with the Great Seal, nor with any Officer belonging to the Great Seal; nor did I employ any Body in it. But there was an Acquaintance of mine, a master in Chancery, since deceased, who apprehending it to be for my Service, without my Knowledge transacted it.

Mr. Serj. Probyn. Who was it?

Mr.

Mr. *Lovibond*. Mr. *Browning*, He came to me, and told me, I have settled the whole matter, you must be sworn in this Night, and you must send to Mr. *Cottingham* or Mr. *Appleby*, then Officers under the Great Seal, 700*l.* in money or Bank Bills. I did send it that Night and was then sworn in.

Mr. *Serj. Pengelly*. My Lords, I desire he may be particular as to the Time: It is necessary he should be certain.

Mr. *Lovibond*. Mr. *Browning* said, he had settled it with the Great Seal, that I should be sworn in that Night; my Lord *Harcourt* was then *Chancellor*.

Mr. *Strange*, My Lords, I desire he may be asked, Whether he was admitted upon a Death or a Surrender?

Mr. *Lovibond*. I was admitted upon a Surrender.

Mr. *Strange*. By whom?

Mr. *Lovibond*. Mr. *Pitt*.

E. of *Strafford*. Before the Witness goes, I desire to ask him how much he gave to Mr. *Pitt* upon his Surrendering?

Mr. *Lovibond*. It was 2000 *l.*

L. *Harcourt*. My Lords, If the Gentleman is not gone, I desire to ask him a Question or two.

Mr. *Lovibond* called again.

L. *Harcourt*. My Lords, I desire he may be asked, Whether he was worth so much Money as to pay 2700 *l.* of his own Money at that Time?

Mr. *Lovibond*. Yes, my Lords, and much more.

L. *Harcourt*. I desire he may be asked, Whether he paid it out of his own Money, or out of the Suitors Money?

Mr. *Lovibond*. I paid it out of my own Money.

L. *Harcourt*. I desire he may be asked, Whether Mr. *Pitt*, at the Time of his Admission, transferred and actually delivered over to him all the money of the Suitors that then was in his Hands?

Mr. *Lovibond*. Mr. *Pitt*, to the best of my Belief, delivered over every Thing that was in his Hands to me.

Mr. *Serj. Probyn*. My Lords, We desire that Mr. *Cottingham* may be called again.

Mr. *Cottingham* called.

Mr. *Serj. Probyn*. My Lords, We desire that Mr. *Cottingham* may be asked, whether he knows any thing of any Transaction relating to the Payment of any Sum of money on the Admission of Mr. *Holford*.

Mr. *Cottingham*. My Lords, if I remember right, there was 800*l.* paid.

Mr. *Serj. Probyn*. How long ago?

Mr. *Cottingham*. It is several Years ago: There was 800*l.* or 800 Guineas given or paid on his Admission, several Years ago.

Mr. *Serj. Probyn*. To whom?

Mr. *Cottingham*. My Lords, Sir *Richard Holford* desired me to recommend his Son to the noble Lord that then had the Great Seal.

Mr. *Serj. Probyn*. Who was it?

Mr. *Cottingham*. The Lord *Harcourt*. Sir *Richard Holford* was my old Friend and Acquaintance: I accordingly did recommend him;

Mr. *Holford* came under a good Character to my Lord *Harcourt*; my Lord agreed to admit him, but he first desired to know whether he had any Estate in Possession sufficient to answer the Suitors money? Upon my saying this to Sir *Richard Holford*, Sir *Richard* said, He had none in Possession, but agreed to settle an Estate upon his Son; and to the best of my Remembrance, it was either 800*l.* or 800 Guineas that was given on his Admission, for the Use of my Lord *Harcourt*.

L. *Lechmere*. To whom was it paid?

Mr. *Cottingham*. I can't say whether it was paid to me, or to Mr. *Appleby*.

Dr. *Sayer*. Who carried the Proposal?

Mr. *Cottingham*. I carried the Proposal. Sir *Richard Holford*, as I told you, being my Friend and Acquaintance, desired me to do it: Accordingly I transacted the whole matter; being an upper Secretary, it was left to me.

Mr. *Lutwyche*. My Lords, I desire to ask this Witness one Question as to this matter. He says, That Mr. *Holford* was recommended as a man of a good Character; I desire to know whether he hath not ever since maintained that good Character?

Mr. *Cottingham*. Yes, he hath made an admirable good matter as ever I knew; and hath executed his Office with as much Honour and Integrity as any matter. I never heard any Complaint against him in my Life.

Mr. *Lutwyche*. Can you recollect who paid the money, Mr. *Holford*, or Sir *Richard Holford*?

Mr. *Cottingham*. Sir *Richard*, I believe: I can't recollect. He was a young man; I presume, Sir *Richard Holford*, his Father, paid the money.

Mr. *Com. Serj.* I desire he may inform your Lordships, whether it was on a Death or Surrender?

Mr. *Cottingham*. As I told you before, It was on a Surrender: Upon the Surrender of Sir *Robert Legard*, If I remember right.

L. *Harcourt*. My lords, If that Witness is not gone, and the Counsel for the Earl, and the managers for the House of Commons have done with him, I desire to ask him, If he can tell whether any Account was taken of the Suitors money by his Predecessor, and whether all the Suitors money was delivered up by Sir *Robert Legard* to Mr. *Holford* at the Time of his Admission?

Mr. *Cottingham*. My lords, I believe it was. But I was not privy to that, I did not transact that matter; I have heard that an Account was made up.

E. of *Strafford*. I would not ask the same Question twice; I think no Body hath asked it already; I desire to know, If he knows of his own Knowledge, what was given to Sir *Robert Legard* for his Surrender?

Mr. *Cottingham*. I know nothing of it.

L. *Harcourt*. My Lords, If I might have your Lordships Indulgence, in order to have this matter a little further explained, I desire Mr. *Holford* himself, or Mr. *Appleby*, or both of them may be called.

Mr. *Holford* called.

L. *Harcourt*. I desire to know of Mr. *Holford*, Whether at the Time of his Admission, when he was sworn master, Sir *Robert Legard* transferred

red and delivered over to him all the Effects of the Suitors?

Mr. *Holford*. He did, my lords,

L. *Harcourt*. I desire to ask him, Whether the money, that it was said he presented to the Great Seal on his Admission, was his Father's money, or his money, or whether it was out of the Suitor's money?

Mr. *Holford*. My Father paid it before any thing was delivered to me.

E. of *Strafford*. I desire to ask the Gentleman this Question, What money he paid to Sir *Robert Legard* on his Admission to his Place?

Mr. *Holford*. My lords, I did not give it my self; I can tell your lordships what I believe was given, and I have some Reason to think I know the Truth; I believe it was 2000*l*.

Mr. *Serj. Probyn*. My Lords, I desire he may be asked, How long it was after his Admission before these Accompts and Effects were delivered over to him?

Mr. *Holford*. My lords, when I came to my lord *Harcourt* to be sworn in, my lord *Harcourt* had an Account delivered there of what was in Sir *Robert Legard's* Hands. My lord *Harcourt* took the Paper in his Hand, and asked me, If I was satisfied to be charged with that? I told him, Yes. I was then sworn in, and a Day or two after the Things were delivered over to me by Sir *Robert Legard*.

Mr. *John Bennet* called.

Mr. *Serj. Probyn*. I desire he may be asked, What money was paid by him to the Great Seal on his Admission?

Mr. *Bennet*. I gave Mr. *Woodford*, the Secretary of the Great Seal at that Time, 500*l*. I don't know that it was given to the Great Seal; I gave it with that Design.

Mr. *Serj. Probyn*. When was it?

Mr. *J. Bennet*. About two or three Days before I was admitted.

Mr. *Serj. Probyn*. When?

Mr. *J. Bennet*. It was in *March*, 1716.

Mr. *Serj. Probyn*. Who was Chancellor then?

Mr. *J. Bennet*. My Lord *Cowper* was Chancellor.

Mr. *Serj. Probyn*. Whether was it paid before his Admission?

Mr. *J. Bennet*. It was paid before my Admission.

Mr. *Com. Serj.* I desire he would inform your lordships, whether he came in upon a Surrender or a Death?

Mr. *J. Bennet*. It was upon a Surrender.

L. *Ch. J. King*. Upon the Surrender of whom?

Mr. *J. Bennet*. Of Mr. *Medlicot*.

L. *Batburst*. I desire he may be asked, whether he paid it out of his own money?

Mr. *J. Bennet*. It was my own money.

L. *Batburst*. I desire he may be asked, whether he had any Account of what was in the former master's Hands, and when delivered over to him?

Mr. *J. Bennet*. The Effects were all deliver'd over to me in a Week's Time, except some very small matters.

L. *Batburst*. What was the money that was given to your Predecessor?

Mr. *J. Bennet*. 3000*l*.

L. *Batburst*. Was that paid out of the Suitors money, or out of your own?

Mr. *J. Bennet*. It was paid out of my own money.

Sir *Thomas Gery* called.

Mr. *Com. Serj.* My lords, The Question that I shall propose to Sir *Thomas Gery*, is under the Apprehension that I mentioned before, that we are at liberty within the meaning of your Lordships Resolution to propose it, he being at liberty to answer or not to answer, if the Question carry any Imputation upon him. I would not ask a Question that is improper: I desire that Sir *Thomas Gery* will inform your lordships what he knows has been paid to the Great Seal, upon the Admission of a master in Chancery?

Sir *Tho. Gery*. My Lords, I never did know, of my own Knowledge, of any Sum paid to the Hands of any Lord Chancellor whatsoever.

Mr. *Serj. Probyn*. I desire he may answer the Question, Whether he hath known any Sum of money paid to the Use of the Great Seal, or of my Lord-Keeper or Lord-Chancellor, upon the Admission of any master?

Sir *Thomas Gery*. I can't tell how that may affect me; I refer that to your Lordships. I think I am not bound to answer.

E. of *Macclesfield*. I think he said, He doth not know of any money paid to a lord Chancellor. Doth he intend to include Lord-Keeper?

Sir *Thomas Gery*. Neither Lord-Keeper, nor Lord-Chancellor.

E. of *Macclesfield*. It may be, not into the Hands of a Lord-Chancellor or Lord-Keeper. I desire he may be asked, If he hath not known it paid to the Use of the Lord-Chancellor, or Lord-Keeper?

Sir *Tho. Gery*. That, I hope, I shall not be obliged to answer. I submit that to your Lordships.

Mr. *Serj. Probyn*. If the Gentleman is not pleased to give a more particular Answer, we must submit.

L. *Harcourt*. I desire to ask this Witness one Question, which will not draw him into any Inconvenience, whether ever he was required in any Lord-Chancellor's or Lord-Keeper's Time, to make up an Account of the Suitors Money, and whether ever he did so?

Sir *Tho. Gery*. Yes, I did it three several Times; once in my lord *Cowper's* Time; and when the noble Lord that asks me the Question was in that place, I did the like; and I did it again when my lord *Cowper* was Chancellor. At all those Times I gave a particular Account of the Sums of money in my Hands, the Time it came in, and how it was disposed of, and the distinct Securities, in distinct Columns.

E. of *Strafford*. He says twice in my lord *Cowper's* Time: I take it, he means both the Times that my Lord *Cowper* was Chancellor?

Sir *Thomas Gery*. Yes, my lords; and the same in my lord *Harcourt's* Time.

L. *Harcourt*. I desire he may be asked, whether all the rest of the masters did so as well as himself?

Sir *Thomas Gery*. I believe they did; I have heard them all declare so.

Mr. *Serj. Probyn*. My Lords, we have now called all the living Witnesses that are willing or compell-

compellable to speak to this Article. We have a great many other Witnesses that would speak to this, as a constant Usage time out of mind: But we apprehend it to be against your lordships Resolution to call and examine any Witnesses but to what they can speak of their own Knowledge, and them we have produced. We shall now beg leave to proceed to prove, That the Offices in the Court of Chancery are increased in their Value beyond what they were formerly, that not only these, but all other Offices, as they have increased in Value, have increased in the Price; all Offices have risen in Value, and the Price given in this Instance, is no more than in Proportion to the Prices given for others.

Mr. Com. Serj. We apprehend, my Lords, it is so notorious, that all Sorts of Offices have risen in their Value, that a very small Evidence will be sufficient. We have a great many Witnesses to this Purpose, we will only call some few. We desire Mr. Steele may be called.

Mr. Steele sworn.

Mr. Serj. Pengelly. My Lords, We desire to know before they proceed, Whether they design to ask as to those Offices your Lordships gave them Direction last Night not to ask to. Your Lordships gave them Directions not to ask any Questions, but to the particular Offices mentioned in the Articles; this is a Piece of Dexterity to elude that Resolution.

Mr. Lutwyche. My lords, I submit it to your lordships, Whether this Attempt is not directly the same as that which was over-ruled Yesterday. If the Witness is to give an Account whether the Price of the Curfitor's Office, or other Offices have risen, they must then shew that they were sold; which is the very Question your lordships determined they should not ask to.

Mr. Serj. Probyn. My Lords, We were then directed by your lordships not to prove any money was paid to the Great Seal for any other Offices, but those particularly mentioned in the Articles. We don't pretend now to ask as to the Payment of money to the Great Seal, but only whether Offices in General have not much advanced in their Prices?

Mr. Serj. Pengelly. My lords, It is extraordinary Usage to tell us of Offices in General; there are private Offices, there are Offices in other Courts in *Westminster-Hall*. We apprehend your lordships Determination is so strong against what is now attempted, that they would not urge it, unless they thought that the managers had forgot every Thing that happened.

Mr. Com. Serj. My lords, The Question we ask is, as to Employments in General, Offices in the Law, or any other Offices; we desire to inform your lordships in General, that the Value of all Employments, not of the Law only, hath risen.

E. of *Macclesfield*. I will inform your lordships how the matter is. I believe this Gentleman is not intended to be asked what Offices belonging to the Great Seal are Worth, but what Difference there is in the Value of other Offices, to what they were heretofore; particularly how the Prices of the Seats in the Six Clerks Office are increased; that they were

once at such a Rate, and what they are now; that is the matter, as I take it.

Mr. Lutwyche. My lords, I apprehend the Direction was given to the noble lord, not to ask concerning the Sale of any Office but what was in the Articles, and the managers had given Evidence to. Now to ask the Difference or Increase of the Prices of a Clerk in Chancery's Place, is, we apprehend, to ask to the very Thing that your lordships have over-ruled already.

E. of *Macclesfield*. My Lords, this is not like the Curfitors Office, which is in the Disposition of the Great Seal; your lordships Resolution was, That the Witnesses were not to answer as to their giving money to the Great Seal. The Evidence we are now upon, is an Inquiry that relates not to any money given to the Great Seal, but what those Persons paid to one another for an Office that doth not belong to the Great Seal.

Mr. Onslow. At the End of your lordships Resolution Yesterday, the Reason given why they ought not to be let into the Examination as to the Offices then in Question, was, because no Evidence had been given thereto by the managers, and it was not charged nor mentioned in the Articles, altho' the noble lord did insist that he should be let into that Examination, because in the Preamble of his Answer, he had taken Notice of those Offices. This Case is stronger, because the Offices now desired to be examined into, are neither in the Articles nor Answer, nor hath any Evidence been given to them; and therefore we hope he shall not be let into this Examination.

Mr. Com. Serj. We humbly hope your lordships will permit us to enquire whether the Business of those Offices in the Court of Chancery is not greatly increased, and whether the Value of the Offices be not increased with it?

M. Serj. Probyn. Notwithstanding your lordships Direction in the former Question, we submit whether we may not be permitted to ask this Question, Whether the Offices in the Court of Chancery are not increased in Value much beyond what they were Seven Years ago?

Mr. Serj. Pengelly. My lords, That is the very Question that we object to.

E. of *Macclesfield*. What I before offered was, that there had been a Usage to make Presents to the Great Seal; I apprehend your lordships over-ruled it as to the Curfitors Office, because there was no need of an Excuse as to that Office, as there is no mention made of it in the Articles, nor any Proof offered against me. This is not of any Payment to the Great Seal, but goes by way of Excuse as to the Sums, to shew the increase or Difference of the Prices of Offices in General. It is notorious that money now carries a less Interest, and that the Price of all Offices is increased. I don't know whether the Gentlemen will deny it. If they do not, I will not trouble your lordships any farther about it.

Mr. Serj. Pengelly. We have no Occasion either to confess or deny any thing that is not before your lordships in Judgment. Therefore, if they expect any Answer, we give this, That it is not before your lordships in Judgment.

Mr.

Mr. *Lutwyche*. I apprehend the Reason of your lordships Resolution Yesterday, was, That there was no Charge in the Articles concerning those Offices; the same Reason equally holds to what they are asking now in relation to Clerks in Chancery.

Mr. *Plummer*. My lords, I should be extreme sorry to make any Objection to any Evidence that is material: But, if he is pleased to examine this Gentleman how far by the Increase of Business the Value of any Office is risen, that must be of the Annual legal Value, and not according to the liberties he left to his Masters.

Mr. *Serj. Probyn*. I desire he may be asked, Whether he doth not know that the Prices of Offices are greater now than they were formerly?

Mr. *Serj. Pengelly*. My lords, we don't understand they have any such Permission to ask that Question. To repeat the same Thing over and over again, we apprehend they think we are asleep.

E. of *Macclesfield*. Your lordships seem not to be of Opinion that this Question should be asked; therefore to save your lordships time, I will wave the Question.

Mr. *Goldebrough* sworn.

Mr. *Serj. Probyn*. We will proceed in the next Place, in Confirmation of that Part of the Answer to this Article, That two Sums of money, mentioned to be paid to my lord *Macclesfield* by Mr. *Kynaston* and Mr. *Bennet*, were both paid back into the Court of Chancery. We desire Mr. *Goldebrough* may be asked, Whether he knows of the two Sums of 1500 Guineas, and 1500 Guineas, that were paid by my lord *Macclesfield* into the Court of Chancery.

Lord *Lechmere*. My lords, I beg pardon. I think the Question that the noble Earl hath waved, if I mistook not, was about the Rise and Increase of Value of the Offices in Chancery. Now, notwithstanding the noble lord hath waved it, yet it may be proper for your lordships Consideration, whether he should not have liberty to ask it, if he thinks fit.

E. of *Strafford*. I think what the noble lord hath said is considerable, and it may be proper for our Judgment.

Ld. Vis. *Townsend*. I move that they may withdraw.

Ld. *Lechmere*. It may be proper to have the Question repeated again. I therefore desire that the Counsel for the Earl would repeat the Question again that they would have asked of Mr. *Steele*.

Mr. *Serj. Probyn*. My lords, The Question is, Whether the Price of Offices in the Court of Chancery, and in the Six Clerks Office, particularly, are increased now more than antiently they were.

Thereupon the Managers and Counsel withdrew, and being returned,

Lord Chief Just. King. Mr. Serjeant *Probyn*, the Lords have considered the Question on which you withdrew. Their lordships are of Opinion, That you are at liberty to ask the Question, Whether the Price of Offices in the Court of Chancery, and in the Six Clerks Office par-

ticularly, be increased now more than heretofore they were?

Mr. *Steele*. My lords, I came to be a Clerk in the Chancery Office in the Year 1687. I served my Clerkship in the Office; and in that Year, and for several Years afterwards, I know that waiting Clerks Places were bought at 50 Guineas, or less, and after I was out of my Clerkship, I was offered a waiting Clerk's Place in the Office for 50 Guineas. They are not sworn, nor have Power to take a Clerk; and since that Time I have known them sold for 3, 4, and 500*l.* My master was a sworn Clerk, and he sold his sworn Clerk's Place for 230*l.* It was a Clerk at the Seat; and by the Custom of the Office, he that hath one Clerk cannot take another till the first Clerk be provided for; but I having a Proposal to go into a Seat of greater Business, that induced me to give a Note to the Gentleman that bought the Seat, that I would not be an Incumbrance on the Seat, otherwise he would not have given so much. Since that Time I have known a sworn Clerk's Place sold for 800*l.* Particularly I transacted a Sale upon a Brother-in-Law's Account; I contracted for 500*l.* and then there was a Clerk upon the Seat that had not served half his Clerkship out.

Mr. *Serj. Probyn*. What Sum of money had they upon taking a Clerk at that Time, and what now?

Mr. *Steele*. I did treat in order to put my Brother-in-Law Clerk to one Mr. *Atkinson*, in the Office.

Mr. *Serj. Probyn*. What Time was that?

Mr. *Steele*. To the best of my Remembrance it was in 1703, or 1704, and he had 100 Guineas. Since that Time my Brother-in-Law, while he was there, had 300*l.* or 300 Guineas with a Clerk.

Mr. *Com. Serj.* I desire he may explain to your lordships what he means by a Clerk being an Incumbrance to a Seat?

Mr. *Steele*. By the Custom of the Office, he that is put a Clerk, must be provided for before his master can take another. The master so taking him, cannot take another Clerk, till he is provided for by a sworn Clerk's Place, or a waiting Clerk's Place.

Mr. *Lutwyche*. If the Counsel have done, I desire to ask one Question, that is, The Gentleman says, he came into the Office in the Year 1687. I desire to know how many Clerks there were at that Time?

Mr. *Steele*. There were at that Time but 60 sworn Clerks; there was an Addition made, to the best of my remembrance, in my lord *Jefferys's* Time; Sir *John Trevor* was then master of the Rolls, I think there was an Addition of thirty.

Mr. *Lutwyche*. I desire to know whether they are not reduced from 90 to 60 again?

Mr. *Steele*. They are not at present yet reduced.

Mr. *Lutwyche*. Whether they are not intended to be reduced?

Mr. *Steele*. If any one dies without surrendering his Office, they don't fill up the Place of that Person with another; but any one may surrender.

Mr. *Lutwyche*. How many are there now?

Mr. *Steele*. I have been told there are about 12 or 13 less than 90: They are to be reduced

duced from 90 till they come to the ancient Number of 60; and they are reduced as they die without surrendring.

Mr. *Lutwyche*. We don't expect you to give an exact Account; How many may there be?

Mr. *Steele*. I can't take upon me to say how many; but, as I have been informed, I believe there are about 16 or 17 above the 60 remaining: I may be mistaken, I am not certain; but there are several Gentlemen here, who can give an exact Account.

Mr. *Lutwyche*. I desire to know whether the Offices are not a great deal better, by there being fewer of them?

Mr. *Steele*. Certainly, I believe that is pretty natural; the fewer the Offices are the better; but the Offices are not so good as they were when I came Clerk. They have reduced several Profits belonging to them since I came out of the Office, by the Act of Parliament made *For the Amendment of the Law*.

Mr. *Lutwyche*. You say they are sold for more than formerly they sold for; I desire to know whether some of those Clerks, whose Predecessors have had good Business belonging to the Office, have not made that Seat sell better?

Mr. *Steele*. Certainly it doth; if the Person surrendring had good Business, that Seat will sell for more than a Seat of less Business.

Mr. *Common Serj*. I desire that he will inform your Lordships, when it was in point of Time that these Offices sold at so low a Rate?

Mr. *Steele*. It was in the Year 1694 that the Gentleman to whom I was Clerk surrendered his Seat.

Mr. *Common Serj*. And when was it you knew 50 Guineas paid for the Place of a waiting Clerk?

Mr. *Steele*. The 50 Guineas I speak of for a Waiting Clerk's Place, was in the Year 87, or thereabouts.

Mr. *Common Serj*. Whether was that before the Increase of the additional Number of Clerks?

Mr. *Steele*. Much about the Time that the Additional Number of Clerks was added.

Mr. *Common Serj*. I desire he would inform your Lordships, whether the Prices began to rise before any Reduction was made?

Mr. *Steele*. Yes, before the reducing of them.

Mr. *Serj. Probyn*. When was the Reduction of them made?

Mr. *Steele*. I can't tell the exact Time. There was an Order made, that they should not be filled up as they died without Surrender.

Mr. *Serj. Probyn*. I desire he may be asked, Whether there was not a Difference of Price between those Seats which were full or empty of Business, or whether they were all at a *Par*?

Mr. *Steele*. The Price always varied, as there was much or little Business.

Mr. *Serj. Probyn*. But every Seat, whether great or less, had a Rise in Proportion?

Mr. *Steele*. Yes.

Mr. *Cary*. I desire he may be asked, Whether there hath not been an Act of Parliament since the Time he mentions, which hath been Beneficial to the 60 Clerks?

Mr. *Steele*. There was an Act of Parliament, called, *An Act for the Amendment of the Law*; by which the 60 Clerks had the Term Fees instead of the Tenour Bill, which was a

considerable Profit; and to make up that to them, the Fees of the small Writs were given to them, and the Term Fees; but in my Apprehension, the Tenour Bill was a greater Advantage than those Fees that have been given in Lieu of it.

Mr. *Common Serj*. That worthy Gentleman's Question hath occasioned me to desire, that he would inform your lordships, Whether, upon the whole of the Act, the Six Clerks Offices are better or worse?

Mr. *Steele*. In my Opinion, they were better before the Act, than they are now.

Mr. *Serj. Probyn*. My Lords, we have more Witnesses to this purpose; but we apprehend that Mr. *Steele* hath spoken so fully to it, that we shall not trouble your lordships with any others, as to this Matter. The next Witness which we shall beg leave to call, is in relation to the two Sums of 1575 *l.* that were paid into the Court of Chancery by the Noble Earl, for which we did call Mr. *Goldesbrough*.

Dr. *Sayer*. Before your lordships enter into an Examination of this Fact, I will only beg leave to take Notice as to the Time of this Repayment: The learned Managers were right in their Observations, That it was after the Vote for the Impeachment; but it was before the Articles were exhibited. This is mistaken in the Answer, but I am sure the Honourable House of Commons will be so candid as to think it was a Mistake only, and that 'tis impossible it could be with any View of deceiving the World, since both Facts were upon Record; the Earl was so very impatient to have his Answer in, that no Delay might be charged upon him, that I assure your Lordships the Answer was not settled till 3 or 4 a Clock in the Morning of that Day that it was delivered in. In such a Hurry, a Mistake of this Nature, I hope will not be taken amiss, nor be looked upon by the House as designed. My Lords, I thought it my Duty to observe this, before your Lordships entred into this Examination.

Mr. *Goldesbrough* called.

Mr. *Common Serj*. There are two Sums of Money taken Notice of to be given by Mr. *Kynaston* and Mr. *Bennet* to my Lord *Macclesfield*, I desire you would inform my Lords, whether those two Sums were paid back again, and when, and in what Manner?

Mr. *Goldesbrough*. My Lords, the 23d of *February* last my Lord *Macclesfield* came into Court, and deposited in Bank Notes and Money to the Value of 3000 Guineas. The Lords Commissioners were pleased to direct the investing it in *South-Sea* Annuities, in the Names of Mr. *Holford* and Mr. *Lovibond*, the two Senior Masters of the Court, for the Benefit of the Suitors of the Court.

Mr. *Common Serj*. I think, my Lords, we need not ask whether Mr. *Goldesbrough* be the proper Officer?

Lords. No, no.

Mr. *Common Serj*. I would with Submission ask another Question of Mr. *Goldesbrough*; I would beg leave to inform your Lordships what the Question is. There hath been an Examination on the Part of the Gentlemen of the House of Commons into the Nature of these Offices,

and I hope it will not be improper, Mr. *Goldesbrough* being now at your Lordship's Bar, to ask him as to the manner of the money coming into the masters Hands, whether it be by Compulsion, or at the Instance of the Parties.

Mr. *Serj. Pengelly*. This must appear by the Order. No money is paid in but by Order.

Mr. *Com. Serj.* The Orders are infinite, but Mr. *Goldesbrough* being the Register, may be properly asked, what the Practice and Usage of the Court is in this Instance. It is usual to ask the Officers of the Court, what the Practice and Usage of the Court is. If we should produce 20 Orders, they might object that others are not so; and therefore I beg Mr. *Goldesbrough*, the proper Officer, may inform Your Lordships, what the Practice of the Court is.

Mr. *Goldesbrough*. Upon Decrees, when Causes are heard, the Counsel pray what Decree is proper: Where Estates are to be sold, they order the money to be brought before the master.

Mr. *Lutwyche*. My Lords, I desire to ask one Question; Mr. *Goldesbrough* is a very experienced Officer of the Court, hath been a good while in the Place, and probably may give Your Lordships some light into this matter. The Question I would ask, is, When he first knew the Office, whether it was usual to direct the money to the masters, in the manner it hath of late been directed?

Mr. *Goldesbrough*. I can't say it was.

Mr. *Lutwyche*. The next Question is, When the present Usher of the *Rolls* had given Security, whether there were not some Orders made by the late Lord *Chancellor*, as well as by the masters of the *Rolls*, for Payment of money to the Usher of the *Rolls*; that is, into Court?

Mr. *Goldesbrough*. Yes, there was.

Mr. *Lutwyche*. I desire him to explain the Difference between paying the money into Court, and paying the money to a master. What is understood by paying it into Court?

Mr. *Goldesbrough*. Paying it into Court, is paying it to the Usher.

Mr. *Lutwyche*. I desire to know, whether there were not some Orders made, after Mr. *Trevor* the present Usher had given Security, for Payment of money to him?

Mr. *Goldesbrough*. Yes, there were.

Mr. *Lutwyche*. I desire to know, how soon after those Orders were varied?

Mr. *Goldesbrough*. I can't remember when the Orders were varied; as to those made before Hearing, and for continuance of an Injunction, I don't know they are altered yet.

Mr. *Lutwyche*. What I ask is, Whether he had any Directions touching the varying of Orders, for the Payment of money; any Direction, I mean, from my Lord *Macclesfield*, to vary the Order?

Mr. *Goldesbrough*. Money paid before Hearing, was paid into Court; money paid upon the Decree, was brought before the master. I had no Direction from my Lord *Macclesfield* to vary the Order.

Mr. *Lutwyche*. Was there any Variation or Difference in drawing up the Order, for some time after the Usher gave Security, from what it was some time before?

Mr. *Goldesbrough*. Upon interlocutory motions, the money was brought before the Usher, and so it hath been ever since.

Mr. *Lutwyche*. Was it always so?

Mr. *Goldesbrough*. It hath been so ever since.

Mr. *Lutwyche*. Ever since what time?

Mr. *Goldesbrough*. Ever since the Time that Mr. *Trevor* gave Security.

Mr. *Lutwyche*. What I would know is, Whether the Orders and Directions at first were not in general, to pay the whole money into Court?

Mr. *Goldesbrough*. No, my Lords.

Mr. *Lutwyche*. How was it?

Mr. *Goldesbrough*. On all Orders interlocutory before Hearing, it was paid in to the Usher: On all Orders for money, subsequent to the Hearing, it was brought before the master.

E. of *Macclesfield*. This Question hath been asked Mr. *Goldesbrough*, with relation to the paying of money into Court, and being brought before a master, I desire he would inform Your Lordships what the difference between them is?

Mr. *Goldesbrough*. Money brought into Court, is money brought in before Hearing, and is subject to the Order of the Court, to be paid out either before the Hearing, or after, as the Nature of the Case requires. Money brought in after Hearing, is money to be put out on Security, and is brought before the master.

E. of *Macclesfield*. Whether when money is ordered to be brought in to be disposed of, as upon a Purchase, or upon a Decree, to pay Debts, &c. The Course of the Court in all his Time hath been to bring it into Court, or before a master?

Mr. *Goldesbrough*. I can't say it hath been so in all my Time: Since the Revolution it hath been generally brought in before the master, before it was brought into Court.

E. of *Macclesfield*. Have the Orders made by me, since the Usher gave Security, been made in the same manner as those by my Predecessors?

Mr. *Goldesbrough*. Yes, They have been the very same.

E. of *Macclesfield*. I desire to know, when first the money paid into the Hands of the Usher went into another Course, that is, upon the Usher's Death, or not giving Security; and what method was taken then?

Mr. *Goldesbrough*. I believe, after the Revolution, there was looked upon to be a Defect in the Security of the Usher, and it was upon that Consideration, that the money was ordered before the master.

E. of *Macclesfield*. And afterwards was there not an Alteration made of all the money that used to be paid to the Usher? Was it not ordered to be brought before the junior masters?

Mr. *Goldesbrough*. In my Lord *Cowper*'s Time, when there was a Difference between the Usher and his Deputy, my Lord *Cowper*, upon that, did order the money to be brought, and lodged in the two junior masters Hands. They were each to keep a Key, and the Usher another: When any money was paid, it was paid out of the Chest, kept under those Keys; and the money that was paid in, was paid in there.

E. of *Macclesfield*. Was not the money that used to be paid in to the Usher's Hands, directed in to the junior masters Hands?

Mr. *Goldesbrough*. It was so.

E. of *Macclesfield*. As to the money appointed to be disposed of, for payment of Debts, or otherwise, how was that paid? Was that put into the Chest, or into the Hands of the respective masters, to whom it was referred?

Mr. *Goldefbrough*. I think it was put into the Chest; there was then no Difference at all.

E. of *Macclesfield*. Had no other masters then any money brought before them? was all brought before the junior masters?

Mr. *Goldefbrough*. The general Order was, for the money to be brought before the junior masters, to be kept in a Chest there.

E. of *Macclesfield*. Mr. *Goldefbrough* mistakes the Question. I don't ask how the money was usually brought; but had no other master money brought before him in my Lord *Cowper's* Time?

Mr. *Goldefbrough*. Yes, My Lords.

E. of *Macclesfield*. What money was that? Upon what Occasion?

Mr. *Goldefbrough*. The bringing the money to the two junior masters, was found to be inconvenient; whereupon, after that it was altered, and the money was brought before the masters, to whom the Reference was in Court.

E. of *Macclesfield*. Whether the money that was paid in to the two junior masters, was not such money as was before ordered to be paid into Court?

Mr. *Goldefbrough*. Yes.

E. of *Macclesfield*. I desire you would recollect, whether you was not present at a meeting of the Master of the *Rolls*, and *Usher*, and others; whether this was not under Consideration, what money should be paid into Court, and what should be brought before the master?

Mr. *Goldefbrough*. Yes.

E. of *Macclesfield*. Whether you was not then asked, whether money directed after a Cause is heard, to be disposed of, was not brought before a master?

Mr. *Goldefbrough*. Yes, I was asked that question.

E. of *Macclesfield*. What Account did you give of the Course of the Court in that Particular?

Mr. *Goldefbrough*. I gave the same as now, That the latter Practice had been to bring it before the master, to whom the Cause was referred.

E. of *Macclesfield*. Do you remember, whether the *Usher* was not asked, whether he had any Precedents of money paid into his Hands, to be distributed amongst Legatees, or Creditors, and what the Answer was?

Mr. *Goldefbrough*. He said he had none.

E. of *Macclesfield*. Do you apprehend the Course of the Court to be, that money brought in before Hearing, is to be paid in to the *Usher*, and money after Hearing, to be brought in before the master?

Mr. *Goldefbrough*. Yes, I do.

E. of *Strafford*. I desire he would inform your Lordships, what the Security is, and how much, that is given by the *Usher*; and whether it is the same now, as it was before my Lord *Cowper* made that Alteration?

Mr. *Goldefbrough*. I can't say any thing as to that, I know nothing of it, it doth not lie in my Province.

Mr. *Serj. Probyn*. Your Lordships will please to remember, in the Case of Mr. *Elde*, though he paid 5250 *l.* all the money was returned, except 1850 *l.* So the same as to Mr. *Thurston*, 5250 *l.* that all was returned in a reasonable Time, except 2000 *l.* so that to these Facts, we shall not trouble your Lordships with any Witnesses. But now we shall beg leave to lay before your Lordships another Evidence, that when

Mr. *Thurston* was admitted into this Office, upon the Payment of 5000 Guineas, another Gentleman offered 6000 *l.* Mr. *Cottingham* proved the same as to Mr. *Elde*. This we do to shew, that his Lordship was not that avaricious Person, as he hath been represented; he refused 6000 *l.* and took less from another. We desire Mr. *Ellis* may be called.

Mr. *Ellis* sworn.

Mr. *Serj. Probyn*. We desire Mr. *Ellis* may be asked, what he knows of any Sum of money, that was offered for the Mastership in *Chancery*, to which Mr. *Thurston* was admitted, and what that Sum was?

Mr. *Ellis*. Upon the Death of Mr. *Borret*, Mr. *Richard Lucas* came to me at my Lord *Macclesfield's*, and told me, That his Brother desired to have the Place of a Master in *Chancery*, then vacant: And he said, that as I was in my Lord *Macclesfield's* Family, I might be of Service to him, in conveying Mr. *Lucas's* Proposal to my Lord. He then told me, what I was to offer my Lord *Macclesfield* for that Place; he said he was so sensible of my Lord *Macclesfield's* Honour and Generosity, that he would leave it entirely to his Lordship, what he would have in Consideration of his coming in. But if my Lord *Macclesfield* did not approve of a Proposal so undetermined as that was, I was to offer 6000 *l.* or 6000 Guineas; I don't remember which of those two Sums, but one of them I am certain it was. I did offer it to my Lord, who told me Mr. *Lucas* had been well recommended to him, and he was satisfied with his personal Character, and with this Offer. My Lord *Macclesfield* said no more; and I could not press his Lordship to explain himself any further. I returned that Answer to Mr. *Lucas*, and heard nothing further of that matter, till my Lord *Macclesfield* had declared that Mr. *Thurston* should have it.

Mr. *Com. Serj.* I desire he may be asked, whether the Gentleman that applied to him, was not his Friend and Acquaintance?

Mr. *Ellis*. Mr. *Richard Lucas* was my Acquaintance; when he desired me to do this, I told him it was not proper for me to apply about matters of such Nature; but in Friendship to him, I would speak to my Lord about it.

Mr. *Plummer*. I don't know whether the counsel have done; if they have, I desire to ask this Witness what Mr. *Richard Lucas* is himself?

Mr. *Ellis*. He is a Clergyman.

Mr. *Plummer*. I desire to ask him, If Mr. *Richard Lucas* did not, at the same Time that he proposed the 6000 *l.* lay some Restriction or Condition, upon which he was to pay it. Had not you such Instructions?

Mr. *Ellis*. No, I don't remember he did any.

Mr. *Plummer*. Then I desire to ask you, If he did not say, Provided Mr. *Borret's* Deficiency was made good?

Mr. *Ellis*. He mentioned no such Condition to me; he did speak of Mr. *Borret's* Deficiency; I told him I had heard there would be no Deficiency there. Upon which he said, he had been assured there would be none, by a Gentleman known to us both; but however that be, says he, my Brother is willing to enter into a Treaty with my Lord *Macclesfield* upon those Terms.

Mr.

Mr. *Serj. Probyn*. My Lords, we shall trouble your Lordships no further upon these Articles we have been upon, the other Gentlemen will answer what is to follow.

Mr. *Robins*. May it please your Lordships, I am likewise by your Lordships Permission assigned of Counsel with the noble Earl, who has the misfortune to lie under the Weight of so heavy a Charge, as an impeachment of the whole Body of the Commons of *Great Britain*; and shall beg leave to open to your Lordships the Nature of his Defence, and the Strength of his Evidence, with regard to the *Eleventh* and *Twelfth* Articles of this impeachment.

I am sensible, my Lords, that the Solemnity of this Prosecution, from the Weight and Number of those, who are become the Accusers of this noble Earl, and the awful Appearance and Wisdom of those who are to be his Judges, and the Name of an impeachment in Parliament, may seem to carry an Argument of greater Crimes and greater Guilt, than are to be met with in the ordinary Courts of Justice below.

But, my Lords, with the greatest Submission, if the Solemnity of the Proceedings on this Occasion has not altered the Nature of Things, and imprinted a Guilt where there is no Guile, we humbly hope we shall be able to lay before your Lordships some few Observations and Circumstances of Evidence, that will, at least, extenuate, if not wholly abate and take out the Sting and malignity of the several Crimes, whereof this noble Earl stands accused.

Your Lordships, without Question, will have long since observed, That the Losses and Sufferings of Widows, of Orphans, and others, who, from the Distress and Impotence of their Condition to help or defend themselves, have fled to the Court of Chancery, when this noble Earl presided there, for Sanctuary and Protection; that these have been justly made use of as the greatest Aggravations of the Crimes, where-with he is charged, and they have been displayed with the utmost Force of Eloquence, and in the most moving Strains of Commiseration and Pity.

And I believe, my Lords, every one that heard them have shared and gone along with the Honourable Managers for the House of Commons, in the Concern and Indignation they have so justly shewn towards those, who have been the Authors and Contrivers of them.

These, my Lords, are Subjects, wherein the richest Fancy may almost lose it self, and the poorest can never be at a Loss for something to offer to move and affect the Passions of mankind.

And the learned managers for the Honourable House of Commons, have adorned and set off their Charge against the noble Earl on this Head, with so many Beauties of Expression, and so great a Propriety and Choice of Language, to engage and win over all the Passions of Humane Nature to their Side, that it will be difficult, if not impossible, for Us, who may seem to have undertaken an Argument leading to disprove and reason against the Force and Truth of all these, to hope for Success, but by shewing to your Lordships, that the noble Earl entirely joins with the learned managers in their just Resentment and Concern on this Occasion, that he is deeply affected with the losses, the Depredations and the Havock, which has been made of the Fortunes of the unhappy Suitors of the Court of Chancery.

That he has long been endeavouring to put a

Stop to them, that at one Time he has contributed his Reason, his Judgment, and his Understanding, to find out effectual methods for the Cure of them; at other Times has made Use of his Power, his Authority and that Majesty wherewith, as Lord Chancellor, he seems to be invested, to enforce and hasten the compleating of them.

That he has convened the masters, the Registers, and the several Officers belonging to his Court, to consult, advise and assist, in finding out means to stop the growing Evil; that he has assisted with his Purse, has advanced considerable Sums of money of his own, and when Nothing would do, when the mischief appeared too big for his single Endeavours to oppose, that he then at last presumed humbly to lay the whole before his Majesty in Council, as well for his Majesty's Assistance and Direction, as to testify how much he had at Heart the finding out a Remedy for the Cure of those overgrown Diseases, this Epidemical Contagion, which was spreading through every Part of the Court where he presided, and seemed to threaten Destruction and Ruin to the whole.

These, my Lords, we humbly hope will prove the noble Earl not to have been an idle and unconcerned Spectator at the Tragedy that was acting around him; that he saw and felt the Com-motions it had raised, and was fully determined to put an End to them as speedily and effectually as he could.

But when, my Lords, a Stop was put immediately to his Endeavours; when he was disarmed almost in the very Beginning of his Onset, and when the great Seal, and therewith his Power to proceed further, was taken from him, your Lordships will not impute it to him, that he was forced to sit still, and leave it to others to effect what he had, so prosperously and happily, begun.

Your Lordships, without question, will have already observed, That these fatal mischiefs did not spring up all at once, That they had long been growing, That the Seeds of them had lain buried and concealed for a considerable Time, and, That they hardly appeared at all, till they were grown too stubborn and obdurate, to yield to an easy Cure.

Your Lordships will likewise, no doubt, have observed, that however in the strictest way of considering Things, the Chancellor may possibly be thought to be answerable for them; yet, that they did not originally proceed from him, that he had not the immediate Custody or Ordering of the Suitors money or effects.

That the Masters in Chancery, who are no less than Eleven in Number, by the Constitution of the Court, and the Nature of their Office, were necessarily to be entrusted with that Part of the Business thereof.

And when your Lordships shall likewise be pleased to observe further, That enough, and more than enough for the strongest Constitution of Body, and the greatest Abilities both of Mind and Understanding, remained still for the Chancellor's own Share, in the Dispatch of the daily and necessary Business of the Court where he presided, the innumerable Avocations, by his Attendances on your Lordships, on His Majesty, and the Council, and other Services, which the Duty of his High Station required from him; Your Lordships, no doubt, will

will easily reflect, that he had but little leisure, suddenly, and immediately to go through so arduous, so difficult, and so tedious an Undertaking, as the stating and settling of the masters Accounts, for no less than almost a million of money, which has now appeared to be in their Hands. And, your Lordships, we are persuaded, are no strangers to the many and almost insuperable Difficulties which even at last have attended the Prosecution of that Affair, the great length of Time it has taken up, the number and variety of meetings and Consultations with Persons of the greatest Abilities and Experience, to go to the bottom of it, and whether even yet they have been able fully to effect it, or have fixed on such methods of Enquiries as have laid open the whole Scene, or will certainly prevent the like mischiefs for the time to come; these, my Lords, we humbly apprehend, are Considerations that will not be thought altogether unworthy of your Lordships Notice, in determining the Guilt or Innocence of this noble Earl, of the Crimes laid to his Charge.

It must indeed be admitted that they have for the present, taken away the money, Effects, and Securities of the Suitors out of the masters Hands, and so have prevented any loss for the time to come on their Part.

But whether, my Lords, they are even yet disposed of in such manner as fully to answer the Ends proposed, whether the Ease and Convenience of the Suitors of the Court will appear to be more effectually provided for, than they were before, by the methods that have now been taken to dispose of their money and securities; these, my Lords, I am afraid are Questions more easily asked, than answered.

But, my Lords, all I would be understood to mean by this, is, and I mean nothing more by it, than that the settling and adjusting of the masters Accounts for such great Sums of money, placed and disposed of in such variety of Hands, so difficult to be thoroughly considered or understood; and so little to be depended on if they were understood; that this, my Lords, was rather the work of Persons at full leisure, of Persons conversant in the Nature and manner of Accounts, that it was the work of variety of Persons of different Capacities and Abilities, and so the taking of these Accounts lately has abundantly verified and proved them to be.

And then, my Lords, we humbly hope that the single Endeavours of a Chancellor to the same end, by being unsuccessful, will not be made criminal, and that he will not be obliged under the pain of an Impeachment in Parliament, to do what, with the greatest Submission, has never yet been attempted, or if attempted, has met with the same ill Success with the Endeavours of the present Earl, and could never hitherto be compleatly or perfectly effected.

But, my Lords, with great Submission, if the stating and settling of these Accounts, on a just and lasting Foundation, should be admitted to be the Duty and Office of a Lord Chancellor, and that he is bound under Pain of an Impeachment to take care of them, yet as this is a Work of the greatest Moment, Judgment, and Consideration, and must unavoidably take up a very great portion of Time, and put a total Stop and Obstruction for the present to all the other Branches of his high Office, we humbly hope, my Lords, that his being cut off in the midst of his Endeavours of that kind, and thereby prevented from

further Pursuit of them, that this will be a Consideration of the greatest Weight with your Lordships in determining the Fate of this noble Earl, and that he will not be made Criminal for leaving it unfinished, when his Power of proceeding further therein, was suddenly and unexpectedly taken from him.

My Lords, your Lordships very well know that the Business not only of the Court of Chancery, but of all the other Courts of *Westminster-Hall*, and even of your Lordships Supreme Court of Judicature, is, and must necessarily be distributed and disposed of into variety of Hands, that some are assigned to one Province, some to another, and all of them concurring to the same End, the carrying on the Business of the respective Courts to which they belong.

And, my Lords, the Officers and Ministers of each of these Courts of Justice, on their being admitted thereto, give each of them the Security of an Oath, or some personal Security for the due and faithful discharge and execution of their Duty, whilst they continue in their Offices.

Now, my Lords, what can be the End of requiring and resting on these Securities, but to relieve and ease the minds of their Superiors from the necessity of prying and examining daily into their Behaviour and Conduct, to the hindrance and neglect of their own greater and more immediate Duty?

The Officer is at the Peril of his Oath, or the Security he has given, nay, even at the Peril of the Office itself, to discharge his Duty as he ought, and justly forfeits his Office by a neglect or breach of any part of his Duty therein; and if one or two of them should have no regard to all or any of these Ties, must the ten Righteous that are left, nay, must the Chancellor himself be punished for their Sakes?

But, my Lords, Masters in Chancery are generally, if not always, chosen from the Profession of the law, and the manner of their Education and the nature of their Studies are justly supposed to set them above the Temptation of mean, or base, or little and unjust Actions.

Many of that Profession your Lordships will permit me to observe, do now, and have in all Ages, worthily adorned even the august Body of the House of Peers, and have been advanced to the highest Dignities in the State.

And, then, my Lords, I humbly hope 'twill not be thought an Observation altogether improper, that when one of this liberal Education, when one brought up in the study and practice of a Profession, whose very Principles consist in the knowledge of Virtue and Honour, of the Rules of Justice and Equity, and all the Accomplishments which can adorn Life, or make him useful to his King and Country; I say, my Lords, I humbly hope 'twill not be improper to observe, that when such a one applies for an Office in the Civil Government, which he is in any Degree qualified for, 'tis no wonder that he should meet with a more favourable Reception than other Persons, who perhaps may have nothing but their Estates or Fortunes to recommend them.

The very Profession of such a one is, my Lords, almost a sufficient Security and Recommendation of itself, and immediately induces a Persuasion and Belief, that they will do nothing to forfeit their Honour, their Reputation, or that Credit and Esteem, which they so justly do and ought to Regard and Value.

But when, my Lords, 'tis remembered that the additional Security and Sanction of an Oath is likewise required from them, when they invoke the Majesty of Heaven to Bless them as they perform their Duty, what higher, what greater or better Security can be taken from them for the due and faithful Discharge of their Duty in the Office they are entering upon?

The Oaths they take upon that Occasion, your Lordships have already heard, and no doubt will have observed, that they differ little from the Oath, which even the Lord Chancellor himself takes on his being admitted to his own high Office.

And as they sit with him in Judgment on the Bench, share with him in carrying on the most important Business of that Court, which is next in Dignity to the Supreme Court of Judicature we are now before, when they are in most Cases necessary for the distributing and dealing out Justice and Equity, and fixing the Rules and Bounds of Property to the Suitors there. Can it, or will it, my Lords, be easily or readily imagined, that they should have no Regard to all these sacred Ties of Duty, that they should prostitute their Honour, their Conscience, and every Thing that is dear and valuable to them, for the sake of any worldly or temporal Consideration whatsoever?

These, my Lords, we humbly apprehend are some of the Reasons, which may be offered, why no personal Security has ever been required from a Master in Chancery, on his Admission into that Office, any more than from the Chancellor himself.

And if this be so, tho' there could be no need, or Occasion for the Chancellor's making any Declarations concerning their Ability or Substance, yet we humbly hope we shall be able to shew to your Lordships, that this Declaration, which is made one of the Articles of an Impeachment against this noble Earl, that even this too, was not without its just Foundation of Reason and Truth.

And this, my Lords, leads me to observe a little on the Eleventh Article of this Impeachment.

[*Article XI.*] My Lords, the Eleventh Article contains a two-fold Charge against the Earl; First, That whilst he continued in the Office of Lord Chancellor, in order to advance and increase the illegal and corrupt Gain arising to himself from the sale and disposal of the Offices of Masters in Chancery, he did admit several Persons to those Offices, who at the time of their Admissions were of small Substance and Ability, unfit to be trusted with the great Sums of money and Effects of the Suitors lodged in their Hands.

The Second Charge against the Earl in this Article, is, That he did publicly in open Court falsely represent the Persons by him admitted to the Offices of Masters of the Court of Chancery, as Persons of great Fortunes, and in every respect qualified for the Trust reposed in them.

These, my Lords, are the two Branches of this Article against the Earl, and I would beg leave to observe upon it in general, that 'tis not so much as charged or insinuated in any part of it, that the Earl knew or had the least Notice of any insufficiency or inability in the Masters at the Time he admitted them to take upon them that great Trust.

If that had been the Case, or could have been clearly made out, the Commons without doubt

would not have omitted so material an Aggravation of this part of their Charge against the Earl.

They have indeed proved, that the Earl did not think fit to take the masters own Words for their Abilities and Fortunes, and therefore never asked them the Question.

But, my Lords, we hope we shall be able to shew to your Lordships, that the Earl took a much more proper and effectual method, to be satisfied of the Truth of their Circumstances and Abilities, than by any Appeal he could have made to themselves; that he did not content himself with barely asking the Question for the sake of an Answer, which he ought to have had no regard to, whether true or false, but that he weighed, considered, and judged of the Account he received of them on his Enquiry from others, and determined accordingly, whether they were or were not fit to be placed in an Office of so great Trust.

That in Consequence thereof, he absolutely rejected some, though their Friends offered him a greater Present, or if it must be called so, a greater Price for their Offices than others, for want of an Estate or Fortune in Possession of their own, that might be some ways adequate to the great Charge they were going to be entrusted with.

That from the same Views of Security to the Suitors of the Court, he refused to admit others, from an Apprehension that the Sums they offered, though considerably greater than were offered by others, would too much exhaust and lessen their own Fortunes, to be able with any Degree of Ease or Credit to support themselves, or be consistent with the Safety and Security of the Suitors money and Effects, to be entrusted with them.

These Instances, my Lords, we shall be able to produce to your Lordships; and when we have so done, we hope we shall need to be in very little Pain for the Second Part of this Charge, which the Earl by his Answer has partly admitted to be true, that is, that he believes he may upon some Occasions, have declared, That he thought the, then, Body of masters as good, with Respect both to their Estates and Ability for the Discharge of their Office, as had been at any time before.

This, my Lords, the Earl owns by his Answer, That he may on some Occasions have said; and if it were true, where was the Crime of it? 'Twas indeed more than he needed to have said, as no One had Authority to require him to make any Declaration at all about the masters.

But, my Lords, if he had said more than he needed to have said, and yet his saying was true; we hope, my Lords, that will never be imputed to him as criminal.

Indeed, my Lords, the Honourable Managers for the House of Commons, both in their Opening, and the Course of their Evidence, have tacked to this Declaration a Circumstance arising from the Death of Mr. *Fellowes*, one of the masters, which happened just before this Declaration was made, from whence they would infer, and one of them was pleased to say, 'Twas a necessary Declaration to be made at this Time, to give Notice that the Office was worth buying, or to that Effect.

But, my Lords, we humbly hope, how ingenious soever the Observation may be, that it will have no Weight with your Lordships, if the Truth and Nature of the Case it self will support the Declaration that was made upon that Occasion.

But, my Lords, before I leave this Article, I would beg leave to add one Observation more to what I have already said upon the first Part of it, concerning the Obligation on the masters in Chancery to be faithful in the Discharge of their Duty, from the Honour of their Profession, and the Nature and Sanctity of the Oath they take on their being admitted masters.

And, my Lords, I the rather chuse to take Notice of it, because 'tis an Argument, which the honourable managers for the House of Commons have themselves furnished us with.

Your Lordships were pleased to observe, That in the very Beginning of their Evidence, they took great Care and Pains to exalt and dignify the Office of Masters in Chancery as high as possible, and therefore they read to your lordships several Commissions, and put in others to the Table, from the Time of *Edward* the VIth, down to this Time, to prove, That the Masters in Chancery were joined in Commission with the Master of the Rolls, and the Judges themselves, for the hearing and determining of Causes in Equity, in the Absence of the Chancellor.

And 'twas said by one of the learned managers in the first Day's Opening upon that Occasion, That the Masters in Chancery were next in Power to the Chancellor himself, after the Master of the Rolls.

From which I would humbly presume to infer, That if this be so, if they are Persons of such Eminence and Worth, and so nearly related to Justice it self, on their commencing masters, 'tis still a higher Obligation on them to be careful in the Discharge and Execution of their Office; and then, whether these Considerations, whether the Ties of Honour, of Conscience, and of the Venerable Company they are from thenceforth joined with, and made equal to; whether these may not in a great measure be supposed to supersede that strict Enquiry, which a Lord Chancellor would otherwise think himself obliged to make; this, my Lords, we humbly hope will not be thought an Argument altogether foreign to the present Question before your Lordships, but will, we hope, at least extenuate, if not wholly wipe off any Guilt, that for want of such Enquiry might possibly be imputed to the Earl on his Admission of Masters.

But, my Lords, there is one Observation further, which I cannot let pass on this Occasion, though 'tis not strictly to the Article I am now upon.

And that is, my Lords, what the same learned manager observed in his Reasoning upon that Point, That the Offices of Masters in Chancery being Offices of such great Trust and Dignity, that no Offices were more improper to be bought and sold than they, except those of the Judges themselves.

This, my Lords, might, and no doubt, was a very just and proper Observation to be made, in support of the Point they were then endeavouring to maintain.

But, my Lords, it falls out very unfortunately, to disparage and weaken another Part of their Articles, which, without doubt, they have equally at Heart to maintain, and that is the obliging

these great Men, these Judges, these Masters in Chancery, to give Security for the Suitors money and effects in their Hands, as if they were not fit otherwise to be trusted with them.

They are just before made a sort of petty Chancellors, equal in Dignity and Power to the Judges themselves, and fit to be entrusted with the Disposal of the Properties and Fortunes of all the Suitors of the Court of Chancery, and therefore their Places must not be bought or sold; but here they are reduced and abased to the low and servile Condition of a common Receiver or Rent-Gatherer, and must give Security for all the Suitors money or effects that shall happen to come to their Hands for fear they should run away with it.

All, my Lords, I shall presume to add further under this Head, is, That though one of the masters has indeed frankly owned, That he was worse than nothing when he came into his Place of a Master in Chancery, yet from another part of his Evidence, he owns, and it fully appears, that he grossly abused and imposed upon the Earl in concealing it from him, of which the Earl, when he came to have Notice, very justly complained, and expressed his Surprise and Resentment, that he should pretend to come into an Office which he was not able to pay for.

And how far the same Gentleman will in time to come remember the kind and generous Return made him by the Earl, of the Fifteen Hundred Guineas, when he came to find him in Distress afterwards for want of it: This, my Lords, must be left to his own Conscience, and the Gratitude of his own Heart; as must also the like Return of Fifteen Hundred Guineas made to another of the masters under the like Distress and Inability to bear the Want of it; These, my Lords, are Instances of the greatest Generosity, Honour and Tenderness, I had almost said Charity, in the Noble Earl, that perhaps can be produced in Private Life on the like Occasions; however, they have been disguised and disguised, by the Learning and Ingenuity of the Honourable Managers for the House of Commons.

In the mean time, my Lords, I would beg leave to observe, that the ready Paying and Producing of these Sums to the Earl, for their Places at first, their not giving him the least Notice or Intimation that it was not their own money, and the Figure and Appearance they made in the World; these all concurring might easily mislead the noble Earl into a Persuasion and Belief, that they really were what they appeared to be; that they were well able and sufficient to bear the Expence of it. And neither of these Two, or of the other masters have given any Sort of Evidence, that the Earl knew, or had reason to entertain the least Suspicion to the contrary: And if now, at last of all, the Deficiencies of these, and of all the other masters placed in by the Earl shall appear to have been already made good, or to be so far secured, as to prevent any Danger of a Loss to the Suitors of the Court, from their several Offices (which we humbly hope, on the strictest Examination, will appear to be the Case) we may then humbly presume to hope, that the Earl will not be thought to be Criminal under any Part of this Article; but that Your Lordships great Justice will acquit him wholly of it.

[Article XII.] But, my Lords, I would now humbly beg leave to offer a few Words and Observations on the Twelfth Article, which comes next to be considered of.

This

This, my Lords, charges that whilst the Earl was Chancellor, an unjust and fraudulent method was practis'd in the Court of *Chancery*, on the Sale of Masters Places, and on the Admissions of new Masters; that the Sums agreed to be paid for the Purchase thereof, were paid out of the Suitors money, either by way of Retainer, or by replacing the same again, in the Hands of the Selling Master, immediately after the Admission of the new one: And that by this Practice the Price and Value of these Places was greatly advanced, and Persons of small Ability and Substance were encouraged to contract for the same, which has occasioned great Deficiencies.

This Part, my Lords, shews only the Contrivances amongst the masters themselves, how to get into those Offices; and so far the Earl seems to be but little concerned in it.

But then comes the Charge against the Earl, that though this Practice was notorious and publick, and the Earl was fully acquainted therewith, yet, for his own unjust and corrupt Profit, in the Selling of those Places, he took no measures to prevent or reform that Abuse, either by causing Schedules to be taken of the money and effects of the Suitors, delivered over to the new master, or by appointing any Person to supervise or inspect the Transfer, and Delivery thereof: But on the contrary, suffered that fraudulent Practice to continue without controul, whereby great Embezzlements have been made of the Suitors Money and Effects.

My Lords, the noble Earl, by his Answer, says, That he was totally ignorant of this practice amongst the masters; but admits, that he never gave any particular Directions for Delivery of the Suitors money and effects, by a Schedule to the succeeding master; and says, he never heard that his Predecessors ordered such Schedules to be made; but says, he believes such Schedules were made, between the new master and the old, on the general Order of Transfer, made of Course on the Admittance of the new master.

This, my Lords, is the Earl's Answer to this Article. And as he has in general denied his Knowledge of these Practices amongst the masters, it was certainly expected by Your Lordships, that the honourable managers for the *House of Commons*, would have fully proved it upon him, and thereby have falsified his Answer to this Part of the Charge.

But, my Lords, if I did not greatly mistake the Evidence to this Point, it has proved nothing more, than that the Earl knew of this Practice, at the same time that all the rest of the World did, that is, a little before *Christmas* last; when the Curtain drew up, and display'd the masters in their true Colours.

Then it was, and not before, that the Earl was let into this Secret by the kind Assistance and Help of Mr. *Thomas Bennet*, and the Affidavits that were made by him and others on that Occasion.

But, my Lords, with great Submission, the Earl's knowing of it at that time was a little too late for him to give any Orders for preventing or redressing it for the time to come; for the great Seal was taken from him sometime before, and then all his Knowledge after could be of no use to him, but only to shew how treacherously he had been dealt with, in not being let into this useful Part of Learning, whilst it might have done him any good.

And, my Lords, if this be so, as it can be no ways Criminal in the Earl not to put a Stop to a Practice he was wholly ignorant of, and which the masters kept private amongst themselves, We humbly hope, how ill soever the Masters may be thought to have deserved of this noble Earl, that the Earl himself will not be thought to have deserved ill of your Lordships, in not endeavouring to prevent it; and that in Consequence thereof, Your Lordships great Justice will acquit him of this Part of the Impeachment.

And, my Lords, As to the last Part of this Charge, the not causing proper Schedules to be taken of the Suitors Money and Effects, delivered over to the succeeding Master, as a method, which might in all probability have prevented the Practices amongst the Masters, complained of in the first Part of this Article; this, my Lords, we humbly apprehend, neither can, nor is intended, even by the Articles themselves, to affect the Earl further or otherwise, than as a means he ought to have made use of, to put a Stop to these dangerous Contrivances, formed and set on foot amongst the Masters, to dispose of their Places to the best Advantage.

But, my Lords, If the Earl himself knew nothing of these Contrivances, if he was wholly a Stranger to, and unacquainted with the mischief, 'twill surely, we hope, be no Crime in him, that he did not look out for a Cure.

But, my Lords, It may, perhaps, be worth while, just to consider of the wonderful Discovery that seems to have been made of these Schedules, and how far they would have answered the ends proposed, admitting the Earl had known of these Practices amongst the Masters, and had been better disposed than the *Commons* are pleased to think he was, for the remedying of them.

And, my Lords, I am afraid this would have proved very far from being an infallible method of remedying these Evils for the time to come; for, my Lords, if the Masters would but trust one another, or any Body would trust them for a very few Days, might they not have done just the same thing they did before? might they not have immediately replaced the Money again in the Hands of the Selling Master? or have paid off a Bond or any other Security they had given on the Borrowing of the Money, as soon as ever they were admitted, and had got the Suitors Money into their Hands? And if they had so done, and this had been discovered and complained of, would it not, with great Justice, have been called instituting a trifling and fallacious method of Security for the Suitors, which could do them no manner of Service, but tended only to amuse and deceive them; and then whether this would not have made a better Figure in an Impeachment, than what is here fixed upon, may, we humbly hope, be thought deserving of Your Lordships Notice; especially, my Lords, when it might have been so easily explained and urged as no doubt it would have been by the learned Managers, that the very taking of these Schedules was for the sake of seeing into the Nature and Value of the Office to be sold, that he might the better know how to set his Price upon it.

But, my Lords, I shall only beg leave to add one or two very short Observations more upon this Head, and then call such Witnesses, as we have, to speak to these two Articles.

And, my Lords, the first Observation I would beg leave to mention, is, that the Earl by his Answer

swer owns that he did not, neither did he ever hear, that any of his Predecessors ordered such Schedules to be made; neither is there the least Proof on the Part of the Honourable Managers for the House of Commons, that any such Schedules ever were made, or thought of, 'till Mr. *Lighboun* very happily hit upon them.

Indeed, the Earl owns by his Answer, that he believes such Schedules were usually made between the Old master and the New, on the General Order of Transfer made of Course in the Admittance of the new master.

But, my Lords, these are not the Schedules the Articles mean, as I apprehend, or, if they are, the Earl at least was to have one Part of them; or else they could be of no Use to him in guarding against any fraudulent Practices of the masters. And if he had had one, what Security that could have been to the Suitors of the Court, if the masters should have been disposed to make Use of their money afterwards; this my Lords, I have already endeavoured to consider of.

The next Observation, my Lords, I would beg leave to make under this head, is, That if such Schedules had been made, what Security would this have been to the Earl, that they were in all Respects true, or with any certainty to have been depended on?

Some, my lords, even of the masters themselves, in the hurry they were lately obliged to give in their Accompts, discovered afterwards several mistakes and Omissions therein; and though they were given in upon Oath, yet on a Review, and a more narrow and careful Inspection and Examination of them, 'twas found they were not altogether to be relied on; and therefore the masters were forced to set them right in their Post-Accounts, given in at some distance of Time after; and whether any, or what other, or better Security for the Truth of those Accounts has been yet found out, I am wholly ignorant of.

My lords, the Third, and last Observation, I would beg leave just to mention, and submit to your lordships under this head, is, Whether there be any, and what real mischief in the Practice it self, so grievously complain'd of in this Article?

It is, my lords, notorious, That in every one of the Offices of these masters in Chancery, there is always necessarily a much greater Sum of Money lying dead in the Office, than goes to pay for their Places, either for want of Securities whereon to place the money, or from the different Claims of Persons entitl'd thereto; or to satisfy the Demands of Creditors, and other Persons, as they shall from Time to Time come in and prove their Debts, and from several other Causes, which I need not here enumerate.

And then, my Lords, Whether there be any great Difference between paying for their Places out of the Suitors money, lying dead in their Hands, or raising so much money out of their own Estates and Fortunes, in order to let the Suitors money lie dead; whether a Practice of this Nature, which does no Sort of Hurt to the Suitors, is of no Advantage to the masters, and which the Earl himself was wholly a Stranger to, and which if he had known, could not have been prevented; whether this can be heightned or improved into so heinous a Crime in the Earl, as to need or deserve the most solemn Prosecution, which we are acquainted with, a Prosecution by the Representatives of the whole Body of the

Nation; this, my lords, we humbly hope will deserve to be thought of. In the mean time, as the Commons have chosen your lordships to be the Judges, the Earl himself with the greatest Pleasure joins with them, and humbly appeals to your lordships Just and Impartial Judgment:

Mr. *Serj. Probyn*. My Lords, the Evidence, which we have next to lay before your lordships, relates to the 11th Article, by which it stands charged that several masters admitted by the noble Earl, were Persons of small Substance and Ability; and in that respect very unfit to be trusted with the Great Sums of money, and other Effects belonging to the Suitors, which were lodged in their Hands by Order of the said Court; notwithstanding which the Noble Earl did publickly in open Court declare them to be Persons of great Fortunes, and in every respect qualified for the Trust so reposed in them, to the manifest Deceit and Prejudice of the Suitors of the said Court: But, my lords, tho' the Charge of this Article be conceived in general Terms, yet I apprehend we are now only to account for the Abilities and Circumstances of such of the masters, as they have descended into any particular Evidence against, upon that Head: Now the masters, who have been admitted in by his lordship, and against whom any Insinuations of this kind have been levelled, are Mr. *Kynaston*, Mr. *Bennet*, Mr. *Elde*, and Mr. *Thurston*: But I should in the first Place observe, as to Mr. *Elde* and Mr. *Thurston*, That there is not the least Pretence of any Deficiency in either of their Offices, from any Evidence that has been yet offered by the learned Managers; they stand both of them without Objection in point of Substance; as to Mr. *Kynaston*, indeed, I do own, That at the Time, when he delivered in his Accounts, there appears to have been a Deficiency in his Office; but since that Time he hath given such Security, as the Court thought fit to accept of, for answering it to the Suitors concern'd. At the time of his Admission he appears to have been a man of Fortune; he had a good Estate in Land, and a considerable sum of money in Bank; and had a great deal of Wood upon his Estate: If he really was a man of a considerable Fortune at that time, and if he appeared so, and came well recommended in other respects to the noble lord, what Foundation is there left to support that part of the Charge against the noble Earl? As to Mr. *Tho. Bennet*, indeed, tho' he did make an Appearance in the World, equal to a man of Fortune, yet he now pretends it was far from being so, tho' he had an Estate in land; yet he has told your lordships it was incumbered; but, with Submission to your lordships, it doth not appear that any of these Incumbrances were made known to the noble Earl; on the contrary, he appeared to him in the same light as in the Year 1720, when he saith he was worth 20,000*l.* and these Incumbrances being private it is impossible the noble Earl should then know them; we shall shew that at this time he was not only a man of visible Substance, but of real Substance, equal to those, who are usually admitted into these Offices; and if he was equal, both in reputation and fortune, with those admitted by the noble Earl's Predecessors, we hope it shall not be imputed a Crime in him, to have trod in their steps in that particular: In order to make this out against Mr. *Bennet*, we shall prove that about the time when he applied to *Hiccocks*, to get back part of the 7000*l.* he then declared his Substance was so good, that if he could but have 2000*l.* he would pay the rest himself; he denied before your Lord-

ships, that he said so, but we have Persons of undoubted Character to prove, that he did say so. And when that appears, we hope you will give the less Credit to Mr. Bennet's Testimony in any other particular, which concerns his Fortune; we shall likewise prove, as to Mr. Hiccocks and Mr. Rogers, that the Sums of money, which they retained, are now submitted to be returned by them respectively to the Court, to answer any Deficiency, so far as the Estates of their Successors shall fall short in satisfying the same; so that upon the whole, the Suitors are in no possibility of suffering by any Transaction of Bennet or Kynaston. We shall beg leave to call our Witnesses, and prove the several Facts I have opened to your Lordships upon this Article.

Mr. Com. Serj. My Lords, we humbly apprehend, that in this Case the noble Earl is not responsible for the bad Circumstances of the Party; if he, upon inquiry, have received such an Account as is proper to rely upon, and to satisfy a reasonable man, it is sufficient: The greatness of the Trusts reposed in these masters, hath been magnified, and great it is; but your lordships will please to consider, that it is not to be expected from the Nature of the Thing, that Persons of great or overgrown Fortunes, should take upon them those Offices. They have informed your lordships, that 120,000*l.* hath been in one of these Gentlemen's hands. I believe no Persons of such vast Estates as 100,000 or 150,000*l.* would give themselves the trouble of executing these Offices, attended with such risque, and requiring so great attendance. I believe the Office of a master in Chancery will never find either such buyers or sellers; all that can be expected is, that they must be men of reasonable Fortunes, Persons of 4 or 500*l.* a Year, brought up with a liberal Education; Persons, who are of good Characters as to their Integrity and Abilities; this is all that can be reasonably expected, and we apprehend it hath appear'd to your lordships, that these masters, which the Evidence hath been given of, were such, and such a Representation was made of them to the noble Earl. My lords, I must submit it upon the Evidence given in that behalf by the Gentlemen of the house of Commons in this Prosecution, that Mr. Kynaston did appear no way unfit, but a Person proper to be admitted into such an Office; no Objections are made either to Mr. Elde or Mr. Thurston. As to Mr. Thomas Bennet, it will appear that his Deficiency will be made good, and that is the best proof of his Ability; and, we hope, Mr. Kynaston's will be so too: As to Mr. Thomas Bennet, he hath denied that ever he told Mr. Hiccocks, that if he would return 2000*l.* he would pay the rest: Being ask'd, whether he had declared to any Body, that he had made that offer to Mr. Hiccocks, he answered directly in the Negative, that he had not, no he was sure he had not; he was asked the Question over and over. But, if my Instructions don't fail me, we shall produce three witnesses to shew your lordships, that Mr. Bennet declared the same thing over and over again, and consequently it could not be a slip of his memory.

Mr. Steele called.

Mr. Serj. Probyn. I desire he may inform your lordships, as to what Reputation and Character Mr. Bennet was of, in point of Fortune, when he was admitted master?

Mr. Steele. Which of the Bennets?

Mr. Serj. Probyn. Mr. Thomas Bennet:

Mr. Steele. It is near two Years ago since Mr. Thomas Bennet came to be admitted a master in Chancery, he was looked upon then to be a man of good Substance and of good Reputation; and since that he had married a Lady of a good Fortune, he made a good Appearance in the World, and was generally esteemed to be a man of Substance.

Mr. Serj. Probyn. Did he keep his Coach?

Mr. Steele. I have heard so; I don't know that of my own Knowledge.

Mr. Plummer. My Lords, if the Counsel have done, I desire to know what Character Mr. Bennet had as to his Integrity, whether he was accounted an honest man or no?

Mr. Steele. My lords, I never heard to the contrary in my life; nor ever knew any thing to the contrary.

Mr. Walker sworn.

Mr. Serj. Probyn. We desire that Mr. Walker will inform your lordships, what he knows of any Proposal or Agreement for the Repayment of any money by Mr. Hiccocks.

Mr. Walker. My lords, Mr. Hiccocks, by order of the Court of Chancery, was to be examined upon Interrogatories, whether he had paid over all the monies and securities of the Suitors of the Court of Chancery, to his Successor Mr. Bennet? It having been alledged by Mr. Bennet, that he retained out of them 7500*l.* Mr. Hiccocks did think fit to submit to the Payment of that money, to make so much good to the Suitors of the Court, as the Estate of Mr. Bennet should prove defective in satisfying, as appears by the Petition delivered by him, and the Answer to the Petition.

Mr. Lutwyche. We shall see that by the Petition. We desire that the Copy of the Petition may be read; they are giving an Account of written Evidence: I desire to ask you, whether you are not concerned as Clerk for Mr. Hiccocks?

Mr. Walker. I am concerned for Mr. Hiccocks as his Solicitor.

Mr. Lutwyche. Whether you had any Authority from Mr. Hiccocks to present that Petition?

Mr. Walker. I had Authority to present that Petition.

Mr. Lutwyche. When did you present the Petition?

Mr. Walker. About three or four Days ago.

Mr. Serj. Pengelly. We desire to see what the Petition is? It hath been presented since the Great Seal was in Commission: Read it.

Mr. Walker reads it.

To the Right Honourable the Lords
Commissioners for the Custody of the
Great Seal of Great Britain.

The humble Petition of John Hiccocks, Esq;
late one of the Masters of this Court

Sheweth,

THAT by an Order of the 23d of Feb. last upon the Affidavit of Thomas Bennet, Esq; your Petitioner's Successor, (who swore that the Sum of 7500*l.* part of the Monies belonging to the Suitors of this Court, did remain
in

in your Petitioner's Hands, and was never paid over to him) it was ordered that your Petitioner should be examined upon Interrogatories, whether all the Monies, Securities, and other Effects, belonging to the Suitors of the Court, were delivered over by your Petitioner to the said Thomas Bennet, and whether your Petitioner kept away any, and what part, by him.

That Interrogatories have been accordingly prepared, and your Petitioner is ordered to put in his Examination, or stand committed.

That your Petitioner, by Reason of his Indisposition, is not in a Capacity to put in his Examination.

That though your Petitioner did pay over, satisfy, and assign to the said Thomas Bennet, all the Monies, Effects, and Securities of the Suitors of the Court in your Petitioner's Hands; and the said Thomas Bennet hath given your Petitioner a Receipt in full for the same, yet, so far, as the Estate of the said Thomas Bennet shall fall short to satisfy the just Demands of the Suitors of the Court; your Petitioner is willing to pay the Sum of 7500 l. into Court, Subject to the Order of the Court, so soon as your Petitioner can raise the same; and your Petitioner is willing to pay the Sum of 2000 l. part thereof within ten Days, and the Residue thereof within three Months, so as the same (as between your Petitioner and the said Thomas Bennet) may not be construed to extend to ease the said Thomas Bennet's Estate from being liable in the first Place to answer the Demands of the Suitors of the Court; but so as the same may abide as a Security to answer any deficiency of the said Thomas Bennet's Estate; and to the end it may appear whether there will be any deficiency or not, that the real and personal Estate of the said Thomas Bennet may be forthwith sold, and disposed of; and in the first place apply'd to answer the Demands of the Suitors of the Court; and the rather, for that your Petitioner is informed, the said Tho. Bennet hath, pursuant to some Order of this Court, by Recognizances, and other Assurances, subjected his whole Estate towards making good those Demands.

Your Petitioner therefore most humbly prays your Lordships, that, upon Payment into Court of the said 7500 l. on the Terms aforesaid, Subject to the further Order of the Court, all further Proceedings upon the said Order, for Compelling your Petitioner to be examined upon Interrogatories, may be stayed.

And your Petitioner, &c.

He reads the Order, May 8th, 1725.

UPON Payment of 3000 l. into Court, and giving Security, such as Mr. Holford shall approve of, for Payment of the further Sum of 4500 l. also into Court, in a Month, both Sums to be Subject to the further Order of

the Court; let all proceedings for the compelling the Petitioner to be examined upon the Interrogatories before the Master, be stayed. Hereof give notice forthwith

J. Jekyle, C. S.

R. Raymond, C. S.

Mr. Serj. Pengelly. I would be glad to know, Whether we can rely upon this as an Authentick Order. Did he examine it?

Mr. Walker. The Original Petition and Answer are in the Register's Office, to draw up an Order.

Mr. Lutwyche. Is it a right, a true Copy?

Mr. Walker. It is.

Mr. Lutwyche. Did you examine it?

Mr. Walker. Yes, I did.

Mr. Com. Serj. If it is not wholly immaterial to examine into the Circumstances of this Gentleman, I would ask whether Mr. Hiccocks is a Person of Ability, sufficient to make good this Sum?

Mr. Walker. My Lords, I don't know the Circumstances of Mr. Hiccocks, nor his Riches. I believe he is able to do what he hath proposed. I believe he hath paid the 3000 l. in money this morning; he told me he would; and he hath proposed Security for the Remainder, 4500 l. and I believe the Security will be approved of.

Mr. Lutwyche. If they have done, I desire he may be asked, How long ago it was since Mr. Hiccocks was ordered to be examined upon Interrogatories?

Mr. Walker. I think the Order is dated the 29th of February.

Mr. Lutwyche. And how long ago is it since this Proposal was made?

Mr. Walker. The Petition was presented the 8th of this Instant May.

Mr. Lutwyche. Was the Petition presented before his Examination? When was it answered?

Mr. Walker. It was answered the 8th of May. It was preferred a little while before. I believe, two or three Days. There was an Order, That Mr. Hiccocks should put in his Examination in four Days, or stand committed; thereupon this Petition was presented;

Mr. Lutwyche. I think it was on Payment of so much money, and giving Security for the rest, that all Proceedings were to stay. I don't find Mr. Walker can say the money is paid, or Security given.

Mr. Walker. Mr. Hiccocks told me the 3000 l. was paid, and I know he hath offered Security for the 4500 l.

Mr. Lutwyche. One or two Securities?

Mr. Walker. I believe only Sir John Buckworth.

Mr. Richard Rogers sworn.

Mr. Serj. Probyn. I desire he may be asked what he knows of the Payment of any money, or the Directing the Payment of any money into Court by Mr. Rogers, the late master, in Satisfaction of the Deficiency of Mr. Kynaston?

Mr. Rogers. I did, my Lords, by the direction of Mr. Rogers, the late master, prefer a Petition about the latter End of April last, upon the 28th, or 29th of April, to the Right Honourable the Lords Commissioners, and thereby did offer to give a Recognizance to make good to the Suitors of the Court any Sum not exceeding 6000 l. as the Estate of Mr. Kynaston should prove defective in answering

ing the Effects of the Suitors of the Court. The Petition is answered, and I believe they design to pay the money.

Mr. Serj. Probyn. Have you the Petition?

Mr. Lutwyche. Is the Order Drawn up?

Mr. Rogers. The Petition it self I have in my Hand.

The Clerk reads.

To the Right Honourable the Lords Commissioners for the Custody of the Great Seal of Great Britain.

The humble Petition of *William Rogers, Esq;* late one of the masters of the High-Court of Chancery,

Sheweth,

THAT by an Order, made by your Lordships the 20th of January last, it was ordered that Mr. Kynafton, one of the Masters of the said Court, who succeeded your Petitioner, should in a Week deposit the Sum of 26,908 l. 11 s. 3 d. $\frac{1}{4}$ in the Bank of England (being the Ballance of the Account of Money and Securities of and belonging to divers Suitors of the said Court, paid into the Hands of the said Master Kynafton, and your Petitioner) or in Default thereof, that the said Master Kynafton should enter into a Recognizance, in the Penalty of 53,817 l. with two or more Sureties to answer and pay the same as your Lordships should direct.

That the said Kynafton not having paid the said 26,908 l. 11 s. 3 d. $\frac{1}{4}$ into the Bank, or given security for the same, as the said Order directed; and having before proposed towards Satisfaction of the said 26,908 l. 11 s. 3 d. $\frac{1}{4}$ to assign over a Debt of 20,850 l. owing to him from one De la Hay, for the Benefit of the said Suitors; it was by an Order made by your Lordships the 29th of Jan. last, Ordered, That the said Master Kynafton should assign over De lay Hay's Debt to Mr. Holford, one other of the Masters of the said Court, for the Benefit of the said Suitors, and should give his own Recognizance for the said 26,908 l. 11 s. 3 d. $\frac{1}{4}$ in the Penalty of 53,817 l. And upon his so doing, the Time for his performing the said former Order should be enlarged to the Wednesday following.

That by another Order made the 3d of Feb. last, your Lordships Ordered, That upon Mr. Kynafton's assigning of the said Debt, and upon his signifying his Consent to be examined upon Interrogatories for Discovery of all other his real and personal Estate, and that the same might be assigned, and conveyed to the said Master Holford in Trust for the said suitors, the time for performing the former Order should be enlarged to the Wednesday following.

That pursuant to the said Order, the said John Kynafton assigned over the said De lay Hay's Debt, but the same not being sufficient to answer the said sum of 26,908 l. 11 s. 3 d. $\frac{1}{4}$ Nicholas Paxton, Solicitor for, and on Behalf of the suitors of the said Court, on the 15th of Feb. last, preferred his Petition to your Lordships, setting forth the several Proceedings aforesaid; and that it appeared by Mr. Kynafton's Affidavit that 6000 l. part of the said 26,908 l. 11 s. 3 d. $\frac{1}{4}$ was retained by your Petitioner, at the time your Petitioner surrendered his said Office to the said Mr. Kynafton; and that the same still remained in your Petitioner's Hands: It was therefore prayed that your Petitioner might forthwith pay the same for the Benefit of the said suitors, or to such

Persons, and in such manner, as your Lordships should direct.

That upon hearing the said Petitioner, upon the 23d. of Feb. last, your Lordships were pleased to Order your Petitioner should be forthwith strictly examined before Mr. Holford, one of the Masters of this Court, whether all the Monies, Securities, and Effects, belonging to the said Suitors, were delivered over by your Petitioner to the said Mr. Kynafton, and whether he kept any, and what Part thereof by him.

That in pursuance of the last Order Interrogatories have been exhibited for the examination of your Petitioner; and in Case your Petitioner should put in his Examination thereto, he doubts not, but it would appear that your Petitioner hath acted with great Justice towards the said Master Kynafton, and that Mr. Kynafton ought to answer and make good the said 6000 l. to the Suitors of the said Court; however your Petitioner being unwilling that any part of the Deficiency in the said Master Kynafton's Office should be imputed to your Petitioner, or that the Suitors of the Court should be put to any Expence or Trouble, in making any further Enquiry touching the said 6000 l. your Petitioner is willing (if your Lordships shall think fit) to give his own Recognizance, or a good and sufficient Mortgage, to be approved of by one of the Masters of this Court, to such Person or Persons as your Lordships shall direct, to answer and make good to the Suitors of this Court any sum not exceeding 6000 l. as the Estate and Effects of the said Mr. Kynafton shall fall short of satisfying the said 26,908 l. 11 s. 3 d. $\frac{1}{4}$, which he was ordered to deposit in the Bank of England as aforesaid; or if your Lordships shall think it more for the benefit and security of the said Suitors, that your Petitioner should bring 6000 l. into Court, your Petitioner is willing to bring in such sum for the Purpose aforesaid, having a reasonable Time allowed him to raise the same.

Forasmuch therefore as it is not pretended, but that your Petitioner has paid and delivered over to Mr. Kynafton all the Money and securities belonging to the suitors of this Court, which were in your Petitioner's Hands at the Time when he surrendered his said Office to the said Mr. Kynafton, except the sum of 6000 l.

Your Petitioner humbly prays your Lordships will be pleased to make such Order in the Premises, as to your Lordships shall seem meet; and that in the mean Time all Proceedings upon the said Order of the 23d of February last, for examining your Petitioner upon Interrogatories, may be stayed.

And your Petitioner, &c.

The Clerk reads the Order. 29th of April, 1725.

Upon the Petitioner's paying the said 6000 l. into Court, subject to the further Order of this Court, let all Proceedings upon the said Order of the 23d of February last, for examining the Petitioner upon Interrogatories be stayed. Hereof give Notice forthwith.

Jeff. Gilbert, C. S.
R. Raymond, C. S.

There was another Petition preferred, but never answered.

Clerk

To the Right Honourable the Lords Commissioners for the Custody of the Great Seal of Great Britain.

The Humble Petition of William Rogers, Esq; late one of the Masters of this Court,

SHEWETH,

THAT Mr. Paxton, in behalf of the Suitors upon Mr. Kynaston, being 26,908 l. 11 s. 3 d. $\frac{1}{4}$ deficient in his Accounts, to answer the Suitors monies in his Hands, having, by his Petition to your Lordships, represented (*inter alia*) That your Petitioner, upon surrendring your Petitioner's Office to him, detained, and still hath in his Hands, the Sum of 6000 l. of the said Suitors money; your Lordships, upon hearing the said Petition, on the 23d of February last, were pleased to order your Petitioner should be examined before Mr. Holford, one of the ~~masters~~ masters of this Court, Whether all the Monies, Securities and Effects, belonging to the said Suitors, were delivered over by your Petitioner to the said Mr. Kynaston?

That your Petitioner, on the 29th Day of April last, preferr'd the annexed Petition to your Lordships; and your Lordships were, thereupon pleased to make the Order thereunto subscribed.

That your Petitioner is informed, the said Mr. Kynaston hath, pursuant to a former Order of your Lordships, by Recognizance and Assurances, subjected his whole Estate towards making good his said Deficiency.

That your Petitioner, upon surrendering his Office, received from the said Mr. Kynaston, proper Discharges for all Monies, Securities and Effects of the said Suitors, then in your Petitioner's Hands, which your Petitioner is ready to produce and prove: And the said Mr. Kynaston from that Time, never pretended but that the Account delivered in to him, contained a full Account of all the Money, Effects and Securities of the Suitors of the Court in your Petitioner's Hands, except the Sum of 70 l. or thereabouts, which your Petitioner was always ready to pay him, provided he would have given your Petitioner an Account wherein the said Omiffion or Mistake consisted; and your Petitioner, upon Examination of his Vouchers, found the same to be true; but the said Mr. Kynaston hath hitherto neglected so to do, though your Petitioner hath sent to him several Times for that Purpose.

That your Petitioner, upon the terms mentioned in the annexed Petition, is willing to pay a ready Obedience to your Lordships Order thereupon; and for that Purpose, now humbly offers, in Six Days time, to pay 2000 l. part of the said 6000 l. into Court, subject to the further Order of the Court, so far as may be necessary to make good any Deficiency to the Suitors of the Court, which Mr. Kynaston's Estate shall not be sufficient to answer.

And your Petitioner humbly prays, he may have a Month's Time to pay in the remaining 4000 l. (your Petitioner being obliged to borrow the same on his Estate) and that all Proceedings on the said Order of the 23d of February last, against your Petitioner, may in the mean Time, be stayed: And your Petitioner further humbly prays your Lordships, That the said Order, made by your Lordships on the 29th of April last, may be so far explained, that as between the said Mr. Kynaston and your Petitioner, the same may not be construed to extend to ease the said Mr. Kynaston's Estate from being liable,

in the first Place, to answer the Demands of the Suitors of the Court; or, if all, or any part of the said 6000 l. shall be applied for that Purpose; that your Petitioner may then stand in the Place of the Suitors of the Court, to have Satisfaction out of the Estate of the said Mr. Kynaston, for all, or so much of the said 6000 l. as shall be so applied; and that the said 6000 l. so to be deposited by your Petitioner, or any Part thereof, may not be applied towards making good the said Mr. Kynaston's Deficiency, till after Sale and Disposal of all the said Mr. Kynaston's real and personal Estate for that Purpose.

And your Petitioner shall ever pray, &c.

Mr. Serj. Pengelly. Is there any Order upon this?

Mr. Rogers. This was never answered.

Mr. Lutwyche. If they have done, I desire he may be asked, if he hath given any Notice to the Solicitor of the other Side, of the Order on the first Petition?

Mr. Rogers. I did acquaint Mr. Paxton, that I had such an Order; but I did not serve it upon him.

Mr. Com. Serj. I desire to ask you, Whether, when you told Mr. Paxton of it, he insisted upon a formal Service?

Mr. Rogers. Mr. Paxton said, Let it be done as soon as possible.

Mr. Com. Serj. What Answer did you give to Mr. Paxton, when he desired it might be done as soon as possible?

Mr. Rogers. I told him, I was raising the money by Direction of Mr. Rogers.

Mr. Com. Serj. I ask you, If you had any Directions from Mr. Rogers, for the Payment of, or for raising the money?

Mr. Rogers. Yes, I had. I believe it will be paid in a Day or two. I can't directly say what Day. Such a Sum is not immediately raised.

Mr. Com. Serj. I desire he may be asked, Whether there is any Reason to doubt of his Ability to raise the money?

Mr. Rogers. I believe he is able to give a Security; but, as he lives in the Country, he may not be able at present to pay so much money; but he is now in Town, and endeavouring to raise the money.

Mr. Com. Serj. My Lords, we beg leave to call two or three Gentlemen, with Respect to Mr. Thomas Bennet, what he hath said; and that he said he was able to pay all the rest of the money, if Mr. Hiccocks would pay 2000 l.

Mr. Holford called.

Mr. Serj. Probyn. My Lords, we beg leave to begin with Mr. Holford, and to ask him, Whether he was not employed, or concerned as a Friend to Mr. Thomas Bennet, to go to Mr. Hiccocks, and what Proposals he was to make to Mr. Hiccocks?

Mr. Holford. Presently after the Article was delivered in by Mr. Thomas Bennet, relating to the money he said was in the Hands of Persons of Ability and Substance, to the Judges and Gentlemen of the Bank, Mr. Bennet did send to me, to desire I would speak to Mr. Hiccocks, that if he would pay him but 2000 l. he would pay the Remainder of the money. I did not much care to undertake it; but upon some Importunity, I did go upon the said message; and it was this, That he desired me to tell Mr. Hiccocks, that if he would

pay him back 2000 *l.* he could or would take care that the rest should be paid, and Mr. *Hiccocks* should not be troubled about the Remainder.

Mr. *Serj. Probyn*. I desire he may be asked, Whether he had any Discourse with Mr. *Thomas Bennet*, concerning what passed between him and Mr. *Hiccocks*?

Mr. *Holford*. Mr. *Hiccocks* told me——

Mr. *Lutwyche*. That is no Evidence.

Mr. *Holford*. I am only relating the Answer he returned to my message; which was, That Mr. *Bennet* had given in that Article, and brought his Name in Question, without ever acquainting him of it; and therefore he would never have any thing to do with him. I did give him that Answer, and never troubled myself any more about it.

Mr. *Lutwyche*. I desire Mr. *Holford* would recollect the Time.

Mr. *Holford*. I believe it was the next Day after he had given in that Article.

Mr. *Lutwyche*. I think they call this Witnesses to prove a Contradiction in Mr. *Bennet's*. Mr. *Holford* says, He said he was willing, he would take care the rest should be paid. I desire to know, Whether he declared he had the money to pay, the money in his own Hands?

Mr. *Holford*. No, my Lords, I can't say he told me so.

E. of *Macclesfield*. I desire to ask him, If Mr. *Bennet* did not expressly tell him, That he was able to pay the money; or if Mr. *Holford* would have gone upon the Errand, without being satisfied that he was able to pay the money?

Mr. *Holford*. Mr. *Hiccocks* was my old Acquaintance and Friend, I did not intend to deceive him; if I had not believed what Mr. *Bennet* said to be true, and that he could make good what he at that Time sent me to desire Mr. *Hiccocks* to accept, I would not have gone on that Errand to him.

Mr. Thurston called.

Mr. *Serj. Probyn*. My Lords, we desire Mr. *Thurston* may inform your Lordships what he hath heard Mr. *Thomas Bennet* say, in relation to Mr. *Hiccocks*, about his paying back 2000 *l.*

Mr. *Thurston*. I do remember Mr. *Thomas Bennet* told me, and I think I was then sitting in the publick Office, that if *Hiccocks* (as I think his Expression was) would pay him back 2000 *l.* he would make up the rest himself.

Mr. *Serj. Probyn*. I desire Mr. *Thurston* to explain himself, whether he expressed himself in that manner that Mr. *Thurston* apprehended he was able to do it?

Mr. *Thurston*. I can't swear critically to the last Words, that he would make up the rest himself; but he spoke in such Words, that I understood he meant so; that was the Sense of those Words, as I have delivered it now to your Lordships.

Mr. *Serj. Probyn*. Had you any Discourse at any other Time with Mr. *Thomas Bennet* about it?

Mr. *Thurston*. I believe I had some Discourse with Mr. *Thomas Bennet* at another Time; and I asked him, Why he would not pay in as much as he had undertaken, if Mr. *Hiccocks* had paid him 2000 *l.*? The Reply he gave me was, All he had in the World would not do it.

Mr. *Serj. Probyn*. I desire he may be asked, if he had any Discourse with Mr. *Thomas Bennet* at any Time, about his Ability to pay this money, or whether he was able to pay it?

Mr. *Thurston*. I had no Discourse with Mr.

Thomas Bennet directly, of his Ability to pay in this money, when these Accompts were called for; but I do remember, at a preceding Time, he was talking of *Hiccocks's* detaining his money by way of Retainer; explaining the Reason, why he paid for the Place that he bought of Mr. *Hiccocks* out of the Suitors money, that it was the most compendious method of doing in that Case, and prevented the Trouble of mortgaging his Estate.

Mr. *Serj. Probyn*. Did he say any thing in case of his death, Whether he should leave sufficient to satisfy it?

Mr. *Thurston*. He said at that Time, if he died, there would be Estate sufficient to answer it; therefore he had the less Occasion to trouble himself to raise the money, but to pay it in the particular manner I have mentioned.

Mr. *Plummer*. I desire to ask him, If Mr. *Bennet* explained to him in what manner the money was to be raised, to make good the Deficiency?

Mr. *Thurston*. He did not at all explain to me, how he was to raise it.

Mr. *Plummer*. I desire to ask you more particularly, Whether he mentioned to have insured any money upon his Life?

Mr. *Thurston*. Not at that Time, as I remember; I have heard him at other Times talk of insuring of money on his Life.

Mr. *Serj. Pengelly*. When was the first Time that Mr. *Bennet* told you, that if Mr. *Hiccocks* would pay him Two thousand Pounds, he would make up the rest himself?

Mr. *Thurston*. My Lords, I can't remember distinctly the Time, never having imagined I should be called upon to repeat it on this Occasion; but it must necessarily be after the Accompts were given in before the Judges. I can't exactly remember the Time, or Day, or Week.

Mr. Elde called again.

Mr. *Serj. Probyn*. My Lords, we desire that Mr. *Elde* may inform your Lordships what Discourse he had with Mr. *Bennet*, in relation to the money in Mr. *Hiccocks's* Hands?

Mr. *Elde*. Some small Time after I had given in my Accompt, I saw Mr. *Bennet*; and he came up to me and said, That it was hard that he could not have any money from Mr. *Hiccocks*. He said, If he would pay him 2000 *l.* he would, or could pay the rest. I do not remember which.

Mr. *Serj. Probyn*. Whether he thinks he might have been able to pay it, if he had thought fit?

Mr. *Elde*. I know nothing of Mr. *Bennet's* Circumstances; I am as little acquainted with him, as with any I must necessarily have Correspondence with.

Mr. *Serj. Probyn*. My Lords, We shall not trouble your Lordships with any further Evidence on the 11th Article, in which we think we have sufficiently contradicted Mr. *Thomas Bennet*, as to the Charge he hath made on the Noble Lord. As to the 12th Article, that principally relates to that Part, That the purchase money was paid out of the Suitors money; that is a Fact that lies upon the Gentlemen of the House of Commons to prove: It is impossible for Us to prove a Negative, they are to prove the Affirmative, and they have not attempted to prove it by any Witnesses; but by Mr. *Thomas Bennet*: Now this being a Fact that rests intirely upon Mr. *Bennet's* Evidence, we submit, Whether your Lordships can believe any thing upon the Credit of his Testimony?

Mr. Com.

Mr. *Com. Serj.* My Lords, We humbly apprehend the Gentlemen of the House of Commons, by joining these Two Articles together, did it as if they were the same, and did depend upon one another: For unless the matter in the 11th Article be established, what was done on the 12th, will be of no great Significancy; For if Persons of good Ability, who are responsible, and fit to answer the money that comes to their Hands, be admitted to be masters, it is not very material whether the Forms of transferring in like Transactions of that Nature are strictly pursued or no; because the Person, being sufficient and responsible, will answer that money that is so detained. I choose to call them Forms, for, with Submission, if we examine them, they are Forms, and nothing else: Whether they take all the money from the preceding master, or replace with the Successor's own money, what is detained by the Predecessor, it comes to the self same Thing, and are only different Forms or methods of Payment. Upon the whole, we apprehend, We have established our Answer to the 11th Article; we think the other follows of Course; and that there is no Necessity to give your Lordships any further Trouble on this Head; but that the Noble Earl will stand clear as to any Accusation on these Two Articles.

Then all Persons concerned in the Impeachment, were directed to withdraw, and then the House adjourned to Ten o'Clock the next Morning.

Friday, 14 May, 1725. *The Seventh Day.*

THE Lords being seated in their House, the Serjeant at Arms made Proclamation for Silence; as also another Proclamation, That all Persons concerned, were to take Notice, That *Thomas Earl of Macclesfield* now stood upon his Trial; and they might come forth in order to make good the Charge.

L. Ch. J. *King.* Mr. Serjeant *Probyn*, you may go on.

Mr. *Strange.* My Lords, We who are Counsel for the Noble Earl within the Bar, beg leave to proceed to his Defence against the 13th and 14th Articles of the Commons Charge.

My Lords, The Facts contained in these Two Articles, are laid to be done with a View of concealing a Deficiency, that had happened in the Office of Mr. *Dormer*, a master of the Court; upon whose Failure it is charged, that there was a total Neglect, either to secure his Person or Effects, or to enter into any Inquiry into the Deficiency: And that altho' the State of this Affair was fully known to the Earl of *Macclesfield*, yet a declaration was afterwards made in open Court, That Mr. *Dormer* was only gone into the Country to take the Air; That he would return again in a little while, and all would be well: And that in further Prosecution of this Endeavour to conceal the deficiency in *Dormer's* Office, a precarious and trifling Composition was made with a Creditor of Mr. *Dormer's*; and this without any Notice to the Suitors of the Court.

My Lords, I shall, for my Part, confine myself at present to these Two Articles only, reserving any thing I may have to offer in general to the close of the defence; but before I proceed

to observe upon the Evidence brought to support the Charge contained in these Two Articles, it will be proper to take Notice to your Lordships, That the Honourable Managers for the House of Commons, have not offered one Tittle of Proof, as to the declaration pretended to be made, relating to Mr. *Dormer's* being gone to take the Air, though they were pleased to inlarge upon it in their Opening; but we have the Satisfaction to know, That we are before your Lordships, who are incapable of receiving any Impressions from Facts that are barely opened, and not proved; and therefore we rest assured, that no Weight will be laid upon this Circumstance, since no Evidence has been produced in Support of this Part of the Charge.

My Lords, as to the other matters contained in these Articles, we humbly hope to give your Lordships abundant Satisfaction in the Noble Earl's Behaviour on that Occasion; that all the proper Steps were taken to secure the Interest of the Suitors; and that, if there still remains any Deficiency, it is not to be imputed to any Neglect of the Noble Earl within the Bar.

Your Lordships were pleased to observe in the Course of the Evidence produced by the Honourable managers for the House of Commons, That Mr. *Dormer's* Failure happened about *Christmas*, 1720. My Lords, it was about that Time that Mr. *Wilson*, who had large Effects of Mr. *Dormer's* in his Hands, stopped Payment; which unfortunately obliged Mr. *Dormer*, without the Knowledge or Suspicion of any one, to retire himself to *Holland*; and soon after, Notice was given of it to Mr. *Cottingham*, who immediately acquainted the Earl of *Macclesfield* with it.

Upon this, my Lords, no Time was lost; for the Two Senior Masters, Mr. *Hiccocks* and Mr. *Rogers*, were appointed to inquire into Mr. *Dormer's* Affairs: His Chambers were searched; the Transfer of any Stock in the publick Funds was stopp'd; and all Endeavours used to procure a full Satisfaction for the Suitors of the Court: But, my Lords, though these methods were very proper to prevent the embezzling of Mr. *Dormer's* Effects, yet your Lordships will readily perceive, that no Steps, that could be taken whilst Mr. *Dormer* was on the other Side of the Water, could be in any Degree effectual towards the Payment of his Debts.

And therefore, my Lords, it was, that upon a Proposal of Mr. *Dormer's*, to come over and discover his Effects for the Benefit of the Suitors, in case he might be assured of his liberty, and not be left to die in a Gaol in his old Age (as himself expresses it) the Noble Earl within the Bar, was prevailed upon to give him those Assurances; but upon Condition, That he made a full Discovery, and assigned over all he had.

Suppose, my Lords, the Proposal had not been complied with, would the Suitors have been in a better Condition than they now are in? The Person of Mr. *Dormer* was out of Reach; the Stock could not be transferred without his Presence or Consent, nor were there any means to procure it under these Circumstances, without some Compliance on the Side of the Noble Earl. To say, my Lords (and it was only said) That Dr. *Eddisbury's* Person was secured, is, in my humble Apprehension, an Argument of no weight in this Case, since it does not appear, that he was out of the Reach of the Court before his Failure:

lure; and, I am persuaded, the Gentlemen, who mentioned this Instance, don't desire to have it thought, That the Noble Lord, who then presided, was capable of so great a Breach of Faith, as to deprive him of his Liberty after a Promise to the contrary: It must be submitted, therefore, to your Lordships, whether the committing a man in the Power of the Court, was a Precedent that could be followed in the Case of Mr. *Dormer*.

My Lords, to finish this Part of the Defence in not securing the Person of Mr. *Dormer*, I shall beg leave only to observe, That though it is alledged in the Articles, and was insisted on in the Opening and Summing up, That Application was made to the Earl of *Macclesfield* for that Purpose, yet the Honourable Managers forgot to call any Witnesses to the Proof of that Particular; which must therefore rest upon the Denial in the Answer of the Noble Earl.

My Lords, It was insisted upon, That Mr. *Dormer* had not complied with his own Proposal in discovering and delivering up his whole Effects; and for that Purpose a Witness was called to inform your Lordships of a very great Discovery that has been since made of a Quantity of Hops, that belonged to Mr. *Dormer*: Your Lordships remember how very lamely they were proved to belong to Mr. *Dormer*, and how reasonable an Account was given of their being kept so long in Hopes of a better market. My Lords, we shall not presume to entertain your Lordships with any Counter-Proof of such a trifling Evidence (as a learned manager was pleased to call it) but beg leave to infer from thence, That it is evident a more than ordinary Care was taken in looking after Mr. *Dormer's* Effects, since, after Four Years, which have past from the Time of assigning his Estate, a few musty Hops are all that are discovered.

My Lords, we humbly hope to make it fully appear to your Lordships, That the complying with Mr. *Dormer's* Proposal was the only means to procure any Satisfaction: Had not Mr. *Dormer* been induced to come over, his Books and Accounts would never have appeared; and had he died Abroad, as he did soon after his coming Home, I am persuaded the deficiency would have been much greater: And if a full discovery of his Effects was not made (which, however, I apprehend there is no Foundation to believe, after the Hops are laid out of the Case) the same will appear to be owing to his death, which happened in a short Time after his Return.

My Lords, The several Steps that were taken towards securing the Effects of Mr. *Dormer*, must necessarily promulge his Failure in some measure; the Chambers could not be searched; there could not be Caveats enter'd in the Books of all the publick Funds; nor could *Lockman* be caution'd against expecting any more out of the Effects of Mr. *Dormer*, without making some Noise, and giving People Notice: And, therefore, when we have made out these Facts, I humbly hope, the Noble Earl will stand acquitted of any design to conceal the State of *Dormer's* Office, in Prejudice of the Suitors; but that, considering all the Circumstances of the Case, he took the wisest and properest Course to secure as ample a Satisfaction for the Suitors, as it was in his Power to do.

My Lords, The 14th Article, relating to the Composition with *Wilson*, will give me no Occasion to take up much of your Lordships Time. It is called a precarious and trifling Composition,

and was aggravated in the Opening, and so, of course, in the summing up, by a matter, which they failed in the Proof of, That *Wilson* was suffered to compound this Debt, though he paid others their whole Demand with Interest.

My Lords, The Witnesses, who was called to prove this, did by no means come up to what was opened: He did, indeed, say, That he was informed, That *Wilson* had paid some Persons their whole Debt; but he, at the same Time, acquainted your Lordships, That these were small Debts; and that he did not pay them out of his own Effects, but from a Supply administered by a Friend, only to give him a Credit at his setting up again; and the unfortunate End of this man (of which I am just now informed) is an unanswerable Proof of his Inability to pay the Whole.

My Lords, As a further Argument to prove the Reasonableness of this Composition, I beg leave to appeal to another Part of the Evidence produced on this Article by the managers of the House of Commons; whereby it appeared, That Mr. *Wilson's* Books were perused by two masters, and himself was put upon his Oath; and that he swore the Composition he then offered, was all he was able to make; which I humbly submit to your Lordships, as an Answer to what an Honourable manager was pleased to object, when he insisted, that there ought to have been a Commission of Bankruptcy against *Wilson*, that thereby his Effects might have been discovered upon Oath.

My Lords, There were many other Creditors of Mr. *Wilson's*, besides Mr. *Dormer*, who might have applied for a Commission of Bankruptcy, if it would have been for their Advantage; but, as every body is acquainted with the great Expence and Delay of such a Procedure, I believe they will be thought to have taken the wisest Course: Here was all the Benefit of a Commission, by the putting *Wilson* upon his Oath, and none of the Expence and Delay that attend such an Inquiry.

My Lords, Another Thing opened, and not proved, is, That at the Time of this Composition, *Poulter*, who was *Wilson's* Debtor, was worth nothing: It is true, my Lords, he was afterwards in Execution, and escaped; but if we make it appear to your Lordships, That at the Time of the Composition he was a visible Person, and not suspected, I humbly hope, whatever has happened subsequent to the Composition, will be no Ingredient in shewing it to have been a trifling and precarious one at the Time of making it.

My Lords, I beg leave humbly to observe, That the Honourable Managers have not been pleased to instance, how the Suitors would have been in a better Condition, in case this Composition had not been made: Could they have shewn your Lordships, that if Part of the Debt had not been taken, the Whole might have been obtained, I must confess, there would have been some Reason to have called this a trifling Composition; but, since nothing of that Nature has been attempted, I must submit the whole Transaction, upon what I have already offered, to have been a Transaction most for the Advantage of the Suitors, considering the Circumstances that attended this Composition.

My Lords, An Honourable Manager, who spoke Second upon this Article, was pleased to say, That by this Composition the Suitors were

tied down to a certain Loss of Half their Demand. My lords, I humbly apprehend the Consequence to be directly otherwise; and that the Suitors are not tied down at all: As they were no Parties to the Composition, they were not bound by it; nor is Mr. *Wilson*, by this Composition, in any degree discharged as to the Suitors of the Court; so that if *Wilson* be able to pay the Whole, he is still as liable to the Demands of the Suitors, as if this Composition had not been made; and if this be so, it will be to the Advantage of the Suitors, that they had no Notice, which, however, I apprehend, was, in the Nature of the Thing impracticable.

My lords, It was insisted upon, That the Petitions, and Orders, and Reports on this Occasion were in an unusual and clandestine manner; and a Certificate has been read to your Lordships to prove, That they were never filed and registred, as is usual in other Cases: But do they, my lords, pretend to say, that this was by the Order, or with the Privity of the Earl of *Macclesfield*? The Business of a Chancellor is to make Orders; but I never yet heard it was his Duty to see them drawn up and registred; and therefore, if there was any thing unusual in this, it is not to be imputed to the Neglect of the Noble Earl, unless it was proved to have been by his express Direction.

My lords, It has already appeared, that this Composition, and the Proceedings upon it, did not proceed from the Noble Earl; but were proposed to him; Mr. *Edwards* did acquaint your Lordships, That it was himself, who first proposed it to the Earl, after having advised with Mr. *Hiccocks*, who put him into that method.

This, my Lords, is the Nature of our Defence against the 13th and 14th Articles of the Commons Charge: We humbly hope the several Steps that were taken, will appear to have been for the Benefit and Advantage of the Suitors, and with no other View, than the securing them their whole Demand; that the Composition so much complained of, was given into, only as a means towards the attaining that End, and could in no Event be prejudicial to the Suitors of the Court, as the Gentlemen of the House of Commons would represent it to your lordships.

Mr. *Dormer Parkhurst* sworn.

Mr. *Serj. Probyn*. My Lords, we desire Mr. *Parkhurst* may be asked, What Conversation passed between him and Mr. *Dormer*, previous to his going abroad, and upon what Occasion he was obliged to go abroad?

Mr. *Parkhurst*. Mr. *Dormer* came to me about the latter End of *November*, 1720, at my Chambers. I had then some-body else with me; upon that Account he said nothing to me, but desired I would come next morning early to him. I went, and when I came to him (he lived then in Chambers in *Lincoln's-Inn*) he shut the Door, and told me, he had a thing of great Importance to communicate to me in relation to himself; and then told me, he designed to go abroad: He said Mr. *Wilson*, his Goldsmith, the Day before had been with him (this was on a *Sunday* Morning, and he had been with him the *Saturday* before) and had acquainted him, That the *Monday* following he should be obliged to shut

up Shop, and stop payment: He had a great deal of money in his Hands, and he was afraid, that as soon as it was known, that Mr. *Wilson* was unable to pay; the Solicitors, and Practisers belonging to the Court, who knew he kept Mr. *Dormer's* Cash, would immediately be alarmed; and that Application would be made thereon, to my Lord Chancellor; and he believed, that the first thing to be done, in relation to himself, would be to confine him; and that there would be an Order for his being committed; and therefore to prevent that (for he could not live a Week without Air and Liberty) he was resolved to withdraw himself, and retire to some Place or other. Upon this, I expressed a great deal of Concern, and endeavoured to persuade him against it: I desired him to make his Circumstances known to my Lord Chancellor and the masters: He said No; he was sure the Consequence would be his Confinement, and was come to a Determination with himself, to secure his Person; his Uneasiness, was from the Fear, that he should be confined; but he would leave every thing fairly behind him, and hereafter come over and obey any Order, from my Lord Chancellor; but the first Thing he would do, he was resolved to withdraw, to secure himself from being confined.

Mr. *Serj. Probyn*. What happened after he was gone abroad? and what Notice was taken of it?

Mr. *Parkhurst*. In a little time after this, I understood he had put this Resolution in Execution, and had withdrawn himself. He had desired me, that I should not mention it to any Body; and gave out by his Clerk, that he was gone into the Country. I did, after this, in about three Weeks receive a letter from him, that he was then at *Rotterdam*; and there was a letter inclosed, which he desired me to shew to some of the masters. I think I shewed it to Mr. *Rogers*; afterwards, according to his Directions in the letter to me, I carried it to Mr. *Cottingham*. It was directed to Mr. *Cottingham*, who was then Secretary to my Lord Chancellor; I carried the letter to him, and left it with him.

Mr. *Serj. Probyn*. If you can, recollect what were the Particulars of that letter, the Contents of it, relating to any Terms of his coming over again.

Mr. *Parkhurst*. It is a great while ago; I have but a faint Remembrance of it; but I think it was much to the same Purpose with what he communicated to me at first, after he had acquainted me with the unhappy Affair, as hath been mentioned. He said he had a great Sum of money in Mr. *Wilson's* Hands; and when he found *Wilson* unable to pay, he was apprehensive of an immediate Confinement, which he could not possibly bear; therefore he had withdrawn himself; but that he had left his own Estate intire behind him, and every thing relating to the Suitors; and he was willing to come over to give an Account of the State of the Office, and of his own Estate; and he was willing to make over all his own Estate, to answer the Deficiency of the Office, as far as it would go, and to do every thing the Court should think fit to order him, provided he might have his liberty both before and after: He desired he might not be confined, and he would do every Thing that the Court would order him to do, or should be desired of him, as much as if he was confined.

Mr. *Serj. Probyn*. We desire he may be asked, If he knew how it was, that Mr. *Wilson* came to have so much of Mr. *Dormer's* Effects in his Hands, and upon what Account?

Mr. *Parkhurst*. I did not know, till this Affair happened of *Wilson's* failing, what money he had in his Hands belonging to Mr. *Dormer*. I used to see Mr. *Wilson* with him; I knew Mr. *Wilson* had Cash of his in his Hands; but afterwards, by way of Justification of himself, for losing so much money, I heard him say, it was an unlucky Accident, he had a considerable Sum of money paid into his Hands, by Order of Court, and a considerable Sum, which came in upon the Land-Tax, and he did not know at that Time, what to lay it out in; the Stocks were so high and precarious, he would not buy any; and he thought *Wilson's* Hands as safe a Place as any at that Time; he could not keep it by him in his Chambers, and he was going into the Country for three or four Weeks; and when he saw things were settled, then he would lay it out: But when he came back to Town, he found Mr. *Wilson* in those declining Circumstances. This was after he returned from *Holland*. I knew nothing before of this, nor that he had any great Sum of money in his Hands.

Mr. *Serj. Probyn*. He saith that he did propose, That he would come over and make a Discovery of, and deliver up his Effects, in case his Person was secured; now I desire he may recollect, before he did come over, if he knew of any Steps taken to secure his Effects; and whether any Thing in his Chambers was taken Care of, and by whom?

Mr. *Parkhurst*. I can give but one Instance of it, that is, Mr. *Rogers*, a master in *Chancery*, came to me one morning, and desired me, upon the Account of being a Relation, for I was no otherwise concerned, that I would go along with him to look into Mr. *Dormer's* Chambers, to see what there was, what Securities, or any thing of that Nature belonging to the Office. I remember we did find several Things, several Land Tax Tallies which Mr. *Rogers* gave an Account of. I don't know what the Number was.

Mr. *Serj. Probyn*. Who took Possession of them?

Mr. *Parkhurst*. Mr. *Rogers*, the master in *Chancery*.

Mr. *Serj. Probyn*. By whose Direction did you understand that Mr. *Rogers* took this Care?

Mr. *Parkhurst*. I understood it was by the Direction of the Court. He came to me, and desired me to go along with him, to see that no Person meddled with any Thing but what belonged to the Suitors; and he took them, and locked them up in his Closet or Scrutore.

Mr. *Serj. Probyn*. My Lords, we have done with this Evidence.

Mr. *Plummer*. I think he says, the Reason of Mr. *Dormer's* having so much money in the Hands of Mr. *Wilson*, was, that there was a great Sum of money come in upon the Land-Tax: I desire to know, if Mr. *Dormer* left this money dead in the Hands of Mr. *Wilson*, or if he had any Interest for it?

Mr. *Parkhurst*. I know nothing of that. By way of Justification, he said, It was unlucky he had so much money paid into his Hands at that Time; Times were so precarious, he did not know how to lay it out.

Mr. *Serj. Pengelly*. I desire he may be asked, Whether Mr. *Wilson* did not usually keep Mr. *Dormer's* Cash, and the Cash of the Office?

Mr. *Parkhurst*. I believe he did, I know but few Instances of it.

Mr. *Serj. Pengelly*. Whether he never heard him declare that Mr. *Wilson* paid him Interest?

Mr. *Parkhurst*. I never heard him declare he did: He never spoke to me about it particularly.

Mr. *Lutwyche*. I desire he may be asked, Whether he can inform your Lordships, how long Mr. *Wilson* had been Banker to Mr. *Dormer*?

Mr. *Parkhurst*. I can't say exactly how long: I believe some Years.

Mr. *Com. Serj.* If the Gentlemen have done with this Witness, we beg leave to call another, to prove what Care was taken to stop those Effects, that were in the publick Funds.

Mr. *John Elphinstone* sworn.

Mr. *Com. Serj.* My Lords, we desire that Mr. *Elphinstone* may inform your Lordships what he knows of any Orders or Directions given, in relation to the Effects of Mr. *Dormer* that were in the Publick Funds; and by whom those Directions were given?

Mr. *Elphinstone*. My Lords, I have been to search the Books of the Bank, the *South-Sea*, and *East-India* Companies, to see what Stock *Fleetwood Dormer*, Esq; one of the masters of the Court of *Chancery* had in the Books of those Companies, and what Orders there were for stopping Mr. *Dormer's* transferring such Stock. My Lords, I went first to the Bank, and searched a Book of that Company, called a *Leidger*, where Mr. *Dormer's* Accompt was stated by way of Debtor and Creditor. I found in that Book, a *Memorandum* written over Mr. *Dormer's* Account in red letters, as follows, *Q. No Transfer*. I likewise enquired, if there were any Orders of the Court of *Chancery*, for stopping the Transfer of such Stock? I was told by the Clerk, That he knew of none. I enquired of the Clerk at the Transfer-Office, if there was any Order of the Court of *Chancery* for, transferring Mr. *Dormer's* Stock to Mr. *Edwards*, the succeeding master; after some search, he brought me an original Order, Signed *Parker*, C. dated 11 July, 1721. I have a Copy of that Order in my Hand, whereby it appears, that all the Stock and Annuities, in the Name of Mr. *Dormer*, were ordered to be transferred to Mr. *Edwards*, on the 12th of July 1721, viz. the Day after the Date of the said Order. I found in the Transfer Book of that Company the Sum of 3393 l. 16 s. transferred by Mr. *Dormer* to Mr. *Edwards*, and Mr. *Edwards's* Acceptance of the same. This is a Copy of the original Order. I afterwards went to the *South Sea* House; I searched the Books of that Company, and in the Book marked Letter *D*. N^o. 6. Folio 430. where Mr. *Dormer's* Accompt is stated by way of Debtor and Creditor, I found a *Memorandum* over Mr. *Dormer's* Account, which is as follows; *Stock not to be transferred without Order from the Court of Directors (he being failed) or from the Court of Chancery*. I also searched the Transfer-Book of the said Company; and I found in Book N^o. 5. Page 86. that on the 12th Day of July 1721. 2251. l. 14. s. *South Sea* Stock was transferred by Mr. *Dormer* to Mr. *Edwards*, and under the Transfer I saw Mr. *Edwards's* Acceptance; Mr. *Dormer* signed the transfer, and Mr. *Edwards* signed the Acceptance. I enquired if there were any Orders for stopping Mr. *Dormer's* Stock from being transferred.

ferred. I found no such Order, nor any Order for transferring the Stock that was transferred; and the Reason which the Clerk of that Office gave, was, That upon the unhappy Turn of the Affairs of that Company, several of the Clerks being discharged, and many Books and Papers being destroyed, lost, or mislaid, and the rest in the utmost Confusion, rendered it impossible to find any such Paper at this Distance of Time. I went likewise to the *East-India* Company; but I could not find upon those Books any Stock belonging to Mr. *Dormer*, or that he had any Interest in that Company.

Mr. *Strange*. I beg leave to take Notice of one Thing he says, relating to the Words expressly entered in one *Leidger* Book; it stands that Mr. *Dormer* should not transfer any Stock, he being failed.

Mr. *Elphinstone*. Yes, the *Memorandum* entred in the *South-Sea* *Leidger* Book, is, as follows: *Stock not to be transferred without Order from the Court of Directors (he being failed) or Court of Chancery; the Words, he being failed, are in a Parenthesis, and then follow the Words, or Court of Chancery.*

Earl of *Macclesfield*. Who was then Governor of the *Bank*?

Mr. *Elphinstone*. I think Mr. *Hanger* was.

Mr. *Serj. Probyn*. Were the Entries dated?

Mr. *Elphinstone*. There was no Date to any of the *Memorandums*; they are wrote just over Mr. *Dormer's* Account, and under a Line drawn to separate Mr. *Dormer's* Account from another Person's.

Mr. *Serj. Probyn*. Was that before the Transfer made to *Edwards*?

Mr. *Elphinstone*. There is no Date to the *Memorandum* for stopping the Transfer of Mr. *Dormer's* Stock; but it must be before the Transfer.

Mr. *Serj. Probyn*. But the Entry in the Books, was it precedent or subsequent to the Transfer?

Mr. *Elphinstone*. When I searched for the Account, I found the Account and the *Memorandum* for stopping the Transfer of the Stock, placed over it, in a Book called the *Leidger*, and when I searched for the Transfer of the Stock, I found that in the *Transfer-Book*, which is a different Book.

Mr. *Serj. Probyn*. What *Transfer-Book* was it?

Mr. *Elphinstone*. It was the *Transfer-Book* No. 5. in Page 86. where I found Mr. *Dormer's* Transfer, and Mr. *Edwards's* Acceptance; but the *Leidger* is quite a different Book. It was in the *Leidger* marked D that I found the *Memorandum* for stopping the Transfer of Mr. *Dormer's* Stock over his Account; but I could not tell what Day of the month it was entred; there were promiscuous Dates in the Year 1720, 21, 22, 23, and 24, to several Articles of that and other Accounts, but no Date to the *Memorandum* at the Head of his Account. I took this Copy of it, which I have in my Hand.

Mr. *Lutwyche*. I desire to ask one Question, which, indeed, is to explain, what he mentioned concerning an Order, that I think, he takes to be signed by my Lord Chancellor. I desire to know the Date of it?

Mr. *Elphinstone*. It was a loose Order brought to me, dated 11 July 1721.

Mr. *Lutwyche*. Who brought it?

Mr. *Elphinstone*. It was brought to me by a Clerk that belongs to the *Transfer-Office* at the *Bank*.

Mr. *Lutwyche*. Was that Original Order left in the Book?

Mr. *Elphinstone*. No, my lords, I saw no Book of Orders; it was a single Order brought to me.

Mr. *Lutwyche*. You say there was an Order signed *Parker C.* was there any such Order drawn up by the Register of the Court?

Mr. *Elphinstone*. I know nothing of its being drawn up by the Register. I saw *Parker C.* Signed to an Order; and I believe it was the noble Earl's Hand.

Mr. *Serj. Pengelly*. He hath a Copy of it; I believe it is proper to put it in, or that it may be read.

Mr. *Lutwyche*. Mr. *Elphinstone* may read it to your Lordships.

Mr. *Elphinstone* reads. *Martis 11. July 1721:*
 "I do order, that all the *Bank* Stock and Annuities therein subscribed, belonging to *Fleetwood Dormer, Esq;* late one of the masters of this Court, be by him forthwith transferred to *Henry Edwards* the succeeding master."
Parker C.
To the Governor, Deputy Governor, and Directors of the Bank of England.

Mr. *Serj. Pengelly*. We desire he may be asked Whether he heard any thing of Mr. *Dormer's* being gone to take the Air?

Mr. *Elphinstone*. No, My Lords; I never did, upon my Oath.

Mr. *Serj. Pengelly*. Whether he did not hear the Earl of *Macclesfield* make a Declaration to that Purport?

Mr. *Elphinstone*. I do not remember that the Noble Lord ever made any such Declaration.

Mr. *Serj. Pengelly*. He mentioned several Orders he found in the Books of the *Bank*; as I apprehended him; whether was there any other Order under My lord *Macclesfield's* Hand?

Mr. *Elphinstone*. No, I saw but one Original Order, signed by the Noble Earl, of which, this is a Copy in my Hand.

Mr. *Lutwyche*. This was an Order under my Lord's Hand, a considerable Time after: I desire he may be asked, whether he hath heard of any Order directed to the Governor, Deputy Governor, &c. of the *Bank*, and sign'd by the Chancellor, and that Original Order left there?

Mr. *Elphinstone*. My Lords, I would be very cautious of saying any Thing that I do not remember; but I do remember something of a Discourse of an Order given for stopping of *Dormer's* Stock and Effects about the Time of Mr. *Dormer's* absconding, but when it was I can't tell.

Mr. *Lutwyche*. He did not understand me: My Question is, Whether or no he hath ever heard of any Order directed to the Governor, &c. of the *Bank*, and signed by the Chancellor, and that Original Order left there?

Mr. *Elphinstone*. No; My Lords, I don't say I heard of any other Order, signed by my Lord Chancellor, and directed to the Governor, &c. of the *Bank*; but I heard an Order was given by my lord, to stop *Dormer's* Stock.

Mr. *Lutwyche*. I only ask, Whether in this, or any other Instance, my lord Chancellor made Orders to the *Bank*, to be left there?

Mr. *Elphinstone*. I don't know what Orders are made; it was out of my Province; I had nothing to do with that; my Business was quite another Thing.

Mr. *Serj. Probyn*. I would beg leave to take Notice of one Observation, that has been made on the Evidence given in Relation to the Order of the late Lord Chancellor, as tho' it was unusual to direct any in that manner to the *Bank*; but to that I beg leave to answer, that this was not an Order of Court; but only a particular Direction, which he, in his private Capacity, sent to that Company, out of his great Care to secure the Effects of the Suitors; and this, I apprehend, fully clears him of the Objection made to him of Neglect to do it in his judicial Capacity.

Mr. *Com. Serj.* Your lordships cannot choose but observe, that this very Thing implies some Caution taken, that these *Effects* of Mr. *Dormer's* should not be transferred without the Privity of the Great Seal: This Order, we apprehend, was for that Purpose; and to make this plain, we shall shew, that Mr. *Cottingham* went from my Lord Chancellor about this matter.

Mr. *Cottingham* called.

Mr. *Serj. Probyn*. We desire Mr. *Cottingham* may be ask'd, How he came to have Notice, and from whom, of Mr. *Dormer's* withdrawing himself; and what care was taken to secure his Effects?

Mr. *Cottingham*. Soon after *Christmas*, 1720, to the best of my Remembrance, as to the Time, Mr. *Parkhurst*, Mr. *Dormer's* Nephew, came to me, and told me, his Uncle, Mr. *Dormer*, had withdrawn himself into *Holland*; and the Reason was, upon account of his having left money and Effects belonging to the Suitors, in Mr. *Wilson's* Hands, and Mr. *Wilson* had been very unfortunate in the *South Sea* Year, and was likewise gone off. I acquainted the Earl of what passed. The Earl directed me to attend the two Senior masters, Mr. *Hiccocks* and Mr. *Rogers*, and consider what was proper to be done on that Occasion. On Consideration, we agreed, that it was necessary to get Mr. *Dormer* over.

We then considered, that it was not possible to have him over, unless he was secure of his Liberty. A proposal was made to the Earl, that in case he came over, he should have his liberty: The Earl agreed to it. In the mean Time, to the best of my Remembrance, Orders were given for searching of his Office, and securing what Effects and Papers were there. The masters told me, that pursuant to these Directions, they had searched his Office, and lock'd up what they found there; but his Effects there were of very little Value.

The next Step the Earl took, was, he directed Persons to go to the *Bank* and *South-Sea* House, to

stop the Transferring of any Stock or Effects in his Name.

In *April* following, when Mr. *Dormer* returned, he came late to me one Evening, and asked me, If the letter writ by the master, was writ by the Earl's Direction? I told him Yes. He then asked me, If the Earl had promised his Liberty? Otherwise he would be gone again.

I told him the Earl had promised him his Liberty, if he would make a full Discovery of all his Effects upon Oath; and make over all he had to the two Senior masters, for the Benefit of the Suitors of the Court; and assist them in getting in every Thing that belonged to him.

He said, these Conditions he readily submitted to and would attend the masters accordingly. I spoke to Mr. *Rogers*, to know whether he would have an Order in Form to examine Mr. *Dormer* upon Interrogatories; and that, if he would, I would prepare one, and get it sign'd. He told me, It was not necessary; and that they thought it was best to get the Estate and Effects in the first Place before that should be done; fearing if Mr. *Dormer* was severely dealt with, he should run away, and an Order might be had afterwards, if necessary. I forgot to tell your Lordships one Circumstance: Some time, in the Summer following, either in *July* or *August*, I happened to dine one Day at the *Blue-Posts*, behind *Lincolns-Inn*. Mr. *Dormer* came to me with Tears in his Eyes; he cried bitterly, and said, That the masters had strip'd him of all he had in the World, and beg'd I would intercede with the Earl to allow him something. I desired him not to insist upon it; for his Effects, as I was inform'd, were not sufficient to pay his Debts, and he knew well, that the Earl could not give away the Effects of the Suitors; It was out of his Power.

Mr. *Plummer*. I think you say, Sir, That Mr. *Dormer* failed, by leaving his money and Effects in Mr. *Wilson's* Hands; I desire to ask him, What he means by his Effects?

Mr. *Cottingham*. The money and Effects belonging to the Suitors of the Court.

Mr. *Plummer*. And you told my Lord of that?

Mr. *Cottingham*. Yes, I told my lord what Mr. *Parkhurst* had mention'd of the money and Effects of the Suitors of the Court being left in *Wilson's* Hands.

Mr. *Com. Serj.* I desire he would inform your lordships, whether or no, upon this Occasion and Transaction, he applied to the masters to make up this Deficiency of Mr. *Dormer's*?

Mr. *Cottingham*. As to the Deficiency of Mr. *Dormer*, I always apprehended and understood, that the masters would make good that Deficiency, Mr. *Lightboun* excepted, who always declared, he would do nothing towards it, unless it were put on another Foot.

Mr. *Com. Serj.* I desire he may be asked whether he gave any such Information to the Earl of *Macclesfield*?

Mr. *Cottingham.* I did so; I told the Earl of it; and to the best of my Remembrance Mr. *Hiccocks* and Mr. *Rogers*; my Lords, I wont be positive, but I think Mr. *Hiccocks* and Mr. *Rogers* did order me to wait upon the Earl, and let his Lordship know that the Body of the masters had undertaken to make up the Deficiency; I do think so, I will not be positive of that, I think it was so.

Mr. *Com. Serj.* I desire he may inform your Lordships, if he knows how it came to pass that Mr. *Dormer* had money in Mr. *Wilson's* Hands?

Mr. *Cottingham.* Mr. *Parkhurst* told me, and I think Mr. *Dormer* likewise, but of that I am not certain, that Mr. *Dormer* had left the money in his Hands when he went into the Country in the long Vacation.

Mr. *Onslow.* I desire he may be asked what were the Words that Mr. *Rogers* and Mr. *Hiccocks* said to him when he apprehended the masters would make good the Deficiency?

Mr. *Cottingham.* I think it was what I told your Lordships, that the Body of the masters would make good the Deficiency; I do not, I cannot swear that positively.

Mr. *Onslow.* Did any other of the masters tell you so?

Mr. *Cottingham.* Mr. *Godfrey* told me, I am positive of this, that Mr. *Godfrey* told me that the Body of the masters would make good the Deficiency; I must except Mr. *Lightboun*.

I have heard Mr. *Edwards* say, that he would never have paid his 500 *l.* if he had not apprehended that it would have been made good.

Mr. *Com. Serj.* This makes it necessary for us to ask another Question, and I desire he may be asked, tho' he doth not remember the particular Words, yet whether that induced him to believe that they intended so to do?

Mr. *Cottingham.* It did.

Mr. *Com. Serj.* Whether upon this Belief he did inform the noble Earl that they would make good Mr. *Dormer's* Deficiency?

Mr. *Cottingham.* I did, I told the noble Earl so, and that his Lordship needed not to be uneasy, they would make it good, and I always apprehended, I always understood they would make it good.

Mr. *Lutwyche.* I desire he may be asked whether the Deficiency of Mr. *Dormer* was ever stated so as to know how much it was?

Mr. *Cottingham.* No.

Mr. *Lutwyche.* Did they agree to make up the Deficiency when they did not know how much it was?

Mr. *Cottingham.* I heard some of the masters say at first, that it was 17,000 *l.* or 18,000 *l.* afterwards they said 20,000 *l.* and then 22,000 *l.* and of late it comes out to be 26,000 *l.*

Mr. *Lutwyche.* If I understand Mr. *Cottingham* right, he speaks of several masters, I desire to know whether he means all, except Mr. *Lightboun*? I desire to know whether they all singly promised?

Mr. *Cottingham.* Singly, as I remember; Mr. *Edwards* can tell I was at a meeting with them at the Tavern, I think they said singly.

Mr. *Serj. Pengelly.* I desire he may be asked whether this Discourse with the masters about

paying this Deficiency was absolute, or upon some particular Terms or Conditions of paying the money?

Mr. *Cottingham.* Mr. *Edwards* told me that they would make good the Deficiency, provided they continued on the old Foot as usual.

Mr. *Serj. Pengelly.* That is, to have the Disposal of the money, the money to be in their Hands?

Mr. *Cottingham.* Yes.

Mr. *Lutwyche.* I desire to know whether you acquainted the Earl of *Macclesfield* with this?

Mr. *Cottingham.* No, this was but lately that Mr. *Edwards* told me that. It was, I believe, in *November* or *December* last.

Mr. *Lutwyche.* Did none of the other masters acquaint you so?

Mr. *Cottingham.* No, I don't remember any other master did.

Mr. *Lutwyche.* I desire to ask you whether you ever heard what Interest Mr. *Wilson* allowed to Mr. *Dormer*?

Mr. *Cottingham.* In *December* last, when the Accompts were before the Judges, the Earl told me that Mr. *Wilson's* Composition was complained of; it was said, that Mr. *Wilson* had paid 20 *s.* in the Pound; and ordered me to talk with Mr. *Wilson*; and accordingly I did see him, and blamed him for imposing upon the masters in the Composition he made with them, when he had paid other Creditors whole Demand; he denied it.

Mr. *Lutwyche.* That is not the Question; what Interest did Mr. *Wilson* allow Mr. *Dormer* for the Suitors Cash?

Mr. *Cottingham.* I am going on to that Part. Mr. *Wilson* said to me; why is all the Blame laid upon me? I allowed Mr. *Dormer* very large Interest for his money: I could have set aside his Debt upon the Score of an usurious Contract; I was resolved I would not do it, I would shew my self to all the World to be an honest man; I gave my Creditors all that I had, what would they have more?

Mr. *Lutwyche.* Whether he mention'd Ten per Cent. or no?

Mr. *Cottingham.* No, he did not, but he said he had given large high Interest, and the Court had had as much as his other Creditors.

Mr. *Com. Serj.* When was this Discourse?

Mr. *Cottingham.* It must have been in *December* last, when the Judges were inquiring into this matter, because he told me Mr. *Edwards* had been with them about the Composition.

Mr. *Serj. Probyn.* Recollect what was said upon this Discourse, whether he said that the Court or the Masters had as much as any of his other Creditors?

Mr. *Cottingham.* He told me, I am an honest man, the masters had as much as my other Creditors, what would they have more?

Mr. *Serj. Probyn.* It is our Misfortune we can't produce Mr. *Wilson* here, we are deprived of his Evidence, which would have been very material, by his Death; we are told he has very lately shot himself.

Mr. *Cottingham.* He was very poor, I always looked upon him to be an honest man; he told me at the same time, I forgot to tell your Lordships, if Mr. *Poulter* could be but delivered up, he should be very easy; he was sure he was in Circumstances to pay him.

Mr. Com. Serj. My Lords, if the Gentlemen have done with this Witness, we desire to call a Witness or two in relation to the fourteenth Article, to shew the Credit of *Poulter* when his Debt was assigned. We apprehend that a little Evidence will serve to clear up the Innocence of this noble Earl on this Occasion: The great Concern the noble Earl had to make up this Deficiency of Mr. *Dormer*, made him with the best of his Knowledge and Power apply thereto; a little Evidence will make it appear, that however unfortunate it was in the Consequence, he did it to make the most he could for the Suitors of the Court.

Mr. *Hunt* Sworn.

Mr. Com. Serj. My Lords, we call this Witness to prove the two Judgments, the one against *Poulter*, to shew that there was a real Debt due from *Poulter* to *Wilson*; the other is a Copy of a Judgment by *Wilson* against the Marshal of the King's Bench, for the Escape of *Poulter*.

Mr. *Hunt*. My Lords, I examined these two Copies of Judgments with the Records in the Court of King's Bench. They are true Copies of the Judgments.

Mr. Com. Serj. I desire he may be asked whether he was the Attorney for Mr. *Wilson*?

Mr. *Hunt*. I was the Attorney for Mr. *Wilson* in that against *Machen*, and entred up the Judgment in the other.

Mr. Com. Serj. Is it your Lordships Pleasure that the Judgment should be read at large?

Mr. Serj. *Probyn*. Read only a Word or two of the Judgments, the Names of the Plaintiff and Defendant, the money demanded, and the Sums recovered.

Clerk reads the Beginning and Ending.

Memorandum quod alias, scilicet Termino Sancti Hilarii ul' præterit' coram Domino Rege ven' Willielm' Wilson versus Edwardum Poulter—Ideo considerat' est quod prædict' Willielm' recuperet versus præfat' Edwardum Poulter damna sua, quæ quidam damna in toto se attingunt ad octodecim mille septingent' & sexagint' libras duodecim solid' & quinque denar'.

Mr. Serj. *Probyn*. The first is against *Poulter*.

Mr. *Lutwyche*. Look when the Judgment was signed.

Mr. *Hunt*. It was signed 22 Dec. 1721.

The Judgment read against *Machen*.

Placita coram Domino Rege apud Westm' de Term' Sancti Michaelis, undecimo Georgii. Memorandum quod Willielm' Wilson—protulit—billam—vers' Richardum Machen—de placito debiti—quod reddat ei octodecim mille septingent' octogint' & un' lib.—Ideo considerat' est quod præd' Willielm' Wilson recuperet &c.

Judgment signed 27 Nov. 1724.

Mr. Com. Serj. If your Lordships please he may be asked if he knows of any Offer made by *Poulter* for a Composition, and what Sum of money was offered, and how Mr. *Wilson* behaved himself on that Occasion.

Mr. *Hunt*. I don't know of any Composition offered, of my own Knowledge, I have heard the present Marshal of the King's Bench say, there was 1000 *l.* offered; but I had Orders from my Client,

if any Offer was made to me, not to accept it, but to refer the Person who made it to him.

Mr. Com. Serj. As Mr. *Wilson* is dead, I desire Mr. *Hunt* may be asked Whether Mr. *Wilson* gave any Reason for that Order not to compound with him?

Mr. *Hunt*. Mr. *Wilson* hath often said that it was his Opinion Mr. *Poulter* was able to pay him.

Mr. Com. Serj. We have done, my Lords, with this Witness.

Mr. Serj. *Probyn*. My Lords, we beg leave to call a Witness to shew that at this Time Mr. *Poulter* had the Reputation of being a man of Substance, and an honest man.

Mr. *Peter Gandy* Sworn.

Mr. Serj. *Probyn*. My Lords, I desire Mr. *Gandy* may give your Lordships an Account whether Mr. *Poulter* had not the Reputation of being a substantial man about the year 1722 or 1723.

Mr. *Gandy*. Mr. *Poulter* always lived in good Reputation, and was reputed to be an honest man; he lived at *Hackney*, he told me he purchased 6000 *l.* South-Sea Stock, which cost him 36,000 *l.* and transferred it to Mr. *Knight*, and Mr. *Knight* gave him nothing for it.

Mr. Serj. *Probyn*. I desire to ask you whether he was a substantial honest man?

Mr. *Gandy*. I believe he was; he always bore an extraordinary Character, I believe I might summon all *Exchange-Alley*, and they would say the same; he was reputed to be worth a great deal of money and a very honest man.

Mr. *Lutwyche*. At what time was this that he was thought a man of Substance?

Mr. *Gandy*. When he lived at *Hackney*.

Mr. *Lutwyche*. After he was arrested?

Mr. *Gandy*, Yes.

Mr. *Lutwyche*. Will you say after he was arrested he was a substantial man?

Mr. *Gandy*. No, my Lords, I do not say he was, but he was generally reputed to be so.

Mr. *Lutwyche*. Whether at the same time you mention that he told you the Circumstance of transferring Stock to Mr. *Knight*, that was not given as a Reason for his Deficiency.

Mr. *Gandy*. He said he had been able to pay Mr. *Wilson* every Farthing, if Mr. *Knight* had not gone away.

Mr. *Lutwyche*. That is what Mr. *Poulter* told Mr. *Gandy*.

Mr. Serj. *Pengelly*. I desire he may be asked when *Poulter* was first known to be in a failing Condition?

Mr. *Gandy*. I don't know.

Mr. Serj. *Pengelly*. When was he arrested?

Mr. *Gandy*. I don't know; he told me he should have been able to have paid Mr. *Wilson* if Mr. *Knight* had not gone away.

Mr. Serj. *Pengelly*. Did he give you that as a Reason why he could not pay Mr. *Wilson*?

Mr. *Gandy*. Mr. *Knight* not paying him, he said he could not pay Mr. *Wilson*.

Mr. Serj. *Pengelly*. Was that the Reason?

Mr. *Gandy*. Here is another Gentleman will tell you he was employed to make a Composition with Mr. *Wilson* and he can tell you more.

Mr. *Onslow*. What was *Poulter*'s Profession?

Mr. *Gandy*. He was a Servant to Mr. *Stroud*.

Mr. *Onslow*. What is Mr. *Stroud*?

Mr. *Gandy*. Mr. *Stroud* is a Sworn Broker.

Mr.

Mr. Onslow. I desire to know what Profession this Person is of?

Mr. Gandy. I transact in *Exchange-Alley* as a Broker.

Mr. Lutwyche. Did not Mr. Poulter transact as a Broker too?

Mr. Gandy. Yes.

Dr. Sayer. We are not now upon the Point what he was really worth at that time, but what his Reputation and Character was, and therefore we desire to know what that was, whether he was not looked upon as a substantial man?

Mr. Gandy. He bore a good Character.

Mr. Strange. What was his Character, as to his Circumstances at that time?

Mr. Gandy. His Character was then very good, and so continued till he was put in Prison.

Mr. Strange. Where is he now?

Mr. Gandy. He is at *Rotterdam*.

Mr. Scott Sworn.

Mr. Com. Serj. I desire that Mr. Scott may inform your Lordships whether he knew Mr. Poulter, and what his Character and Reputation was, as to Substance.

Mr. Scott. Mr. Poulter I had been acquainted with a great many Years; I looked upon him to be a very honest man; and in the Year 1720 he transacted abundance of Business, and I did a great deal of Business for him, and some other Gentlemen at that time, as a Scrivener. In the Year 1720, upon the Fall of the Stocks, he came and told me he was ruined by it, and begged of me to assist him. He told me at first he had some Accompts depending with Mr. Wilson.

Mr. Serj. Pengelly. I desire he may repeat it, where he told him, and when?

Mr. Scott. About *December 1720*, before Mr. Knight went away, he said he had large Accompts with Mr. Wilson, and that he was utterly ruined, because he said he had transferred 6000 *l.* South-Sea Stock to Mr. Knight, which cost him 40,000 *l.* or better, and if he could not get it of Mr. Knight, he must be ruined. He told me I was acquainted with several Gentlemen of Mr. Wilson's Acquaintance, and desired me to speak to him or them about this matter.

Sometime after Mr. Wilson's Agents, Mr. Ashton, I think, and one Mr. Newton, sent to Mr. Poulter, and desired a meeting on the Behalf of Mr. Wilson. I went on the Behalf of Mr. Poulter, and carried a Friend with me; we met at the *Crown Tavern* over against *St. Clement's Church*, and we told them how Mr. Poulter was served; that Mr. Knight had so much Stock of his without any manner of Consideration, as Mr. Poulter had told us; that Mr. Poulter was willing to do any thing they could expect. Some considerable time afterwards, I heard Mr. Poulter had been arrested, and he desired me, as being acquainted with Mr. Wilson, to go to Mr. Wilson and see if I could make up the Affair, he apprehended that his Bail would surrender him: Whereupon I went to Mr. Wilson, and told him, that Mr. Poulter protested to me he was worth but 3500 *l.* or thereabouts, and that he would endeavour to get Friends to make it up 4000 *l.* if Mr. Wilson would accept it. I was with Mr. Wilson several times about this matter, but he would not accept it.

Mr. Serj. Pengelly. Did he give any Reason why he would not accept it?

Mr. Scott. He said he looked upon Mr. Poulter not to be an honest man, and that he could pay more; I said he had better take that than keep him in Prison.

Mr. Com. Serj. Notwithstanding these private Intimations of his Disability, I desire to know what was his general Character as to his Circumstances?

Mr. Scott. He was looked upon to be a very honest man, and in good Circumstances; he hath been trusted with Thousands and Thousands of Pounds.

Mr. Serj. Pengelly. I desire he may be asked, Whether the money, the 24,000 *l.* Wilson lent to him, was not for Stock-jobbing, for him to traffick with in the Alley.

Mr. Scott. I know nothing at all of that.

Mr. Serj. Pengelly. Whether he hath not declared so?

Mr. Scott. No, I know nothing of that; whenever I was in Company with Mr. Wilson he was always very shy, and would not speak freely.

Mr. Plummer. I desire he may be asked, Whether in *June* or *May 1720*, he looked upon Mr. Poulter to be a good man?

Mr. Scott. Mr. Poulter, in *April* or *May 1721*, told me his Circumstances, and desired me to go to Mr. Wilson to meet those Gentlemen, and to treat with them; but every body then, except four or five Persons to whom he had made known his Circumstances, reputed him an honest and a substantial man.

Mr. Com. Serj. I desire he may inform your Lordships, In *May 1721*, what his general Character was, or what was generally thought by other People of him, without relation to his own particular Knowledge.

Mr. Scott. He was looked upon as a man of Substance, and a very honest man.

Mr. Sandys. I desire he would explain himself; Whether he was looked upon at that time by himself to be a sufficient man, and able to answer the Demand of Mr. Wilson?

Mr. Scott. He had told me a Reason to induce me to have but an ill Opinion of his Ability, that he had transferred 6000 *l.* Stock to Mr. Knight, which cost him 40,000 *l.* and upwards.

Mr. Serj. Pengelly. Whether Mr. Poulter at that time went on dealing in the way of Business as he did before?

Mr. Scott. No, I believe he did not at that time: I believe in 1720 his Business was done, and he thought himself worth a great deal of money.

Dr. Sayer. Whether in the Year 1720 he was not looked upon to have got a great deal of money, and for that Reason to have quitted his Business?

Mr. Scott. It was then taken so; he was then looked upon as a man of great Substance: There were not above five who knew his Circumstances to be otherwise; he was generally looked upon then to be a man of Substance.

Mr. Lutwyche. It is a very surprising way to establish a man's Reputation to say he was a man of Substance when he offered a Composition, and at the same time he could not pay his Debts, he is understood to be a man of Substance; I desire to know, Whether it was after or before you had that meeting, and offered the Composition?

Mr.

Mr. Scott. I believe it was after.

Mr. Lutwyche. Did you take him to be a man of Substance afterwards, after you had offered a Composition for him?

Earl of Macclesfield. This Gentleman hath answered two Things very consistent, that he and three or four more, who knew Mr. Poulter's Circumstances, knew that he was not a man of Substance then, but that all other People looked upon him to be a man of Substance, and he tells you how he came to be so esteemed.

Mr. Scott. Yes, so it was.

Mr. Lutwyche. I desire to know again, whether after the Year 1720, he transacted Business as he used to do?

Mr. Scott. No.

Mr. Lutwyche. I desire to know again, where he lived after the Year 1720, and what means he had to live upon, besides his Business?

Mr. Scott. He lived as a Gentleman at Hackney, had his House well furnished and full of Plate; I have been at his House several times.

Mr. Lutwyche. How long ago?

Mr. Scott. I believe a Year and a half, or two Years ago?

Dr. Sayer. I don't apprehend it is material what this Gentleman thought from the private Conversation he had with Mr. Poulter. The general Reputation is sufficient for us to justify what was done; I desire he may be asked, whether till that Conversation he himself did not look upon him to be a man of Substance?

Mr. Scott. I looked upon him to be a man of Substance, till he told me he was so unhappy that he could not get his forty thousand Pounds and upwards of Mr. Knight.

Mr. Lutwyche. When was it he told you so?

Mr. Scott. I believe some time in December 1720 that he told me so first.

Mr. Lutwyche. The Composition was in 1722.

Mr. Serj. Pengelly. I desire he may be asked one general Question, Whether after the Year 1721 Mr. Poulter retained any Character of Sufficiency or Ability?

Mr. Scott. He was looked upon by every one that did not know this Affair of Mr. Knight's, to be a man of Sufficiency in 1721.

Mr. Lutwyche. After 1721, Whether it was not generally known that Mr. Poulter was an insufficient man?

Mr. Scott. No, I believe not.

Earl of Abingdon. If they have done, I desire to ask this Witness a Question, Whether it was generally known that Mr. Poulter had transacted for Mr. Knight?

Mr. Scott. Not as I know of, I believe not.

Mr. Serj. Probyn. My Lords, we shall trouble your Lordships with no further Evidence on this Article. So if your Lordships please, we shall now proceed to the other Articles.

Mr. Strange. With your Lordships Permission we will now go on to the next Set of Articles that were opened by the managers for the Honourable House of Commons, which are the fifteenth, sixteenth and seventeenth Articles. And I shall now, as I did before, confine my self to these particular Articles.

The Charge, my Lords, in these three Articles consists of several Acts supposed to be done by, or by the Order of, the noble Earl within the Bar, and are laid to be all tending to the same Design

of concealing the Deficiency of Dormer's Office.

For which Purpose, my Lords, it is said the Accompts of the masters were called for, not with any Design of examining the Accompts, but with an Intent to terrify the masters, and oblige them to contribute towards answering the Demands that should be made upon that Office: And as an Instance of this Design, the Commons charge, That after a Contribution by nine of the masters, the Earl did not oblige them to bring in their Accompts.

That upon occasion of another Sum of money wanted to pay off a Suitor who had an Order for money in Dormer's Office, the noble Earl pressed the masters to raise it amongst themselves; and, upon their Refusal, caused his Secretary to pay it: And that notwithstanding this Notice of Dormer's Deficiency, an Order was afterwards made for Mr. Edwards to enquire, whether there was likely to be a Loss of any money deposited with Mr. Dormer.

And as a farther Instance of this Endeavour to conceal the Deficiency, it is insisted on, that several Orders were made for the paying some Suitors the whole of their Demand, without regard to that just Proportion to which the other Suitors were entitled.

This, my Lords, is the State of the Complaint contained in these three Articles.

And as to the first part of the Complaint in calling for the Accompt, and terrifying the masters into a Contribution, I shall beg leave to insist upon two Facts; either of which, in my humble Apprehension, will be a sufficient Defence against the Charge.

The first, my Lords, is, That the Contribution was voluntary: And the next is, That long after this Contribution the Accompts were continued to be called for, notwithstanding it is charged to have been dropp'd immediately upon the Contribution:

To prove the Contribution voluntary, I beg leave, my Lords, in the first place to look back upon Mr. Lightboun's Evidence, where he acquainted your Lordships, that upon his asking the noble Earl, who the Proposal came from, the Earl's Answer was, That it came from some of the masters: And he concluded his Accompt of that Conversation with informing your Lordships, that upon his declining to contribute, the Earl left him to his Liberty.

But, my Lords, not to rest it upon Mr. Lightboun's Evidence only, we shall call Mr. Cottingham, who was acquainted with the whole Transaction, and will inform your Lordships, that the Contribution was altogether voluntary, and of their own Proposal.

My Lords, the other Branch of the Article, and which indeed is the Jet of the whole, relates to the dropping the Design of looking into the Accompts upon the making of this Contribution, which we shall be able to falsify; and the Account, my Lords, we shall give of the whole Transaction is this:

In February 1720, Mr. Cottingham, by the Earl's Directions, wrote a Letter to the Masters, requiring them to make up their Accompts, and present them to the Earl, according to a Plan which he imparted to them in that Letter.

Your Lordships are pleased to observe, that Mr. *Dormer's* failure was at *Christmas*, and this Letter in *February* following, before Mr. *Dormer* had any leave to come over, or any Discovery had been made of the Condition of his Office.

My Lords, The use which the Honourable managers say was to be made of this Letter, was so little understood, that some of the masters did, pursuant thereto, make up and deliver in an Account, tho' not according to the Directions they had received; and the Affair of Mr. *Dormer* coming on, caused a Stop in making up these Accompts, till after the appointing a Successor, and the making the Contribution, which, I think, is already fixed to have been in or about *August 1721*.

My Lords, The Summer being then far advanced, and every Body going out of Town, the Accompts were not exacted at that Time; but upon their Return to *London* a new Order was sent by Mr. *Cottingham* in *November*, with fresh Directions for bringing in their Accompts.

My Lords, I must here beg leave to observe, that if the Contribution was all that was aimed at by calling for these Accompts, how comes it to pass that Mr. *Lightboun*, who never contributed, was not called upon, in a particular manner, to bring in his Accompt, which, I did not observe, was proved, or so much as opened by the learned managers?

My Lords, The true Reason why these Accompts were not brought in, was the insuperable Difficulties of such an Undertaking; of which, I am persuaded, no other Evidence need be given, than to reflect on the Proceedings that have been of late in taking these Accompts.

But, my Lords, a learned manager was pleased to say, Why did this noble Earl keep the Office, if he was not able to do the Business of it? I hope your Lordships won't think the noble Earl was idle all the while: Every Body knows the great Variety of Business, and the continual hurry a Chancellor is in: The ordinary Business of the Court of Chancery is sufficient to engage a Man of uncommon Application: What a Fatigue then, my Lords, must it be, when the necessary Attendance upon your Lordships, and at the Council Table, are both taken into the Account? Sure I am, my Lords, it can never be said, that there was no want of Time or Leisure for taking these Accompts.

My Lords, The next Branch of the Charge is the Order for 1000 *l.* to Mrs. *Chitty*, which it is said was paid by the Noble Earl's Direction, in order to conceal the Deficiency: But pray, my Lords, does not the Article and Evidence both destroy the Supposition? Could the Earl of *Macclesfield* intend to conceal the Deficiency, when he cautioned *Lockman* against marrying Mrs. *Chitty*, in prospect of any more Money to be coming out of *Dormer's* Office. "That this would be the last Payment (I give your Lordships the very Words) she was like to receive out of the Money paid into the Hands of Mr. *Dormer*, for the Residue thereof was in danger of being lost, by reason of the Deficiency in the Effects of Mr. *Dormer*." Is this, my Lords, a Concealment of the Deficiency? A Payment of 1000 *l.* of the Noble Earl's own Money, in order that the Suitor should have no suspicion of a Deficiency!

But to go further, my Lords, we shall shew, that the payment of this Money did not proceed

from any such low Motive, as, I may say, is uncharitably represented in this Article, but from a noble Mixture of Generosity and Compassion.

Mr. *Lockman*, my Lords, represented himself as an undone Man if he had not the Money: He first insinuated himself among the Noble Earl's Servants, as a Person under the utmost Distress; and the frequent Solicitations, which himself owns, are a strong Evidence of that Distress: When he had gained Access to the Earl, he told his Story in so moving a manner, not without Intimations of some desperate Resolution he might be forced to take if he had not the Money against the time, that, in pure Compassion to his Distress, the Noble Earl (whose Purse was always open to the Unfortunate) was prevailed with to order him the Money. And we shall prove to your Lordships, that how little sensible soever he now is of so great a Favour, yet at that time he express'd himself in Terms of one the most highly obliged; and I believe when our Witnesses to this Transaction come to be examined, they will leave Mr. *Lockman* very little Credit with your Lordships, and will wipe away the most remote suspicion of affecting any Concealment by this Transaction.

My Lords, The last Branch of this Article relates to a Declaration said to be made by the Earl in the Cause of *Harper* and *Cafe*, and an Order made therein for Mr. *Edwards* to enquire if there was likely to be a Loss of any Money deposited with Mr. *Dormer*.

My Lords, The particular Occasion and manner of that Declaration and Order have been fully stated by the Evidence we have already given of the several Judgments and Proceedings that have been against Mr. *Poulter* and the Marshal, which I shall not trouble your Lordships with a repetition of, it being sufficient for my Purpose in answering it as an Instance of Concealment, to observe, that the whole Transaction was after the Accompts of the Masters had been laid before the Committee of Council, when it was too late, and to no purpose to affect any Concealment.

My Lords, The last Branch of the Charge I am now upon, relates to the making Orders for paying to several Suitors their whole Demand, out of the Effects of Mr. *Dormer*, without regard to that just Proportion to which the other Suitors were intitled: And the Case of *Eddisbury* was mentioned for this purpose; tho' I did not observe the Gentlemen enter'd into any Proof of what was done in that Case.

My Lords, In Proof of this Article several Orders were read: But I appeal to the Evidence of Mr. *Edwards*, whether it did not appear, upon his cross Examination, that it was but in one Cause only where the whole Money was paid out; and whether that single Instance is a sufficient Proof of this Article, I must submit to your Lordships.

But, my Lords, the true Answer is this: Both the Noble Earl and Mr. *Edwards* doubted not but that the Deficiency would be made good, and proceeded upon that Expectation; nor can a stronger Evidence be given (and I desire it may be applied to some of the other Articles) that they were under this Persuasion, than Mr. *Edwards's* making Payments without any Objection.

Especially, my Lords, when it is consider'd too, that Mr. *Lightboun*, who was so averse at first to any Contribution, has, in that letter which

has been read to your Lordships, mentioned several of his own Schemes for making good the Deficiency.

And if there was a Prospect of making good the Deficiency (as I humbly apprehend it is plain there was) it was very proper and natural to make the Orders in the manner they are now complain'd of. The nature of ordering Money out of Court makes it impossible the Suitors should call for it all at once, but the same is order'd out by Degrees: And Mr. *Cottingham's* taking an Assignment of *Cbitty's* Order, shews plainly, that it was expected Effects would in time come in to discharge that, and all other Demands.

I would not, my Lords, be understood by any thing I have offered, as if I intended to dispute the Rule of Equity that has been laid down by the Managers, That where several Persons have Demands out of one Common Fund that cannot answer the whole, there ought to be an Average in such Case: But what I shall beg leave to insist upon is, That that Rule only holds place where the Quantum of what is left to answer is fix'd and certain. In this Case the Effects were daily coming in, and therefore a Declaration of an Average where there was likely to be no Deficiency, would not, in my humble Apprehension, have been advisable or proper.

I beg leave, my Lords, to close my Observations upon all the Articles relating to the Concealment of *Dormer's* Deficiency, with submitting it to your Lordships Judgment, if the whole Transaction does not speak itself to have been one continued Endeavour to secure to the Suitors their whole Demand, and to have been no more.

Mr. *Serj. Probyn*. My Lords, the Managers, when they entered upon these Articles, produced an Order made by the late Lord Chancellor, in the Year 1720, by which the Masters were obliged to bring in their Accounts, which as they charge to have been concerted with other Views, and for very different Ends than at first appear, we think it will be extremely proper for us to begin our Defence to that Part of the Charge with a Witness who is ready to shew your Lordships the real Designs the impeached Earl had in calling for these Accompts; and his Evidence, we humbly conceive, will satisfy your Lordships that it could be for no other Purpose than that the Earl might the better know the true State and Condition of their respective Offices, in order to find out a proper Method of redressing such Grievances as were most apprehended at that Time. My lords, it will appear by the Course of the same Witness's Evidence, that the other Order that was made upon them afterwards in *December* following, in as strong Terms as the former, could be for no other Reason or Purpose than that his lordship hath assigned in his Answer, that he might understand the State of the several Offices, so as to be able to apply proper Remedies to the Danger which was then dreaded. All this will appear yet more fully from the Evidence of another Witness, who is to inform your lordships of the particular Directions the Noble Earl gave about the Manner of bringing in these Accompts, with the Names of the Causes of the respective Solicitors concerned in them, and also what the several Sums first paid in were, the Time when so paid in, and also when the same or any Part were paid out

again, together with many other Particulars which his lordship thought necessary for his more exact Information. It will be likewise made appear to your lordships, how the Masters were severally consulted with about this Matter, and that the Assistance of the Master of the Rolls was at length called in. But all the Masters agreeing, and particularly Mr. *Holford* (who had been in the Office for twelve Years) that it was next to impossible to bring in their Accompts, as first directed, in any reasonable Time; then it was, and not before, that the noble Earl condescended that they might bring them in in a different Manner. Now, my lords, as to the Suggestion that all this was only a Scheme, made use of to terrify the Masters into a Contribution towards *Dormer's* Sufficiency, give me leave to say it is impossible to collect the least View of that Kind from the Evidence laid before your lordships on that Head; for the Masters who did contribute on this Occasion, have all sworn that they paid in their Money voluntarily, and without being any ways influenced by his lordship's Threats or Persuasions; so far from that, that Mr. *Lightboun* (the only Master who refused concurring in this Contribution) made no other Objection at first to it, than that the Proposal did not come from his lordship, but from the other Masters; for in that Case he declared, That, if it had come from the noble Earl himself, he might have had more Regard to it, and would have taken it into his Consideration. So that we doubt not upon the whole, but it will plainly be made appear to your lordships, that the constant Application which the noble Earl made from time to time to the Masters for this Purpose, proceeded from no other View, than that as soon as he might be truly informed of the State of their Offices, he should apply proper Remedies to whatever Abuses he should discover; and that as this was always his real Intention, so he would have put it effectually in Execution, had he not resigned the Great Seal so soon.

Mr. *Com. Serj.* My lords, we shall call a Witness to shew, that after the 500*l.* apiece was paid, the Accompts were called for; it cannot then be pretended, that this calling for the Accompts was to terrify the Masters to pay this 500*l.* apiece.

The Time of the Payment of these five hundred Pounds was in *August*; these Accompts were called for in the Beginning of *November*.

Mr. *Cottingham* called.

Mr. *Serj. Probyn*. I desire Mr. *Cottingham* would inform your lordships whether any Directions were given to call in those Accompts about *November*, 1721.

Mr. *Cottingham*. I did in *November*, by the Direction of the Earl, write a letter dated the 7th *Nov.* 1721.

L. *Ch. Just. King*. Have you any Draught of that letter?

Mr. *Cottingham*. I have a Draught, the Committee required me to leave the letter with them.

Mr. *Lutwyche*. My lords, we will do the noble Earl all the Justice we can; here are the letters.

Mr. *Cottingham*. The first letter is dated *Feb.* 14. 1720.

Mr. *Lutwyche*. Who is it directed to?

Mr.

Mr. *Cottingham*. The Letter is directed to each master, and this is the letter.

S I R,

I Am commanded by my lord Chancellor to signify to you, that you do with all convenient Speed lay before his lordship an Accompt in several Columns,

1. Of the Name of the Cause.
2. The Solicitor or Agent.
3. The Date of the Order.
4. For what Purpose the money was brought in.
5. How much was brought in.
6. When.
7. How much in Hand.
8. How much on Security.
9. How much paid out.

A distinct Account of the Securities.

1. Cause.
2. From whom the Security is taken.
3. What the Security is.
4. In whose Name taken.
5. For how much each Security.
6. The total of the several Securities in the same Cause.
7. In whose Hands lodged.

A distinct Accompt of money paid out.

1. Cause.
2. By what Order, and of what Date.
3. When paid.
4. To whom.

Your very humble Servant,

14 Feb. 1720.

P. Cottingham

S I R,

BY my letter of the fourteenth of *February* last, I signify'd to you my lord Chancellor's Pleasure; which was that you should with all convenient Speed lay your Accompt before his Lordship; (the method whereof was to be in several Columns subscribed at the Foot of that letter.) I am now further to acquaint you, that his lordship is very much surprized to find, that in all this Time no such Accompt hath been laid before him: And therefore hath commanded me to tell you, that it is expected to be delivered in, on or before the last Day of this Term. And, if this is not comply'd with, you will oblige his Lordship (though very unwillingly) to think of other measures; which I doubt not but you will avoid, by a ready Compliance with what is a second time required of you. And to the End there may be no mistake as to the method of your accompting, I here subscribe it again at the Foot of this Letter; and am,

Sir,

Your very humble Servant,

7 Nov. 1721.

P. Cottingham.

To the best of my Remembrance, this Letter was delivered to ten of the masters.

Mr. *Lutwyche*. Did you read it to them?

Mr. *Cottingham*. No: I am going to give you an Account. My Lords, according to a *Memorandum* I kept at that Time of this letter, it was delivered to ten of the masters: to Mr. *Rogers*, Mr. *Hiccocks*, Mr. *Fellowes*, Mr. *Lightboun*, Mr.

Bennet, Mr. *Holford*, Mr. *Borrett*, Mr. *Godfrey*, Mr. *Conway*, and Mr. *Lowibond*.

Mr. *Serj. Probyn*. We desire that the second Letter in *Nov. 1721*. may be read.

Mr. *Cottingham*. The second Letter is dated 7 *Nov. 1721*. "Sir, by my letter of the fourteenth of *February* last, I signify'd, &c. N. 47."

Mr. *Serj. Probyn*. By this it appears to be after the several 500 Pounds were paid in, the last 500 Pounds was paid in in *August*, before, which shews that these Accompts were to be delivered in for no other Reason than that the Suitors should have Satisfaction, as soon as a proper Remedy could be found.

Mr. *Com. Serj.* I beg leave to make one Observation; here is——

Mr. *Lutwyche*. If they have any more Questions to ask the Witnesses, they may; the Observing is proper afterwards.

Dr. *Sayer*. I only beg leave to ask this one Question, to be better informed. The Letter recites, it is written by the Command of my lord Chancellor: I would ask whether my lord Chancellor did give such Directions?

Mr. *Cottingham*. Yes, my Lords, he did.

Mr. *Plummer*. If they have done with the Question, I would ask Mr. *Cottingham* in the Words of his own Letter, Whether the Earl of *Macclesfield* did oblige the masters to deliver in their Accompts in Pursuance of such his said Order?

Mr. *Cottingham*. Of the Letter of *November 1721*. I have kept no *Memorandum*; of the first Letter I have.

Mr. *Plummer*. Whether that Letter of 1721. was delivered to the masters?

Mr. *Cottingham*. I believe it was.

Mr. *Plummer*. Then I desire to know, if the masters did deliver in their Accompts?

Mr. *Cottingham*. I don't remember they did.

Mr. *Plummer*. I desire he may be asked, if after this time that the 500*l.* was paid in Obedience to the first letter, there was afterward any other Demand made upon the masters for more money?

Mr. *Cottingham*. I know of no Demand made upon them, except the 500*l.* apiece.

Mr. *Plummer*. I desire he may be ask'd if he doth not remember Mrs. *Chitty's* Affair, and if that was not after 1721?

Mr. *Cottingham*. The Business of Mrs. *Chitty* was but in *July* last.

Mr. *Serj. Pengelly*. I desire he may be asked, Whether since no Accompt was called for after this last Letter, whether he did not understand the Reason to be, because he apprehended the masters would make good Mr. *Dormer's* Deficiency?

Dr. *Sayer*. My Lords, I submit it, whether that Question is material as to what his Apprehension was; your lordships are Judges only upon Evidence of Fact, and not upon his Thoughts or Apprehensions.

Mr. *Serj. Pengelly*. Why were not the Accompts called for afterwards?

Mr. *Cottingham*. I really can't tell the Reason.

Mr. *Serj. Pengelly*. Whether he acquainted my Lord *Macclesfield* that the masters would make good the Deficiency?

Mr. *Cottingham*. I told your lordships I did.

Mr.

Mr. *Serj. Pengelly*. Therefore I desire he may be asked, Whether after that Time he received any Orders to send to the masters to give in their Accounts?

Mr. *Cottingham*. I can't speak particularly as to the Times.

Mr. *Serj. Pengelly*. Whether those other measures, intimated in his letter to be taken, were not signify'd to him by my Lord *Macclesfield* to be, that the Cash should be taken out of their Hands?

Mr. *Cottingham*. My Lord called me into his Study, and directed me to write this Letter; all he said was, he was sorry that the masters had not brought in their Accompts as he required, and that if they did not bring them in by the last Day of the Term, he said he would take other measures: My Lord did not say to me what those other measures were, whether it was to make an Order in Form, and then he should expect they would yield Obedience to it; all the Earl told me was no more than to write to the masters, that he would take other measures, what those other measures were I do not know, but I apprehended it to be an Order his Lordship would make for obliging him to it.

Mr. *Snell*. I desire he may be asked, Whether he did not himself apprehend by those other measures, the taking the money out of the masters Hands?

E. of *Macclesfield*. My lords, I submit it whether a Question of this kind is proper; he hath been asked what those measures were; he hath told your lordships that he knows not, but he has said what he apprehended they were; if now any Fact occur to him that may give Reason for apprehending otherwise, let him acquaint your lordships with it.

Mr. *Cottingham*. Your Lordship said you would take other measures; what I apprehended was, your lordship would make an Order in form if they did not comply with that letter.

Dr. *Sayer*. My lords, I beg leave to ask one Question: Whether the masters, after this letter was brought to them by Mr. *Cottingham*, did not represent to him the Difficulty of making up their Accompts?

Mr. *Cottingham*. There were several Particulars mention'd in the former Letter, there was the Causes to be named, &c. Some of the masters told me they had not kept their Accompts so as to answer all the Particulars in the letter; others said it would take up a great deal of Time; others that the manner required was very difficult and tedious, and that it was almost impracticable, so many Items were contained in the letter, that they seem'd to say it could not be done.

Dr. *Sayer*. I desire he may be asked, Whether he hath any Paper of the method of Accompting required by the Committee, that his majesty was pleas'd to direct to look into this matter?

Mr. *Cottingham*. I have not a Copy of it here. There is an original Order, if the masters please to produce it, I left it with Mr. *Lighboun*.

Mr. *Com. Serj.* If the Gentlemen have it, I hope they will produce it.

Mr. *Cottingham*. The original Order is of the third of *November* last, which I left signed by the Earl.

E. of *Macclesfield*. This will come more properly under another Article: The Gentlemen,

the masters, will take Care to look it out that it may be ready by that Time.

Mr. *Cottingham*. My Lords, I have now found it; I can't say it is a true Copy, dated the third of *November*, 1724. signed *Macclesfield, C. Let the several Masters* — Am I to read it, my Lords?

Mr. *Lutwyche*. What, the Order of the third of *November* last?

Mr. *Com. Serj.* This Order cannot relate to this matter. We are now upon the second Letter in 1721. The Letter is framed in so strong Terms, that it can't be supposed but the Earl was very much in Earnest, and it can't be insinuated as if intended to make the masters comply in the Affair of Mrs. *Chitty* and *Lockman*, because that Transaction was but in *July* last.

Earl of *Macclesfield*. I desire, my Lords, to go a little back again, upon recollecting that the Question the honourable Manager was pleas'd to ask, about his giving me an Account that the masters would make good the Deficiency, carries an Insinuation, as if this method were dropp'd upon it: I desire he would inform your Lordships, Whether he can be sure of the exact Time, whether this was before or after *November*, 1721.

Mr. *Cottingham*. I really can't be sure of the exact Time.

E. of *Macclesfield*. How near was it to Mr. *Dormer's* going out, and Mr. *Edwards's* coming into his Office?

Mr. *Cottingham*. Mr. *Edwards* came in in *May* 1721. It was near his coming in.

E. of *Macclesfield*. I desire to know whether you can recollect the Time you did tell me of it? Whether it was after *November* 1721. or before?

Mr. *Cottingham*. I several Times mentioned it to your Lordship before *November* 1721. and I believe several Times after, but that I cannot certainly tell, nor can I be particular to a Day.

E. of *Macclesfield*. Did you ever hear of it before the 500*l.* a-piece was paid?

Mr. *Cottingham*. No, my Lords, it was after they had paid the 500*l.* a-piece; but, my lords, I don't know that they agreed to make good the Deficiency, I only told my lord I thought they intended it.

Lord *Trevor*. He hath proved two letters sent by the Direction of the Noble Earl. As to the first letter he kept a *Memorandum* as to the Time, but no *Memorandum* of the second. I would ask him as to the Time, when the masters made that Representation of the Difficulty of giving in the Accounts, whether it was before or after the second letter, or between the first and the second Letter?

Mr. *Cottingham*. To both the Letters they still made a Representation of the Difficulty.

Lord *Trevor*. Then I desire to ask one Question more, that is, Whether, after the Representation made after the second letter, they owned that they had received the second letter?

Mr. *Cottingham*. I verily believe that the second letter was deliver'd to the Masters as the other was, but I have kept no *Memorandum* of it; I verily believe the Masters had it; I can't tell; I took it for granted they had it; I trusted one of my Clerks with it to take a *Memorandum*; I enquired after him; he hath been gone from me, and I can't find him out: I verily believe it.

I have

I have no Reason to doubt but I gave it; the masters know that.

Mr. *Serj. Probyn*. If Mr. *Holford* is called, he will explain it; on his cross Examination he admitted a second letter was sent for him, and left in the publick Office: That appear'd in his cross Examination.

Mr. *Strange*. It might not be improper (this letter is before the honourable managers) to enquire if they had it not from some of the masters.

Mr. *Cottingham*. No, they had it from me.

Mr. *Holford* called.

Mr. *Serj. Probyn*. I desire he may be ask'd, Whether he had not any notice of the letter in November 1721, whereby the masters were obliged to bring in their Accounts?

Mr. *Holford*. Indeed, my Lords, I do not remember that letter.

Mr. *Serj. Probyn*. I desire he may be asked, Whether he remembers a second letter about Accompts?

Mr. *Holford*. Whether it was a letter or a message I cannot tell; but between the first Account in February 1720, and the last in November last, I was called upon to Accompt, and had prepared it; but this second letter dated in November 1721, I do not remember any thing of it.

Mr. *Serj. Probyn*. How long was it after the Payment of the 500 *l*.

Mr. *Holford*. It was a good while after.

Mr. *Serj. Probyn*. That is all we contend for.

Mr. *Holford*. I believe not above a Year before the last.

Mr. *Serj. Pengelly*. I desire he may be asked, whether after this letter, supposed to be in November 1721, his Accompt was ever demanded of him?

Mr. *Holford*. I did deliver to my Lord an Account of November 1721; and I think a Year before November last, in pursuance of either a letter or a message, I don't know which, my Lord required an Account; then I deliver'd an Account of money, not of Securities in my Hands.

Mr. *Serj. Pengelly*. Whether that was an Account in pursuance to that letter, demanding and requiring it of him?

Mr. *Holford*. Not as I know of, indeed.

Mr. *Lutwyche*. My Lords, as some mention hath been made of it, I think it may be proper to know what he can say to it, whether he ever promised to make good the Deficiency of Mr. *Dormer*?

Mr. *Holford*. I never did my Lords.

Mr. *Cottingham* called again.

Mr. *Serj. Probyn*. I desire he may inform your Lordships what he knows in relation to the Payment of the 1000 *l*. to *Lockman*, and what Conversation he had with Mr. *Lockman*.

Mr. *Cottingham*. About the beginning of July last, to the best of my Remembrance, Mr. *Lockman* told me, that Mrs. *Chitty* had an Order upon Mr. *Edwards* the master, to pay her 1000 *l*. That she had been with the master, but could not get the money, and that he had spoke to my Lord *Macclesfield* about it, and the Earl had promised to speak to the master. — And he desired

me to speak to the Earl concerning it: I promised I would, and accordingly I did; he sent me to the master. When I came to him, I spoke to him of it; he said he had no money; I informed the Earl of it; the Earl said he could not tell what to do. I informed Mr. *Lockman* of it; he seemed to be under the greatest Concern, and said, if he had not the 1000 *l*. he was undone; he was going to marry Mrs. *Chitty*, and Mrs. *Chitty* would not marry him, unless his Debts were paid, and she had given him this 1000 *l*. to pay his Debts. He had compounded his Debts, and he repeated it over and over again, that if this 1000 *l*. was not paid, he was undone.

I have not seen a Gentleman in a greater Distress than he appeared to be; on which I told him, if he would please to have a little Patience I would consider the thing, and see what could be done. I did consider it; and it came into my mind that Mr. *Lightboun* had not paid his 500 *l*. I acquainted the Earl with it, and said Mr. *Lightboun* had not paid his 500 *l*. and if he could prevail upon him to do it, I thought it would be easy to get 50 *l*. a-piece of the other masters, and that would do.

By the Earl's Order, I attended Mr. *Lightboun*, and told him that the Earl expected him to pay his 500 *l*. but I could not get a Penny from him; so he refusing to pay the 500 *l*. that Proposal of the 50 *l*. a-piece dropt: I acquainted the Earl of this; he said he could not tell what to do. I acquainted Mr. *Lockman*, and told him I had done all that was in my Power to do; and that it was not to be done, unless he expected I should pay it out of my own Pocket, which I was sure he could not expect: When I told him that, he said, I am undone, Mrs. *Chitty* will not marry me, his Royal Highness the Prince of *Wales* will not protect me, my Creditors will throw me into a Gaol, there I must rot and starve. He made use of so many extravagant Expressions, and was under that Pain and Agony of mind, that I apprehended he would do himself a mischief. I could say nothing to it, I had done all for an unfortunate Gentleman that possibly I could do. Two or three Hours after this, when I was at Dinner, he came to me again, and told me the Earl wanted to speak with me immediately; he begged of me of all things in the World to go: On that I went to the Earl. The Earl was pleased to send for me into an inner Room, and said, that he was teized out of his life by Mr. *Lockman*; I told him I was so too, I had no Rest Night nor Day for him; I then represented to the Earl his own Story in Substance as he had told me. The Earl said he was sorry to find Mr. *Lockman* brought to that State and Pass. I told the Earl I was afraid of the Consequence, I did not know what a despairing man might do, he seemed to be in the utmost Despair. Upon that the Earl ordered me to pay him the 1000 *l*. and said, he would pay it me again. When I saw Mr. *Lockman*, I told him I had now received Orders to pay him; I had not the money by me, but he should have it in a little time, three or four Days would break no Squares; he said, I am satisfy'd, provided it is paid. I said I had it not by me, I must borrow it; I did so; and on the thirtieth of July I paid him the 1000 *l*. I think it was three or four Days after, he asked me what Reward he should give me; I told him that his Distress was so great that he should not give me

any Reward; I would not take a Penny of him, and I never had the Value of a Dish of Coffee of him; I paid him the money, I borrow'd it for that Purpose. Says I, Mr. *Lockman*, it appears to me that you are in great Distress, I will borrow the money. I did borrow the money, and paid Interest for it, meerly to supply the Gentleman.

Mr. *Serj. Probyn*. I desire he may be asked if he knows of any other Sum of money demanded by Mr. *Lockman* after this 1000 *l.* was thus agreed to be paid him?

Mr. *Cottingham*. After this money was agreed to be paid, and, I think, the same Evening, I received this letter from him, which any Gentleman that will may read. (*The Letter read.*) Sign'd *Lockman*. Monday Evening.

S I R,

Monday Evening.

I Am very sensible of the Favour you have already done me, in promoting what my Lord in so affable a manner was pleas'd to promise me, which Kindness I shall gratefully acknowledge all my life: But as there is so great a Necessity, I hope you will pardon me the sooner in being once more troublesome, to beg of you to remind his Lordship of letting Mrs. *Chitty* have the other 574 *l.* which my Lord was pleas'd to say we should have, and without which Mrs. *Chitty*, who hath neither out of Chancery nor her Estate received any money this two Years, cannot spare me the whole 1000 *l.* As my whole Ease and Quiet depends on your kind Assistance, I must beg, Sir, once more to use your Interest to let us have it on Thursday Afternoon, between Four and Five, when Mrs. *Chitty* intends to wait on you for the other. I shall be very proud on all Occasions to shew with how much Gratitude and Esteem I am,

S I R,

Your most oblig'd
humble Servant,
A. Lockman.

Dated Monday Evening, no other Date. My Lords, Upon the Receipt of this letter, the very same Evening I laid it before the Earl, I told him that it appeared by this he wanted 570 *l.* more. The Earl said he was very much surprized at this Gentleman's sending such a letter, he did not know what he meant by 570 *l.* more that he promis'd, and, in short, told me he could advance no more.

Mr. *Strange*. I desire he may be asked, whether he had any Discourse with Mr. *Lockman*, relating to this 570 *l.* after this letter?

Mr. *Cottingham*. I had a Discourse with him some time afterwards about the letter.

Mr. *Serj. Probyn*. I desire to ask him, whether after this letter Mr. *Lockman* came to know what Answer he would give him?

Mr. *Cottingham*. Mr. *Lockman* came on the Thursday following, being the thirtieth of July; Mrs. *Chitty* did not come: And then I told him that I had received his letter, and had laid it before the Earl, and that the Earl understood not what he meant by it, that this was a growing upon him, and he would not pay a Penny more; I thought he had been very generous to him, and I told him I wonder'd what he meant.

Mr. *Serj. Probyn*. I beg leave to take notice,

and your Lordships will please to recollect, that *Lockman* swore he never made any Demand of any money besides the 1000 *l.*

Mr. *Lutwyche*. That is to be observed when the Witness is examined throughout.

Mr. *Serj. Probyn*. I ask whether Mr. *Lockman* did petition my Lord Chancellor for this Sum of money?

Mr. *Cottingham*. I don't remember Mr. *Lockman* petitioned. I believe not.

Mr. *Serj. Probyn*. Or Mrs. *Chitty*?

Mr. *Cottingham*. Yes, Mrs. *Chitty* did, before the Payment of this 1000 *l.* as I remember.

Mr. *Lutwyche*. Was there any Petition preferred before the Payment of the 1000 *l.* because the money was not paid according to the Order, which I think was dated March 17, 1723.

Mr. *Cottingham*. Yes: I told you so before.

Mr. *Lutwyche*. I desire to know whether there was not a general meeting of the masters before my Lord *Macclesfield* order'd him to pay the said 1000 *l.* to Mr. *Lockman*?

Mr. *Cottingham*. Yes, there was.

Mr. *Lutwyche*. Whether it was not after the meeting of the masters, when it was propos'd to Mr. *Lightboun* to pay his 500 *l.* and the others 50 *l.* a-piece?

Mr. *Cottingham*. Yes, I believe it was.

Mr. *Plummer*. Mr. *Cottingham* hath given a long Evidence, he hath told you on the Application for this 1000 *l.* he recollected that Mr. *Lightboun* had not paid his 500 *l.* and if he could get him to pay his 500 *l.* and the other masters 50 *l.* a-piece, that would make up the 1000 *l.* The Question I would ask is, if Mr. *Cottingham* had then any Orders from the Earl of *Macclesfield* to convene the masters?

Mr. *Cottingham*. No, I had then no Orders.

The first Order I had to convene the masters together, was on a Monday, before Payment of the 1000 *l.* as I remember: Mr. *Edwards* was then at my Lord's House, and my Lord ordered me to speak to him to convene the masters, and they were convened, and came to my Lord's House that Evening, as I was told, but that was after the money was ordered to be paid.

Mr. *Lutwyche*. I desire Mr. *Cottingham* may look upon that, and tell us whether it is his Hand.

Mr. *Cottingham*. This is my Hand (*reads.*) His Lordship can do nothing in it at present.

Mr. *Lutwyche*. Do you remember any thing of this Petition being offer'd?

Mr. *Cottingham*. Yes, I do remember it; it is a Petition of Mrs. *Chitty* preferred to the Earl, to be paid 1000 *l.* This Petition came to my Hands, the Earl said, he could do nothing in it at present, and this Order writ upon it is my Hand.

Mr. *Lutwyche*. Whose Petition is it?

Mr. *Cottingham*. The humble Petition of the Defendant *Elizabeth Chitty*, Mrs. *Chitty*'s Petition.

Mr. *Lutwyche*. What is the Answer writ upon the Back.

Mr. *Cottingham*. His Lordship can do nothing in it at present.

Dr. *Sayer*. We apprehend it is of Consequence to have this meeting cleared. I desire he may be asked, whether he knows of any meeting of the masters, and when, and what was done there?

Mr. *Cottingham*. Yes, there was a meeting that Evening, but I was not present.

E. of *Macclesfield*. By the Questions they have asked, they have taken it for granted as if he knew what was done at that meeting of the masters; I desire to know whether he was present or not at that meeting of the masters?

Mr. *Cottingham*. I was not, I said so before.

E. of *Macclesfield*. Then I think he says the Day of Payment of this money was on the thirtieth of *July*.

Mr. *Cottingham*. Yes.

E. of *Macclesfield*. What Day were the masters called upon to meet?

Mr. *Cottingham*. I can't be positive, but I think it was the *Monday* before Payment of the 1000 *l.* This meeting of the masters was between the Order and the Payment of the money.

Mr. *Plummer*. I believe there is a mistake in this matter; I desire to know of Mr. *Cottingham* whether Mr. *Edwards* was not by when he acquainted the Earl with this Demand, and proposed to him the method of paying it by Mr. *Lightboun's* 500 *l.* and the other masters 50 *l.* a-piece.

Mr. *Cottingham*. No, no.

Mr. *Plummer*. I desire it may be cleared then, and to ask him if Mr. *Edwards* was not by when he acquainted my Lord *Macclesfield* of the Demand of the 1000 *l.*

Mr. *Cottingham*. No, Mr. *Edwards* was not by: When this 1000 *l.* was directed to be paid, Mr. *Edwards* was in the House, but the Earl did not see him; when I spoke to Mr. *Lightboun* for the 500 *l.* it was only between Mr. *Lightboun* and me, Mr. *Edwards* was in the House when my Lord spoke to me, and ordered me to speak to Mr. *Edwards* to convene the masters together.

Mr. *Serj. Pengelly*. I desire he may be asked whether the 1000 *l.* was paid before he made the Proposal to my Lord *Macclesfield*, that Mr. *Lightboun's* 500 *l.* and the other masters 50 *l.* would pay it?

Mr. *Cottingham*. The money was paid afterwards, I have told you so before.

Mr. *Serj. Pengelly*. Before the 1000 *l.* was paid, whether did not you hear that the masters had refused to advance the further Sum of 50 *l.* a-piece?

Mr. *Cottingham*. Yes, I told you so before, that Mr. *Lightboun* would not pay his 500 *l.* so the other masters did not pay their 50 *l.* a-piece; this was some time before the Payment of the 1000 *l.*

Mr. *Elphinstone* called.

Mr. *Strange*. My Lords, we desire Mr. *Elphinstone* to give your Lordships an Account of what he knows of the Application of Mr. *Lockman* for this 1000 *l.*

Mr. *Elphinstone*. My Lords, Mr. *Lockman* and I often had Conversation together before he received the 1000 *l.* upon the Account of Mrs. *Chitty*. He told me often that he had compounded his Debts with his Creditors, and if he could not receive the 1000 *l.* against a certain Day, on which he had engaged to pay it, he should be ruin'd and undone; and some time after he told me, that his Creditors had been with much Difficulty brought to give him some few Days longer for Payment of the Composition, and that if he had it not then, he should be ruin'd and undone for ever; swearing by the blessed Name of God, that that Disappointment would be a means of breaking off the match with the Lady.

Mr. *Serj. Probyn*. Go on.

Mr. *Elphinstone*. I can't be positive as to the

Day, whether it was the same Day that he received the 1000 *l.* or a Day or two before; but I then heard the noble Earl declare to him, that in Pity and Compassion to his Circumstances, and the great Difficulty he then laboured under, he the said Earl had given Directions to Mr. *Cottingham* to pay him the 1000 *l.* and about two Hours after, or something more, Mr. *Lockman* came to me, and with abundance of Joy told me how much obliged he was to the noble Earl, for that he had relieved him in his Circumstances, by giving Mr. *Cottingham* Orders to pay him the 1000 *l.* He seemed to express this with an uncommon Pleasure, and did not at all doubt it would be agreeable to Persons of the highest Distinction and Character to know it, and that he would make them acquainted with it. My Lords, I think it was on *Friday* last, in a Conversation with me and others here in the Painted Chamber, he declared he would rather have given two or three hundred Guineas or Pounds, than have been examined on this Occasion; and said, Damn it, it hath happen'd, thro' a silly Word or two I dropt to the Solicitor on the other side, I asked him what it was, he said it was his telling him he had received the 1000 *l.* for Mrs. *Chitty*, by the noble Earl's Direction.

Mr. *Serj. Probyn*. After this money was paid, whether he hath had any Discourse with him, and whether it was owned by him that it was out of the Earl's own Pocket?

Mr. *Elphinstone*. Yes, many and many a time, and with great Respect.

Mr. *Plummer*. I desire the Counsel for the noble Lord may explain one thing: I think the Witness said, Mr. *Lockman* said He had rather give two or three hundred Pounds than have been examined. Whether the Witness doth apprehend by what Mr. *Lockman* said, that he comes an unwilling Witness?

Mr. *Elphinstone*. No, my Lords, I did not say that Mr. *Lockman* was an unwilling Witness, but that he told me and others, he had rather have given two or three hundred Guineas or Pounds, than have been examined on this Occasion.

Mr. *Serj. Probyn*. We shall give your Lordships, no further Evidence on this Article; we shall now proceed to the seventeenth Article, which charges the Earl of *Macclesfield*, that in order to conceal the Deficiency in *Dormer's* Office, and to prevent any publick Enquiry, he did from time to time, in Violation of the Trust reposed in him, make Orders on Mr. *Edwards* for Payment of the money belonging to several particular Suitors, which had been lodged in the Hands of Mr. *Dormer*; in Obedience to which Orders several Sums were paid, without Regard to, or Consideration of the Proportion which the rest of the Suitors were entitled to, out of the Effects of the said Mr. *Dormer*, whereby many of the said Suitors lost the Benefit of their proportionable Share, to which in Justice they were entitled.

The Crime supposed in this Charge is denied by the Earl in his Answer; he had no certain Knowledge what Mr. *Dormer's* Estate would come out to be; but he was under a full Persuasion that Effects would come in in due Time, to make full Payment; and that the only Reason why they were not paid in an Average, was because no Application was made by any of the Suitors for that Purpose.

Mr.

Mr. *Com. Serj.* As to the seventeenth Article, your Lordships observe there was a full Persuasion both in the noble Earl and Mr. *Edwards*, that there would be sufficient to pay every one; besides I think he himself made not above one Order, not more than this one in the Case of *Chitty*; your Lordships will please to observe, from the Evidence of Mr. *Edwards*, that the noble Lord who made these Orders was firmly of an Opinion, from the Accounts he had received, that the Deficiency would be made up, so likewise Mr. *Edwards* was then under the same Persuasion: We shall rest it here, that it was no manner of Fault, under these Apprehensions, to make such an Order as that was.

Mr. *Robins.* If your Lordships please, there is in the Close of the sixteenth Article a Declaration, supposed to be made by the Earl of *Macclesfield*, then sitting in Court, I had the Honour to be in Court when the Declaration was made: As I had the Honour to be in Court at that Time, I apprehend that what he said was —

Mr. *Plummer.* If the Gentleman speaks as Counsel, he stands in a proper Place, but if he comes as an Evidence, I beg he may come to the Bar and be sworn; I humbly appeal to your Lordships if it is not proper.

Lords. Ay, ay.

Dr. *Sayer.* If the Gentlemen think it proper to insist upon it, the Gentleman is ready to be sworn.

Mr. *Com. Serj.* The Gentleman's Character is so unexceptionable, that we hope the learned Gentlemen will not put this Difficulty upon him of taking an Oath in a Cause, wherein he is Counsel.

Mr. *Plummer.* My Lords, I insist upon it, because then I shall have the liberty of asking some Questions, which I apprehend I have not now.

Mr. *Serj. Probyn.* My Lords, We submit it upon the Evidence that hath been already given, he himself did declare then, when it came before him regularly, he would examine into it; and the first Opportunity this came before him in Judgment, he then put it into a method, and accordingly referred it to a master, and all proper measures were taken.

Mr. *Com. Serj.* My Lords, We shall, with your Lordships Permission, now proceed to lay before you what we have humbly to offer in Defence of the noble Earl as to the 18th Article. The Charge therein contained is in Effect, that tho' the Earl knew, that the masters of the Court might and did dispose of, and traffick with the Effects of the Suitors; and tho' Proposals were made for remedying of it, yet the Earl neglected to enquire into the Accounts of the masters, permitted, and encouraged them to employ, and traffick with the Effects of the Suitors, and took no Care that those Effects should be placed out, so as to prevent such Practices of the Masters, or that they should give such Security as was proposed; and this is charged to be done with a corrupt View and Intention of making an unlawful Gain by the Sale of those Places, and to keep up the Price of them.

The Proof of these matters depends entirely upon the Testimony of Mr. *Lightboun*, Mr. *Holford*, and Mr. *Kynaston*, with the particular Repetition of whose Evidence, I shall not presume to trouble your Lordships, after so much Time has been already spent; but shall beg leave to ob-

serve upon the whole, that there is not the least Evidence to support that Part of the Article, whereby the Earl is charged with permitting and encouraging the Trafficking with the Suitors Effects. So far from it, my Lords, that the quite contrary appears from the Evidence which Mr. *Lightboun* has given upon this Article. He has inform'd your Lordships, that when a Proposal was made, in order to the making good the Deficiency in *Dormer's* Office (which the Earl had confessedly so much at Heart) that each master should out of the Suitors Effects in his Hands, place out a Sum of money, the Interest whereof should be applied for that Purpose; the Earl would not give the least Countenance to that Practice, by coming into the Proposal; but in plain Terms declared he neither could nor would give any Encouragement or Direction for the Disposal of the Suitors Effects, for any other Purpose than their own Benefit.

My Lords, The Gentlemen of the House of Commons are so sensible of the Defect of their Evidence as to this Point, that they seem not to rely upon it, but are forced to fly to Implication for Assistance; and your Lordships are told that this Part of the Charge is a Consequence of the Earl's not having taken Care that the Suitors Effects were so placed out, as to put it out of the Power of the masters to make such an use of them; and that this Neglect amounts to a Permission and Encouragement to the masters, to dispose of and traffick with them as they have done.

My Lords, If this Part of the Article is to be considered as a distinct separate Charge, it is so obvious, of how dangerous a Consequence it would be to admit such argumentative Evidence only as a Proof of it, that I apprehend I need not trouble your Lordships with saying any thing more to it; if it is to be looked upon as a Consequence only of some other Part of the Charge, as a mischief arising from the neglect of putting those Effects of the Suitors out of the Power of the masters to make such use of them, I am something at a Loss to know why it is made a distinct self-subsisting Charge; it may perhaps by that means swell the Bulk of the Article, but we humbly submit it to your Lordships Consideration, whether it at all increases the Weight of it.

My Lords, The Charge in this Article is not founded upon a bare Neglect of the Earl, upon an Omission only of doing what it is conceived he ought to have done, for the Prevention of this misbehaviour of the masters; that perhaps was thought too slight a Ground for an Article of an Impeachment, especially when the Neglect here complained of does not consist in the not redressing any particular Grievance, pointed out by the Complaint of any of the Suitors of the Court, but in the not making general Orders for the Reformation of the masters. Perhaps, my Lords, it might be thought, that such a Charge would have been sufficiently answered, by alledging, as the Truth is, that the masters have only been continued by the Earl in the same Degree of Trust and Power in which he found them, and with which they were invested long before he presided in that Court: It may be too, my Lords, it might be consider'd, how wide and dangerous a Field for Impeachments and other Prosecutions would have been opened, by making

it criminal in every one who had the Superintendency of an Office, barely to neglect, or omit, the introducing such new general Orders and Regulations, as seem'd to carry a Probability of preventing the Abuses of the under ministers of such Office; and therefore it is, my Lords, as it may be presumed, that the Earl's Behaviour in this Respect is alledged to be fraudulent, and unjust, and with an Intention of making unlawful Gain to himself, by the Disposal of those Offices, and with a corrupt View and Intention to keep up the Price of them: So that it is not Remifsness, or Negligence that the Earl stands here accused of, but Fraud and Corruption, and if this is not made out, we must humbly submit it to your Lordships Judgment, whether or no this Article does not fall to the Ground?

But what Proof, what Evidence has been offer'd for that purpose? None, my Lords, that I remember; but your Lordships are left to collect it, by way of Argument, from the Earl's not having made use of proper Expedients to prevent this ill Practice; the masters, by that means, were more at Liberty to make a Profit out of their Offices, which for that Reason sold at higher Prices, and therefore the Earl must be guilty of this Neglect with that View; a severe (tho' not a strict) Consequence indeed! Is the Prospect of Gain, from hence, so certain, as to tempt so strongly? And are there no other Reasons apparent why the Earl should defer his Regulations in this matter? I need not put your Lordships in mind of the great Uncertainty of a Continuance in that high (but slippery) Station: And as the Profit suppos'd to be in View, depends upon the Death or Alienation of the masters, which sometimes do not happen in a long Interval of Time, when this Uncertainty is added to the other, I appeal to your Lordships, whether it can be easily imagined, that any, even the most greedy Person, allowing him only to be in his Senses, could be prevailed upon to hazard his Reputation and Quiet, upon such distant, such uncertain Hopes; especially, my Lords, if the Necessity of so harsh a Conclusion be excluded, by its appearing that there were other matters, which might probably enough be the Reason, or Occasion of the Earl's not immediately entering upon these Regulations.

It appears, by what Mr. *Lightboun* has said, that the Earl was very willing and desirous of having these matters regulated; and that when he first inform'd the Earl that he had something to offer to his Consideration in relation thereto, the Earl seem'd very glad, and mightily pleas'd with the Proposals, and gave him all due Encouragement.

It appears, my Lords, that after some time taken by Mr. *Lightboun*, to discourse the masters upon this Head, he wrote a letter to the Earl, containing several Proposals for the regulating the Affairs of the masters; and your Lordships will observe the times and manner of the Earl's sending for and pressing the masters to bring in their Accounts, which, notwithstanding the different turn that has been endeavour'd to be given to it, we humbly insist upon it, appears to have been done, in order the better to enable the Earl to judge of and regulate these matters.

As there were Proposals for regulating the Conduct of the masters, in respect of the Suitors, so several Grievances, which the masters were suppos'd to labour under, and in which the Suitors

too were suppos'd to be concern'd, were represent'd to the Earl; and, amongst others, that of money being order'd to be paid into the Hands of the Usher of the Court, instead of the masters; which was represent'd as a thing of ill Consequence, and dangerous to the Suitors of the Court, as well as injurious to the masters. It appears likewise, that it was thought proper, if not necessary, to take all these matters into Consideration together, that the intended Regulation might be entire, and not by piece-meal; and Mr. *Lightboun* himself was of that Opinion, as well as Mr. *Holford*. And tho' it is alledged, that the Earl was credibly inform'd that the sufficiency of some of the masters was much suspected, and consequently, that a more immediate regard should have been had to what concern'd the Effects in their Hands; yet when your Lordships consider how that stands upon Mr. *Lightboun's* Evidence; that it was only a general Intimation, without naming any particular Person, and that Mr. *Lightboun* declared he had no certain Ground for such Suspicion; it will not, we hope, be thought a Fault not to single out that Part of the intended Regulation; especially when the same Witness informs your Lordships that it was as impracticable for the masters to have given an adequate, that is, a proper Security, as for the great Officers of the *Exchequer*, or the Treasurers of the *South-Sea*, or other great Companies to do so. And your Lordships will be pleas'd to think it well deserves Consideration, whether it was in the Earl's Power to compel the masters to give even such Security as they could; and if it should be said, that if they would not have complied, he might have order'd the money out of their Hands; it will require time to consider where, in such Case, he must have plac'd those Effects. It would have been as extraordinary to have required Security from the masters which came in afterwards, and so to have put them upon a Foot different from the others, when it was under Consideration how to settle the whole. But, my Lords, the Event has shewn that there was not so much occasion for so speedy a Precaution in this matter, for the Purpose for which it was then principally intended, which was the preventing the masters from embezzling the Securities of the Suitors in their Hands, since there is no occasion of Complaint in that respect, they having been all deliver'd up, and the Deficiencies which have happen'd have been in the Cash in their Hands, of which there was then so little apprehension or likelihood, that the preventing it was one of the things the least under Consideration. So short sighted and uncertain is human Prudence! So different the Judgments made of things in Prospect only, from what they are in Experience! I make no Question but your Lordships will have a due regard thereto, and make all equitable Allowances on that Account.

Your Lordships have been further inform'd, that, in order to settle these matters, several meetings were had, and, amongst the rest, one very solemn one, at which were present both the Earl and the master of the Rolls. I need not trouble your Lordships with a Repetition of what pass'd there, it is sufficient to observe, that nothing being settled, the Earl, whose mind was intent upon this Affair, propos'd some Expedients to facilitate matters; particularly, that if the masters would quit their Pretensions to a co-ordinate

nate Power of Judicature with the master of the Rolls, that matters might be made easy, in respect of the ordering the Payments of the money: But this would not be complied with. And when it was found, by Experience, impracticable to bring any thing about, with the Agreement of the Parties, the Earl declared that he would take the whole matter into his Consideration; and since he could not have the Concurrence of others, he himself would regulate these matters as soon as he could. Upon the whole of the Evidence offer'd upon this Article, more especially from what Mr. *Lightboun* and Mr. *Holford* have said, it plainly appears, that for a considerable time past, even from the latter end of the Year 1721, there has been an Intention of regulating the Offices of the masters of the Court of Chancery; that such Intention has been pursued, and several Steps taken, and Endeavours used, to bring it to effect; and your Lordships, I hope, perceive the many Difficulties that have interposed, and will not be at a Loss to find Reasons for the Earl's not having actually made these Regulations, very different from the distant view of an unjust Gain.

My Lords, the Business of Reformation, however desirable it may be, is in all Instances, attended with Difficulties, and in the present Case, those Difficulties have been increased by the different and jarring Interest of the Parties concerned; which, at least, prevented their Concurrence in such Reformation, and in a great measure deprived the Earl of the Benefit of the Advice of those, who were the most able to inform him what was fit to be done.

Your Lordships are sensible how great a Portion of the Earl's time must necessarily be taken up in the dispatch of the ordinary Business of that Court, and in his Attendance upon the publick Functions of his Office; and if, under these Circumstances, he has not been able to bring his good Intentions to effect, and compleat them, before it was put out of his Power so to do, your Lordships, we hope, will think it more his misfortune than his Fault, and that he is not to be reputed guilty of any Neglect or Omission in that respect, which can be adjudged to be Criminal. We shall not trouble your Lordships with any Evidence upon this Article, but submit it upon what has been already offer'd.

Mr. *Robins*. May it please your Lordships, The last Article which the managers for the honourable House of Commons have been pleased to close this solemn Prosecution withal, is the Nineteenth; wherein they have endeavour'd to represent the Earl, as designing to abuse and impose upon his most sacred majesty, for the sake of skreening and protecting the masters from a Parliamentary Enquiry, and to keep up the Price and Credit of their Offices.

But, my Lords, we humbly hope no Evidence appears to have been given that does in the least support or prove any such Designs in the Earl.

'Tis true, indeed, that when his majesty was graciously pleased to order the masters Accompts to be laid before a Committee of the Lords of the Council, in order to inspect the same, that the Earl, in Obedience to his majesty's Commands, thought he could not be too zealous in giving Orders for their preparing and getting the same ready, and therefore order'd them immediately to set about it.

And when some of them objected, that 'twas impossible to have them ready by the time ex-

pected, the 10th of *November* last, especially Mr. *Holford's*, which was to be an Accompt of twelve Years, that the Earl however order'd them to be got ready in the best manner they could, and told them, if it should appear they wanted more time to make them perfect, that on Application it would, without doubt, be granted.

After which your Lordships have heard, that at a meeting of most of the masters at Mr. *Edwards's*, when Mr. *Cottingham* came in, he proposed to them, some say, three things, others two; but all of them agree in Substance, that 'twas to have their Accompts and Securities inspected, and to produce the Ballance of Cash in their Hands, if it should be required.

And as to the inspecting of their Accompts and Securities, your Lordships have been pleased to observe, that not one of them appear'd to make any Difficulty or Objection to it, but, on the contrary, readily consented and agreed to it.

But as to the producing their Ballance of Cash, they were something startled at that, as not knowing what was intended by it; and therefore asked Mr. *Cottingham* if they were only to produce or shew it, or if 'twas going to be taken away from them.

And though Mr. *Cottingham's* Answer was, that they were only to produce it, as he understood, yet several of them appear'd to be very jealous that 'twas going to be taken out of their Hands; and Mr. *Edwards*, one of the masters, expressly said so, and therefore advised them to get it ready as soon as they could.

But your Lordships have been pleased to observe, that whatever they understood by it, yet not one of them said, or so much as insinuated, to Mr. *Cottingham* that they were not able to answer or make good their Ballance of Cash, only that some of them had it not all ready immediately; and Mr. *John Bennett* said it could not be expected they should keep it all by them, for fear of having their Throats cut, and that therefore they must have some reasonable Time given them to raise it in; and Mr. *Conway* expressly swears that he apprehended they all said they were able and sufficient to produce their Cash and Effects.

And, my Lords, it seems very natural and reasonable to believe that they did say so, or at least that Mr. *Cottingham* understood it so, because when some of them ask'd whether they were to produce it in *Specie*, or whether Bank Notes or Goldsmith's Notes would not do as well, he made Answer, it certainly would do as well, and therefore advised those that had not such Notes ready by them to provide them, and to stand by and assist one another.

Now, my Lords, with great Submission, all this seems to be a very natural, plain and artless Representation of this meeting: And when Mr. *Cottingham* had thus acquainted the masters what was expected from them, and had Assurances from them all, that they were ready and willing to comply with what had been proposed,

Can there be any room to doubt but that the Noble Earl was very well pleased with this Account from Mr. *Cottingham*? And therefore when they met after, at the Earl's House on the 10th of *November*, no wonder he did not particularly ask them the Question, whether they were able and sufficient to pay or make good the Ballance of their Cash, for this Mr. *Cottingham* had before assured

him

him they were, and therefore no need for the Earl to ask the Question over again.

And Mr. *Lovibond*, one of the masters, swears expressly, not only that he himself was ready and willing to pay and produce his own Ballance, but that, from what passed at the Earl's House, he believed or thought all the rest of the masters were so too.

Now, my Lords, if this be so, if the Noble Earl was fully satisfied that all the masters were able to make good their Accounts, and he was just then going to lay a State of them before the Lords of the Council; is it at all to be wonder'd at, that his Lordship should give them his Advice or Opinion what Form of Words or Subscription he thought would be most proper to express their meaning by?

And as he approved of the Form made use of by Mr. *Holford* on that Occasion, was it or could it possibly be any Crime in the Earl to advise the rest to subscribe or under-write the same Form to their Accounts likewise?

And your Lordships have been pleas'd to observe, from the Evidence of all the masters, that not one of them made any Scruple or Difficulty of it, but went into another Room, as if they were really going to under-write the very same Subscription to their Accounts.

'Tis true indeed, my Lords, some of them, when they were got by themselves, were conscious they could not come up fully to it, and therefore varied the Form, as best suited their own Circumstances.

But your Lordships have been pleas'd likewise to observe, that the Noble Earl was so far from being in any Plot with the masters, to deceive his majesty or the Lords of the Council, that he took their Accounts, with the Subscriptions they had under-wrote, without so much as ever looking to see if they were conformable to Mr. *Holford's* Subscription, and apprehended they really had been all the same, till upon reading them before the Lords of the Council, the variance between them appear'd.

But your Lordships have not heard of one Word of Reproof given them by the Earl afterwards, for not observing his Directions in making the Subscription he desired.

If the Earl had had any Designs of imposing on his majesty or the Council, by getting the masters to under-write such a particular Form of Subscription to their Accounts, would he not have been more careful before he carried in those Accounts to the Council Board, to have seen that they had exactly pursued his Orders, for fear of a Discovery?

Nay, my Lords, can it possibly be imagined but that when he came afterwards to find they had deceived him, and had not under-written the Subscription, they pretended, and went out of the Room seemingly on purpose to comply with;

I say, my Lords, can it possibly be imagined, but that if the Earl had had any Views or Designs of his own in it, he would have severely rebuked and reprimanded them afterwards for not observing his Directions.

But your Lordships have not heard one Word of Proof that the Earl complain'd, or ever said any thing afterwards to the masters about it.

Now, my Lords, if this be so, can there possibly be a greater or stronger Concurrence of Circumstances to shew that the Advice or Encourage-

ment which the Earl afterwards gave the masters to assist and supply each other with money and Effects, and represent'd to them that 'twould be for their Honour and Service to appear able and sufficient; I say, my Lords, can any thing in the World be more unnatural, than to imagine, that by this the Earl meant to advise them to make a false shew and appearance?

They had before assur'd him, or given him the strongest Reasons possible to believe, that they could make a true shew and appearance. Why then should he advise them to make a false shew and appearance? What End or Purpose in the World could this serve, either for themselves or his Lordship?

This surely, my Lords, could never be the Earl's meaning; or if it was, whilst he was under a Persuasion that they were all able and sufficient to answer and make good the Ballance of their Accounts; if he meant to advise them to make a false shew and appearance, it must have been by advising them to conceal Part of their Cash and Effects, for fear the World should really take their Words, and be of Opinion that they were as able and sufficient to make good their Accounts, as they had under their Hands acknowledged themselves to be.

But, my Lords, as the Construction the other way is not only most natural, but also consistent and agreeable with all that had before pass'd on that Occasion, surely, my Lords, it must be a strange wresting and perverting of Words to understand them otherwise.

The Sum of this whole Article, my Lords, is this: The masters were on a sudden call'd upon to bring in their Accounts of Cash and Effects, and they did so, and declared, at the same time, that they were able and willing to make good the same on a reasonable time given them for raising the money; but being afterwards called upon for their money sooner than they expected, and applying to the Earl for his Advice and Directions what to do in it, he advises them to assist and supply one another with money and Effects, till their own could be gotten in; tells them it would be for their Honour and Service to appear able and sufficient, and that he would not have them let the World see, at a time when there had been so much Clamour and Noise about them, that they were not always ready, even at a Minute's Warning, to make good their Accounts.

This, my Lords, is the whole of this grievous Complaint against the Earl; and as it seems to be nothing but a Piece of good Advice in the Earl given to the masters for their own sakes, in great Sincerity and Friendship, as the Earl expresses himself in his Answer, without any possibility of Advantage to the Earl himself, we humbly hope your Lordships will not think it worthy of a Place in this Impeachment.

Mr. *Com. Serj.* My Lords, we shall not give your Lordships much trouble on this Article, we shall only call Mr. *Holford*.

Mr. *Holford* not then appearing, Mr. *Cottingham* was called in again.

Mr. *Serj. Probyn.* My Lords, we desire that Mr. *Cottingham* may inform your Lordships of the time the masters had the letter which he refers to, and which he deliver'd, whereby the Accounts are directed to be brought in. We did desire

desire Mr. *Holford* to bring it up with him: If Mr. *Holford* hath not the letter, and it is not among the masters, we must examine Mr. *Cottingham* about it.

Lord *Ch. Just. King*. Mr. *Holford* is come.

Mr. *Serj. Probyn*. This is the Copy of a letter, the Original of which Mr. *Holford* hath; if he hath it not here, I hope your Lordships will give leave to read the Copy.

My Lords, I desire that Mr. *Holford* may give your Lordships an account of this letter.

Mr. *Holford*. My Lords, I have it not; Mr. *Kynaston* did inform me just now that he believed it might be in his Custody, but he hath it not here.

Mr. *Serj. Probyn*. Your Lordships will give us leave to examine Mr. *Cottingham*.

Mr. *Cottingham*. My Lords, there was an Order made, dated the 3d of *November* last, of which my Clerk made a Copy. I can't say I examined it myself: The Order is,

Let the several masters of the high Court of Chancery forthwith prepare and deliver to me a perfect Account of the MONEY in their Hands, therein distinguishing, in several Columns,

The Names of the Parties to the Cause.

The Dates of the Orders for bringing in ——— } Money
or
Securities

The Time of bringing in each Sum.

Particularly expressing the Sums transferred and paid to them at their coming into their Office in the first Place.

How the same hath been disposed.

What Sums paid out, and to whom, ——— } } When
and
By what Order.
What invested in Securities, } }
Specifying the Securities, by Dates, Numbers, &c.

Where the Securities are at present.

What money remains in their Hands.

Where the same now is.

Nov. 3, 1724.

MACCLESFIELD, C.

Mr. *Com. Serj.* My Lords, we beg leave to observe, that this Order is very much the same with the Directions given by the Noble Lord before to bring in their Accompts; but, upon the Nature of the thing, there seems to be a very good Reason why they did not comply punctually with it.

Mr. *Plummer*. Upon this Observation, my Lords, I beg leave to ask this Witness, Whether the masters have not given in some Account, notwithstanding the Difficulty of the method?

Mr. *Cottingham*. Yes, my Lords, they have.

Earl of *Macclesfield*. Mr. *Holford* will inform your Lordships of this.

Mr. *Holford*. I believe this is a Copy of the Order given by my Lord *Macclesfield* for bringing in our Accompts in *November* last.

Mr. *Serj. Probyn*. I desire he may be asked whether the masters were able to make up the Accompts pursuant to the Directions given in that Order.

Mr. *Holford*. I believe it was the next Day after this was sent, that Mr. *Cottingham* did inform me of it; I had not seen it, I was then at *Westminster*, sitting in Court with my Lord *Macclesfield*; after the Court was up I went into the little Room be-

hind the Court with my Lord, and I did say, I thought it would be very tedious to do exactly as this Order directed, because it would require a transcribing of every Particular that each master in the Court had ever paid and received for several Years, even where Causes were ended many Years ago, and that I thought it an impracticable Thing. My Lord told me that must be no Objection to the bringing in of the Accompts; if we could not do as well as he wish'd, we should do it as well as we could; and desir'd them to be ready, that they might be brought in by the Time prefixed.

Mr. *Com. Serj.* I desire he may be asked whether there were any Arguments used by my Lord to recommend Dispatch in this matter?

Mr. *Holford*. My Lord recommended it to me to be sure to have the Accompt ready by the Time; I think he said it was to be delivered in to the Council by such a Day.

Mr. *Com. Serj.* I desire he may inform your Lordships if nothing was said about making an Excuse a Pretence for delaying the Accompts.

Mr. *Holford*. My Lord did desire that they might be prepared according to those Directions, but said This must be no Excuse for not bringing in the Accompts as well as you can by the Time.

Mr. *Plummer*. When this Accompt was asked for, how long was it before it came in?

Mr. *Holford*. Three or four Days or a Week.

Mr. *Plummer*. And you gave them in complete and right, fully and amply.

Mr. *Holford*. Yes, there were some little mistakes which were rectified afterwards, very small ones.

Mr. *Com. Serj.* By Reason of this Question that hath been asked, give me leave to trouble your Lordships with asking another, Whether in the Accompt deliver'd in there was any thing more than the Ballance of the Accompt?

Mr. *Holford*. Yes, the Accompt I deliver'd in was an Accompt of every particular Cause, and of the money and Securities in every Cause, and I did add the Solicitors Names in every Cause, as far as I knew; I believe all the others were not so.

Mr. *Com. Serj.* How were the others?

Mr. *Holford*. I believe the others were the same, only not the Solicitors Names.

Mr. *Com. Serj.* I don't mean that, but whether there was not the Ballance of each particular Accompt deliver'd in?

Mr. *Holford*. There was the Ballance of the particular Causes, and the whole summed up together.

Mr. *Serj. Probyn*. I desire he may be asked, whether it was practicable to give in their Accompts in the method directed within the Time prescrib'd them?

Mr. *Holford*. It was not.

Mr. *Serj. Probyn*. I desire he would inform your Lordships, whether they have not been call'd upon frequently to hasten their Accompts?

Mr. *Com. Serj.* I desire he may be asked whether they have been since called upon by the honourable Committee of the Council, to bring in their Accompts according to the said method?

Earl of *Macclesfield*. I desire he may be asked, whether after this Accompt brought in, and the Ballance made upon every Cause, they have been since called upon to make up the Accompt according to the first Instructions or not?

Mr.

Mr. *Holford*. We have not been required to pursue the former Instructions.

Mr. *Com. Serj.* If the Gentlemen of the House of Commons have done as to this Article, we have done. My Lords, We shall now beg leave to call some Witnesses to the establishing the Reputation of Mr. *Cottingham*; when one side have endeavoured to lessen his Credit, it will be necessary for the other Side to call Witnesses to confirm his Credit. As to the Testimony he hath given, it is very material, as it stands in Opposition to the Evidence of others; tho' it be not directly contradicted, yet it is very different from some Accounts, which your Lordships have received from some of the masters, particularly from Mr. *Thomas Bennet*: And as for the managers of the House of Commons, notwithstanding he was call'd a Witness by themselves, tho' they have not said in direct Terms that he is a Person not to be credited, yet calling him a *black Minister of Iniquity*, and using a great Number of such like other Expressions seem to carry some Insinuation, as if Mr. *Cottingham* was not a man of that Integrity as I believe all that know him will bear Testimony to. We beg leave therefore to call a few of that Number as Witnesses to his Character and Reputation, who have known him for several Years, and have had a full Opportunity of knowing his Character and Behaviour in the several Stations he has been in.

Mr. *Goldebrough* called.

Mr. *Serj. Probyn*. My Lords, I desire he may be asked how long he hath been acquainted with Mr. *Cottingham*?

Mr. *Goldebrough*. I have been acquainted with Mr. *Cottingham* upwards of twenty Years.

Mr. *Serj. Probyn*. I desire he would inform your Lordships, during his Acquaintance with him, what hath been his Character?

Mr. *Goldebrough*. All the Time he was a Solicitor, I observed him to have a good Character; he behaved himself with all Integrity and Fidelity as ever I knew any body of his Profession.

Mr. *Serj. Probyn*. You speak as to his general Character.

Mr. *Goldebrough*. I never heard he had any Blemish on his Reputation, he always maintain'd a very fair Character.

Mr. *Serj. Probyn*. During the Time he was Secretary to the Lord Chancellor, how did he behave himself?

Mr. *Goldebrough*. He bore a very fair Character in the Place, as fair as ever any body did that went before him.

Mr. *Price* sworn.

Mr. *Com. Serj.* We desire he may give your Lordships an Account what he knows of the Character of Mr. *Cottingham*, and how long he hath known him?

Mr. *Price*. My Lords, I have known him upwards of twenty Years, I never knew any body say any thing amiss of him, I always took him to be a very fair and honest man: I know no man in his Place behav'd himself better than he hath done.

Mr. *Com. Serj.* We desire to ask not only to what Mr. *Price*'s Opinion is, but to what is the Opinion of others, as to his general Character?

Mr. *Price*. I believe, if you ask his Character

of an hundred People, ninety of them will give him rather a greater Character.

Mr. *Com. Serj.* And as to the remaining ten, what Character doth he believe the remaining ten will give him?

Mr. *Price*. I believe that the remaining ten cannot justly charge him with any thing that is ill.

Mr. *Hickman* call'd and sworn.

Mr. *Serj. Probyn*. I desire Mr. *Hickman* may likewise give your Lordships an Account how long he hath known Mr. *Cottingham*?

Mr. *John Hickman*. I have known Mr. *Cottingham* thirty Years, I believe; he had always a very good Character, he was Clerk to me for two Years; he was a diligent faithful Clerk, and hath had a very good Character ever since; and I never heard any thing to the contrary.

Mr. *Blithman* sworn.

Mr. *Serj. Probyn*. My Lords, We have a great number to this Purpose; I desire you would inform my Lords how long you have known Mr. *Cottingham*, and what his Character is?

Mr. *Blithman*. My Lords, I have known, and been intimately acquainted with Mr. *Cottingham*, for above twenty Years; while he was a Practiser in the Court of *Chancery*, we were now and then concern'd one against another in Business, and I observ'd him to act with great Diligence for his Clients, and in a fair way of Practice in respect to his Adversaries; he had the Character of the Practisers of the Court of *Chancery* in general, for being a very honest and fair man; after he was promoted to be Secretary to my Lord *Macclesfield*, every Practiser of the Court that had any Business must have frequent Recourse to him, and he was observ'd to discharge that Office with great Justice and Dispatch to the Suitors, with great Civility to the Practisers, and with a strict Regard to the Honour of his master and the Court; he was content with his just Fees, without ever demanding or expecting more on Pretence of Expedition, or upon any other Account. In general, I took him for a very honest man, and he was always so reputed during the Time that I knew him.

Mr. *Serj. Probyn*. My Lords, we might apply to some of the learned Managers themselves, were it proper upon this Occasion, but we hope his Character is so clearly established, by what Evidence has been already offer'd, that there is no Necessity for troubling your Lordships with any more on this Head: But we shall trouble your Lordships with one Piece of Evidence more, of a different kind, which the noble Lord is with a great deal of Difficulty oblig'd to submit to, and that relates to the private Conduct of himself, of which many enjoy the Benefits, and all were enjoy'd and oblig'd to keep secret; but now it is become necessary to make known, since he hath been represented in Publick as a Person full of Corruption, that hath studied nothing in the whole Conduct of his life but the amassing great Riches to himself, in Oppression of his Majesty's Subjects; it is now become necessary, for the Vindication of his Lordship's Innocence, to shew that his Actions (which best speak the Intention) have been of a different Nature; that as his Lordship hath received great Bounties from his Majesty, so he hath been as liberal in sharing them with those

who have wanted his Relief. Multitudes of Instances might be given of this kind, but we shall only lay some few before your Lordships, and then beg leave to submit to your Consideration, whether it be possible to suppose, that a noble Lord, whose Heart was so charitably inclin'd to relieve the afflicted who apply'd to him, and to seek Opportunities of doing good to Strangers who were no ways known to him, could be guilty of Actions such as his have been represented by the Managers of the House of Commons. How can these things be reconciled, that a man, truly religious, truly virtuous and charitable, should be guilty of Oppression, Injustice, Avarice, and Corruption? We beg leave to lay some few Instances of this Nature before your Lordships, and then submit their Weight to your Lordships great Judgment.

Mr. Com. Serj. I beg leave to observe, that in a great many Articles, the Intention being what the managers have much relied upon, we humbly apprehend we have clear'd the noble Lord from those Intentions he is charg'd with, by what we have already offer'd to your Lordships; but if any Doubt should still remain, when it shall appear that he was a constant Benefactor to the Oppressed and Afflicted, that a constant Spirit of Benevolence hath reigned in the Breast of this noble Lord towards mankind, you will think it impossible for a man to be so contradictory to himself, that at the same time as he was doing all the Good he could in Private, he should be guilty of Avarice, Corruption and Oppression in the most publick manner. These Qualities are so inconsistent, that they could not reign in the same Breast at one and the same time, for that Reason we shall beg leave to mention a few of the great many Instances we might produce on this Head; and first we desire that Mr. Oaker may be called.

Mr. Oaker sworn.

Mr. Serj. Probyn. My Lords, I desire that Mr. Oaker may give your Lordships an Account how long he hath been employ'd under the noble Earl within the Bar?

Mr. Oaker. I serv'd his Lordship all the Time that his Lordship had the Great Seal.

Mr. Serj. Probyn. I desire he may give a general Account during all the time that he serv'd his Lordship, how far he hath been privy to any charitable Actions he hath done?

Mr. Oaker. My Lords, I have the Names of some few in my Hand, I can only tell the Names and Sums of such as accidentally came in my way, for his Lordship always did those Actions privately, and with his own Hands, if it could conveniently be. When I first came to serve his Lordship, having heard his Lordship's Character of being very bountiful to almost every body that came in his way, I therefore endeavoured to inform myself more particularly from such Persons as I apprehended apply'd to him for any Assistance of that Nature. The first that I remember was one Mr. Brown, who had been Author of several Practical Books in the Law; his Lordship was pleas'd for some Years before I acted under him, to pay for him 24*s.* a month for his Board and Subsistence, besides Cloaths and Pocket-money; the Person that us'd to pay it being absent in my time, I paid it for near seven Years, till *Christmas* last, when he died.

Mr. Serj. Probyn. At the time he died, how old was he?

Mr. Oaker. He said he was on *Bartholomew* Day last aged 102. As I have been inform'd, my Lord sent a Surgeon and an Apothecary to attend him, and paid them, and the Expence of his Funeral; and the whole that came within my Knowledge was about 120*l.* Afterwards there were two Clergymen recommended to his Lordship for a living that was in his Disposal; my Lord could not soon determine which to give it to; one of them was a poor Curate in *Surrey* at *Thames Ditton*: This poor man complain'd, that he could not attend longer in Town, nor had money to carry him home; my Lord gave him a Guinea, and told him he might go home, he need not stay, but should be sent to when he had determin'd what to do for him. A little while after, he came to Town again, and said that it being reported, that his Lordship would give him a living, he was turn'd out of his Curacy, and being an Inmate, was order'd by the Officers of the Parish to quit the Parish, but that he had not money to remove his Family; and my Lord being told of that, sent for him, and gave him a Sum of money in a Paper; I asked the Clergyman what it was he gave him, and he said *twenty Guineas*. He had soon after a living given him by my Lord, in *Kent*, and then as he was removing his Family to his living, they were, here in Town by the way, taken ill of the measles; upon which the poor Gentleman wanting money to proceed on his Journey, came again to my Lord, and his Lordship gave him twenty Guineas more, as he told me; and I believe his Lordship hath given him several times since, but I don't know the Particulars, neither had I known any of those I have mention'd, had not the poor Clergyman himself told me of them.

Mr. Com. Serj. What is his Name, and where is his living?

Mr. Oaker. His Name was *Vigurs*, and his living is near *Sittingbourne* in *Kent*. There was one man, a converted *Jew*, I believe he is here himself; he hath had of my Lord seventy or eighty Pounds. There is one *Thwaites*, a Quaker, who hath attended the Houses of Parliament long, and is very well known, hath had a pretty large Sum of money, besides other Assistance; Sixty Pounds I paid him at once by my Lord's Order. There is one Mr. *Wickam*, a Gentleman in the Navy, a half-pay Officer; he had out-run that, and was in the *Marshalsea* Prison, and could not make up his matters; a Friend of his was personally acquainted with me, and said my Lord had some Knowledge of this Officer, and desir'd me to acquaint him with his Case, which I did, and his Lordship said he had no Acquaintance with him, but had known his Father, and for his sake would clear him; and it being said he was in for about thirty Pounds, his Lordship said if it came to forty Guineas he would pay it, so that it set him out of Distress, and cleared him of all Debts; the Gentleman did make up his Affairs, and my Lord paid the money, and besides gave him a whole Suit of Cloaths, double Shoes and Stockings, and Wigs, and new Sword and Belt, fit to appear in the World again, which came to something above forty Pounds in the whole. Another poor Clergyman my Lord gave a living to, and he was very lame, and came to Town to go into the cold Bath; he happened to be arrest-

ed for an old Demand of 36*l*. His Wife came to my Lord, who gave her money for present Subsistence, and order'd me to take care that the whole Affair should be made up, and the whole Debt was clear'd and discharg'd, and all the Costs and Charges paid out of his Lordship's Pocket. There are abundance of other small Sums I might mention of the same kind, but it would be endless to trouble your Lordships with them. Then there is another matter which I mention to your Lordships, not so much for the Value as for the manner of doing it; a poor Gentleman residing at the *Bath*, had a Place given him, as he said, in *Ireland*, but had not money to carry him over, and therefore only beg'd 40*s*. to carry him over to *Ireland*; my Lord order'd me to remit him five Guineas, which he received, but afterwards he wrote word that he and his Family were ill at the Time, and therefore had expended the money, and wanted the same Supply again; my Lord then order'd me to remit him ten Guineas more, which I did. Here is at your Lordships Bar one Mr. *Saunders*, a Clergyman, who hathundry times received of his Lordship's Favours whilst a Youth, and upon the Foundation in the *Charter-House*; and when he went from thence to the University, his Lordship gave him forty Guineas; and afterwards, when he was near going into Orders, remitted him sixty Pounds to clear all matters in the University, which I sent to Dr. *Bentley* by his Lordships Order. I don't mention several other Particulars, but they are very numerous, both what pass'd through my Hands, as well as others of his Lordships Servants, hardly a Week pass'd without some Instance of this kind.

Mr. *Com. Serj.* As you was under the Great Seal, you can inform my Lords, when Clergymen were admitted to their livings, whether his Lordship has not frequently order'd their Fees to be remitted them?

Mr. *Oaker.* My Lord frequently gave Orders to remit the Fees of his own Officers, and at other Times his Lordship paid the Fees of the Patent Officers and Stamps out of his own Pocket; and hath given the Clergymen money besides to pay their Journeys to their livings, and otherwise to sustain them, and to buy Books.

Mr. *Com. Serj.* Do you remember Mr. *Higgs*?

Mr. *Oaker.* Mr. *Higgs* was greatly indebted, and in Prison; his Lordship discharg'd him, and paid such Debts as were insisted upon, to the Value of about ninety Pounds: He is there to give your Lordships a particular Account.

Dr. *Sayer.* As a great deal depends upon the manner of doing these things, I would ask him as to the manner in which they were done, whether in an ostentatious manner, or how;

Mr. *Oaker.* My Lord did these generous Actions merely as they fell in his way, and without mentioning them, or letting them be seen or known, as far as I could ever perceive; so that where I did not apply to his Lordship myself for such People as came to me, I never knew it but by Accident; and in Cafes where I was privy, my Lord generally gave me more than was asked, his method being, as far as might be, to set Persons entirely free, and to do them a full Service.

Mr. *Hunt*, a Clergyman, sworn.

Mr. *Serj. Probyn.* My Lords, we desire that Mr. *Hunt* would recollect and give your Lordships

an Account of what charitable Acts he hath known done by the Earl of *Macclesfield*?

Mr. *Hunt.* I have known my Lord to be a very generous and noble Patron: I can speak from several Instances, relating not only to myself, but to several other Gentlemen of the University of *Oxford*. The first Time I had the Honour of being known to his Lordship; was about *Whitsuntide* 1722, upon the Recommendation of one Mr. *Thornbury*, Vicar of *Thame* in *Oxfordshire*. The Noble Lord asked Mr. *Thornbury* what Persons he knew in the University that were inclinable to be studious: Mr. *Thornbury* was so kind as to mention me as one: Upon which his Lordship sent for me to dine with him the Day after; I carried him some of the private Exercises that I had done in the University, which his Lordship read over, and was so kind as to approve. His Lordship kept me with him several Days, and desired to have more Conversation with me, and he dismiss'd me with a generous Present of twenty Guineas, telling me he should be glad to see me when he came to *Sbirburn*, and that he design'd to make me a Present now and then till he could do something else for me. About *Christmas* after was the next Time I waited on my Lord: I carried him again some of my University Exercises, which his Lordship perused, and was so favourable as not to dislike them. His Lordship dismiss'd me at that Time, with another generous Present of twenty Guineas, and further Assurances of future Favours. About this time I had received a letter from Mr. *Gagnier*, Deputy Professor of *Arabick* in the University of *Oxford*; wherein he complained to me, that he had been ill used by some Persons in the University, for having writ a Poem in Praise of her Royal Highness. This I related to his Lordship: His Lordship express'd a great deal of Concern for his misfortune, pity'd his Case, and sent him by me a Present of twenty Guineas. The third Time I had the Honour to wait upon his Lordship was about *Michaelmas* 1723, when I received likewise a Present of twenty Guineas: I should have also mention'd that I received other smaller Presents from his Lordship, five Guineas at one time, and one Guinea at another. The last time I had the Honour of waiting on his Lordship and receiving his Bounty, was about *Easter* 1724, when his Lordship made me the usual generous Present of twenty Guineas, and was so kind as to send by me thirty Guineas more, viz. fifteen to Mr. *Hutchinson*, and fifteen to Mr. *Greenway*; so that within the space of two Years I received of his Lordship's Bounty, for the use of myself and the Gentlemen of my Acquaintance, one hundred and thirty six Guineas, upon no other Account, and for no Consideration whatever, but to encourage us in our Studies, and support us in the University.

Dr. *Sayer.* I would know whether the thirty Guineas were look'd upon as a single Bounty, or was it to be an annual Charity?

Mr. *Hunt.* I believe so; they told me they had received it as such before; we all looked upon our several Benefactions as to be continued.

Mr. *Smithys*, a Clergyman, sworn.

Mr. *Serj. Probyn.* I desire he may give an Account of what he knows of my Lord *Macclesfield's* Charities.

Mr. *Smithys.* My Lords, In the Year 1721 there became vacant the Place of a master of an Hospital

Hospital in the Town of *Colchester*, in the Disposal of my Lord Chancellor, to which mastership, King *James* the First had annex'd the Cure of Souls of a Parish adjoining, and which Parish had no other Provision for a minister.

The former master had taken no notice of the Parish, nor had any Care been taken time out of mind (as I have been informed by the Inhabitants of the Parish) of either burying their dead, or baptizing their Infants. My Lord Chancellor being (as I have been told) informed of this, sent to me to know if I would accept of the master's Place. I would not mistake, my Lord's Chaplain sent me word, if I would accept of the Place, and let him know my Christian Name, his Lordship would send me the Grant of it. I did so, and then my Lord was pleas'd to enquire into the Nature of the thing. I informed his Lordship that no Care was taken of the Parish at all, tho' I apprehended the master of the Hospital ought to take Care of it. My Lord then was pleas'd to give me the Grant of the Hospital, and oblig'd me to a particular Care of the Parish; and at the same time desired me to let him know what Condition the Church was in. I informed him that it was utterly unfit for divine Service; none had been performed in it (as I had been inform'd) Time out of mind; and the Parishioners were in such a Condition of Poverty, that they were not capable of making it fit for divine Worship.

My Lord then was pleas'd to order me to acquaint him how much would put the Church in Repair. Upon this I thought proper to apply to Workmen for their Advice; and by their Advice I inform'd his Lordship thirty Pounds would do it. My Lord order'd me to set the Workmen at work, and he would pay their Bills. Before the Church was finish'd, through my Unskilfulness, and the Cunning of Workmen (as I then thought) this thirty Pounds would not do. I acquainted his Lordship with it, and he desired to know how much more would do. The Workmen told me ten Pounds. My Lord order'd the Workmen to proceed, and they should be paid the other ten Pounds; but by the falling of a Wall, and other Accidents, this money was not still enough. I was ashamed to betray my own Ignorance, in suffering myself to be so impos'd upon by the Workmen (as I imagin'd his Lordship would think) I determin'd to pay the rest of the money myself; but being encouraged by Dr. *Sayer*, I did inform his Lordship of the Condition we were in. I then receiv'd an unlimited Commission to let the Workmen finish the Work, and send up their Bills when they had done, which they did, and my Lord immediately paid the money, which amount'd to 52*l.* 6*s.* 11 $\frac{1}{2}$ *d.*

Dr. *Sayer*. I desire he may be ask'd what sort of Parish this is, and what kind of People the Inhabitants of it are?

Mr. *Smithys*. It is a poor Parish, but not numerous; there is not one in the Parish that is call'd master; nor one, I believe able to contribute a Shilling towards a Work of this kind, without hurting himself or his Family.

Dr. *Sayer*. I desire he may be ask'd whether the Earl has any relation to it, or any Estate thereabouts?

Mr. *Smithys*. He hath no relation to the Town, nor Seat near it, nor any particular Concern, that I know of, for any man belonging to it.

Mr. *Plummer*. If my Lord *Macclesfield* thinks it decent to give this Evidence, we do not think fit to oppose it.

Dr. *Sayer*. The Charities laid out by my Lord *Macclesfield* have been to fit out Clergymen for Parishes, and to provide Churches for Parishes.

Mr. *John Meyer* sworn.

Mr. *Serj. Probyn*. I desire this Witness to inform your Lordships, whether he was not formerly a *Jew*.

Mr. *Meyer*. I was a *Jew* formerly.

Mr. *Serj. Probyn*. I desire he would give your Lordships an Account of his Conversion, and what Circumstances of life he was then in, and how he was relieved?

Mr. *Meyer*. I was, by several misfortunes, and by the hardship of my Relations, reduced to great Extremities, after I was converted from *Judaism*.

Mr. *Serj. Probyn*. After you were converted, what Charities have you received? Have you received any Collection made for you by any Person?

Mr. *Meyer*. I did apply myself to my Lord *Macclesfield* for Charity, by the Recommendation of several worthy Clergymen: Upon which Recommendation, his Lordship was pleas'd to bestow upon me a Charity of fifty Guineas. I was set up in a way of living in the Parish of *St. Katherines* near the *Tower*; then the Fire happen'd there, and I was burnt out, after which I had a dangerous Fit of Sickness.

His Lordship got an Account of the same, and sent me a second Relief of twenty Guineas. The same Time that his Lordship gave me fifty Guineas, he sent twenty Guineas to the Reverend Mr. *Skute*, who was Treasurer to the Society for propagating the Gospel in Foreign Parts.

Mr. *Edward Sanders* sworn.

Mr. *Serj. Probyn*. I desire he may give an Account of what he hath received of my Lord *Macclesfield's* Bounty?

Mr. *Sanders*. My Lords, in the Year 1713 the Duke of *Somerset*, through the Intercession of the Earl of *Macclesfield*, put me into the Charter-House, where I was educated eight Years and an half; all which Time his Lordship furnish'd me with Books; and at my leaving of the School, he gave me forty Guineas for the better prosecuting my Studies at *Cambridge*: In a Year and an half after this, he gave me sixty Pounds. My Lords, this was not all; for when I acquainted his Lordship at my going into Orders, that I owed some money at *Cambridge*, his Lordship was pleas'd to give me forty Guineas more, towards the discharging of my Debts.

Mr. *Thornbury*, a Clergyman, sworn.

Mr. *Serj. Probyn*. My Lords, I desire he may inform your Lordships what he knows of his Lordships Charity?

Mr. *Thornbury*. My Lords, what I have to inform your Lordships of is this; that in the Year 1721, about the latter End of *July*, some Application having been before made to my Lord Chancellor by my Father, I had the Honour to be sent for by his Lordship to *London*. When I came to Town, as it was my only Business, so I made it my earliest Care to wait upon his Lordship, who was pleas'd to receive me with the greatest Kindness and

and Condescension, telling me he had some Livings at that time in his Disposal, one of which he intended for me; his Lordship likewise offered, if I had a Mind to see the Livings, he would be at the Expence of my Journey, and that I should have my Choice when I was come back; but I answered, I would refer that to his Lordship's Pleasure. In a few Days after, he ordered his Secretary of the Presentations to prepare a Presentation of me to a Vicarage in *Somersetshire*, called *Ninebead*. When the Presentation was sealed, and I had received Instructions to go and wait upon his Lordship for it, he was graciously pleased not only to give me the Presentation, but also discharged the whole Fees, and likewise made me a Present of 100 Guineas to buy me Books withal.

Mr. *Tho. Withers*, and Mr. *Henshaw* called, who not immediately appearing,

Mr. *Serj. Probyn*. My Lords, I am told here is a Reverend Prelate, who will willingly stand up in his Place, and give your Lordships an Account of what he knows of some of my Lord *Macclesfield's* Charity.

The Lord Bishop of *Oxford* stands up.

Mr. *Serj. Probyn*. I desire your Lordship would give an Account of what you know of this Matter?

Bishop of *Oxford*. My Lords, the Question put to me is concerning my Lord *Macclesfield's* Benefactions and Encouragement to Learning in the University of *Oxford*. I am a good Witness of it; for my Lord some time since desired me to recommend a Number of young Men to him, whom I thought proper Objects of his Favour, and like to make a considerable Progress in Law, Physick, Divinity, or any other Branch of Learning. He said he was willing to bestow a considerable annual Stipend on them, for no other end but to enable them to buy Books, and encourage them to follow their Studies; and this without any Regard to Party, but merely for the promoting of Learning in the University. I recommended several Persons to him, and enquired into the Characters of some who were recommended by others, and have no Reason to doubt but that every one that was thought deserving had a considerable Allowance. I can't charge my Memory with particular Sums, but believe his Lordship said he was willing in the whole, to expend this way four or five hundred Pounds every Year. This is the Sum of what I know; if your Lordships desire to be informed of any Thing more particularly, I am ready to give an Answer to the best of my Knowledge.

Mr. *Com. Serj.* My Lords, we have now gone through our Evidence, and I shall beg your Lordships Indulgence for the making some short Observations upon what has been offered in Defence of the noble Earl, now at your Lordships Bar; and as this Proceeding has already been drawn out to a very great Length, I am sensible it will become me, to use as much Brevity as may be. I shall, however, before I proceed, beg leave to trespass upon your Lordships Patience so far as to say, that if in the Course of this Proceeding, any thing should have slipped from us who are of Counsel for the Earl, which might not be so exactly suitable to the very great Respect

and Deference, which is due from every one to this august Assembly, I hope your Lordships will, in your great Goodness, impute it only to the Inadvertency, which the Variety of Incidents and Hurry attending Proceedings of this Nature, may reasonably be supposed to occasion, and as such excuse it.

We hope, my Lords, that what has been humbly offered to your Consideration, in Behalf of this noble Earl, has made him appear a Person very different from what he has been represented to be, by the Gentlemen of the House of Commons; and I am apt to persuade myself, that if they had been as well informed beforehand, of what he had to say in his Vindication, as they were of what they had to object to his Conduct; your Lordships would have been spared the great Trouble occasioned by this long Prosecution.

It is, my Lords, the peculiar Happiness of our Constitution, to have in the different Parts of it, all the Requisites necessary and proper for the Preservation of the Peace and Welfare of those who have the good Fortune to live under it. In those, whose Part it is, like Centinels, to watch for and guard the Liberties and Safety of the People; who are the grand Inquisitors, to search into, and expose every Thing that has even the Appearance of being hurtful or dangerous to the Liberties or Properties of those they represent; Vigour, Warmth, Zeal, I had almost said some Degree of Passion, seem proper Qualifications; whilst Calmness, Moderation, and Patience, not altogether without Tenderness and Mercy, are the proper Characteristicks of those, who by the Constitution are to determine and judge. And, my Lords, I may venture to say, that, to the Glory of our Nation, all these Qualities have been exercised, and every Part of our Constitution hath exerted itself, upon Occasion of this Proceeding: His Majesty's great Condescension, in readily laying this Matter before his Parliament; the Zeal and Vigour of the House of Commons, in examining into it; the great Abilities and Industry which the learned Gentlemen, who have had the Honour of managing this Prosecution, have shewn, (they'll pardon me, I hope, for saying, I could have wished it had been attended with something less Harshness and Severity;) and your Lordships great Goodness and Patience, hitherto so conspicuous, and of the Continuance of which there is not the least Reason to doubt, are so many illustrious Proofs of it.

Give me leave, my Lords, to proceed further, and mention the Part which the noble Earl at the Bar hath had in this Affair. His Readiness, when after his Endeavours for that Purpose, he found the thorough Reformation of the Court of Chancery a Work too difficult for him singly to effect, in laying the Affair before his Majesty in Council; the seasonable and proper Orders he afterwards issued out upon that Occasion; and his Zeal in pressing to have them immediately comply'd with; leave him still, we hope, some Share of the Reputation and Merit of what has been, or is likely to be done towards the Reformation of that Court. Nor will your Lordships be at a Loss, to what Cause to ascribe this Behaviour of the Earl, notwithstanding the Representations which have been made of him; when you shall consider the steady Affection and Zeal for our Constitution, which on all Occasions

have so remarkably appeared in him. Your Lordships, no doubt, remember those Times and Conjunctions, which it was thought required not only good Wishes and Affection, but Vigour likewise and Courage, to support and preserve to us the Continuance of our Constitution. Then it was, and for that end, that this noble Lord so eminently exerted all those great Abilities he was Master of; and that with such Success, as gained him the approbation of his Majesty, who thought his Services so signal, as to justify his Munificence towards him, and his Goodness in raising him to so great Honour. And can it easily be thought, my Lords, that one so qualified, so affectioned, so distinguished, should enter into a wild Design of deceiving both King and Parliament? Or that he should enter into it, and carry it on in so poor and indiscreet a manner, as is suggested in the Charge against him? in a manner so void of Thought and Contrivance, that it relishes more of Madness than any thing else. Suppose he could be thought capable of attempting to conceal Matters that were so notorious to every body, and that by a Means, which from the very Nature of it, must in some short Time have betrayed the Contrivance; yet surely, my Lords, his Fears and Apprehensions would have restrained him from communicating himself in a Matter of so high Concern, without Distinction, to so many Persons as were then supposed to be present; that he should publickly give such Orders as would certainly expose him to the Repentment of his Majesty, and both Houses of Parliament, in Hopes that such a Secret would be kept by so many People as are supposed to be concerned in it; surely, my Lords, is a Charge of so extraordinary a Nature, as will require better Proof than what arises from uncertain Expressions, in Discourse with a Number of People at the same time, and they in so great a Hurry and Confusion, that there was very great room for Misapprehensions, and where it was easy for one to mistake what was said to another, as if spoke to himself: And from hence it proceeded, as I presume, that the Account given of that Transaction, by the Gentlemen concerned in it, is so various and uncertain, that we humbly hope your Lordships will not think it reasonable to be relied on, as a Proof of such a Charge.

My Lords, the Foundation of this whole Complaint against the Earl is his Acceptance of Presents or Gratuities, upon the Disposal of Places; or, as the Gentlemen of the House of Commons are pleased to style it, the selling of Places, principally those of the Masters of the Court of Chancery. We have admitted the Facts, but without admitting those Circumstances which accompany it, as it stands charged in the several Articles for that Purpose; and we hope we have satisfied your Lordships, that it was no ways illegal to act as the Earl hath done upon those Occasions. To support our Reasoning upon that Head, we proposed to shew to your Lordships, what the Sense and Opinion of divers great and learned Men had been, in respect to the Law in that Point, from their own Practice and Behaviour: And we hope that the Evidence which hath been offered for that Purpose, hath plainly made it out, that the Earl hath the constant Usage of his Predecessors in that Office, as well as of other great Persons in other Stations, to

countenance what he hath done upon such Occasions, and that without any Marks of Parliamentary Repentment. If this noble Lord stood in need of an Excuse for having taken Presents, how effectual would this be for that Purpose? For sure, my Lords, if it were allowed that he had erred in this Matter, yet after such great Examples, your Lordships would think it an Error only, and not an Offence which deserved a heavy Censure.

The rest of the Articles have so near a Relation to the charge of taking Money, being only Aggravations of that Matter, under the several Circumstances therein contained, that I humbly apprehend, they do in a great measure depend upon, and will stand or fall together with it. And as the Evidence which has been given in relation to them, and the Observations made thereon, have been so full, and are yet so fresh in your Lordships memories, I will avoid troubling your Lordships with a needless Repetition of any thing upon those Heads.

My Lords, the Source of all the Evils here complained of in the Earl, is supposed to be Avarice: Every thing is ascribed to an immoderate Thirst after Gain, an irregular Desire of amassing Wealth. And great Endeavours have been used to persuade your Lordships, that the Earl was so wholly tainted, so thoroughly possessed with this Vice, that he had nothing in View but to gratify it; and every single Action of his had a Tendency that Way. But sure, my Lords, the Evidence just now laid before your Lordships, shews a Spirit and Temper of Mind far different from that, and totally inconsistent with it. And none, I hope, will object against our having entered into a Proof of that Nature; there are some Occasions, and surely this is one, that will justify the most modest man in publishing his own good Deeds; and upon which even charitable Acts, as first intended, as they ought to be bury'd in Silence, and known to none but the great Rewarder of them, may be withdrawn from their Privacy, and disclosed to publick View.

My Lords, the Instances which we have produced are not of pompous Charities; we should then, no doubt, have been told that Vanity and Ostentation had the greatest Share in them: Had they been a few Instances only which were laid before your Lordships, though far exceeding in Value those which have now appeared; it would perhaps have been said, that those were Starts and Fits of Charity: But your Lordships will observe that these have flowed in a continual Stream, and can be owing to nothing but a constant habitual Benevolence towards Mankind, a regular and continual Inclination to do good. And can such a Temper and Disposition of Mind be consistent with insatiable Avarice, base Corruption, and merciless Cruelty, in spoiling and oppressing Widows, Orphans, and Lunatics, and such too, who were under his Guardianship and Protection?

My Lords, we hope it will be thought impossible for such opposite Sentiments to reign in the same Breast, at the same time; and that at least, where any thing may appear doubtful in the Earl's Words or Actions, not only the received Notion of our Law, of presuming always in Favour of Innocence, but this Benignity of Temper in the Earl will determine your Lordships to consider

der it in the most favourable Light, and never to intend any thing harsh, which will admit of a milder Construction.

The Cries and Tears of Widows and Orphans have been artfully introduced, to raise your Lordships Compassion and Indignation upon this Occasion. It is no Wonder, my Lords, that Women and Children should be frightened at the first Appearance of the Deficiency in the Suitors Effects, which was represented in so terrible a View; but we hope, my Lords, the Terror is sunk with the Deficiencies, and that in a great Measure these Cries are hushed, and Tears dry'd up, now it already appears (as we hope it evidently does) that no very considerable Loss is likely to happen to the Suitors, and that the Prospect of its being lessened still improves.

Under these Circumstances should your Lordships think (which we humbly hope there is no Ground to suppose) that the Earl has fallen into any mistakes; yet when his Majesty, your Lordships, and the Commons, have extended their Clemency to those masters, who have been the acknowledged, the immediate Instruments and Actors of the Evils complained of, and of whatever may be prejudicial to the Suitors; and the Legislature hath interposed, to preserve them in the Enjoyment of their Offices; we hope the Earl would not be the only Object, on which your Lordships Goodness did not shine. We rather hope your Lordships will consider his misfortunes; and when you look upon the high Eminency from whence he is fallen, and view him at your Lordship's Bar, scourged with the severest Stripes the Tongue can inflict, and what can be more cutting? a Punishment, from which he had some Reason to expect that his Relation to your illustrious Body might have protected him: That these Circumstances will raise those generous Sentiments of Tenderness, which always dwell in noble Breasts: A Tenderness, no ways inconsistent with your Lordships Justice, to which the Earl cheerfully submits himself; and that in Imitation of the unerring Judge of all, whose Vicegerents you are on this Occasion, your Lordships will in Judgment remember Mercy.

Mr. Onslow. I would not interrupt the Gentleman that spoke last before he had ended; but I must now, before this Gentleman goes on, inform your Lordships that an Incident hath happened, that the Managers think they are obliged to take Notice of. The Right Reverend Prelate is not by the Managers in the least suspected as to his Veracity, and the Truth of what he says; but in judicial Proceedings, especially in a criminal Case, as this is, the Managers think Witnesses of all Sorts are to be examined upon Oath; not, as I have said, that they have any Doubt of the Reverend Prelate's Veracity; but for the sake of the Precedent, and to prevent ill Consequences, the Managers think his Lordship must, as all other Persons do, give his Testimony upon Oath: Your Lordships have Precedents in the Case of my Lord *Strafford* and others. The Witnesses, if members of your Lordships House, are to be sworn at the Table, and give their Evidence in their Place.

Mr. Serj. Pengelly. My Lords, if it is insisted upon, that what the Reverend Prelate says should be taken as Evidence; we humbly apprehend, according to the Rule of Evidence, he is to give

his Evidence upon Oath. And this being so material an Incident, and the Prosecution having proceeded so far, we humbly beg leave to put your Lordships in mind, that it is insisted upon in Point of Testimony, that the Reverend Prelate would be pleased to be sworn.

Lord *Lechmere*. No doubt but the Reverend Prelate ought to be sworn. It was not taken Notice of. If the Prelate be called upon as a Witness, his Evidence must be upon Oath.

Bishop of *Oxford*. My Lords, I should be very sorry to give any Offence to your Lordships; if the honourable Managers insist upon it that I take my Oath, and your Lordships direct me so to do, I am as willing to give my Evidence upon Oath, as without it. I submit it to your Lordships, whether you will look upon the Journals, to see how the Precedents stand.

Lord *Lechmere*. If it be insisted upon to look into the Journals, the Parties must withdraw.

Thereupon it was waved, and the Bishop sworn.

Bishop of *Oxford*. My Lords, for the Advancement and Encouragement of Learning in the University of *Oxford*, I remember my Lord *Macclesfield* some time since, told me he was willing to allow considerable Salaries to Persons that were studious and sober; and that this should be done for the Advancement of any Sort of Learning in general, without restraining it to any particular Science or Faculty, and without any Relation to Party, provided the Persons were worthy: And I desire leave to own to your Lordships, that otherwise I would not have had any Concern in it. I did, my Lords, recommend several Persons, whom I thought proper Objects of his Lordship's Bounty; and at his Lordship's Request, enquired the Characters of others, who had been before recommended to him. I have Reason to believe that several of these succeeded in his Lordship's Favour, and received bountifully from him. I dare not, at this Distance of Time, charge my memory with particular Sums, but believe that the noble Lord assured me, he was willing, in the whole, to lay out this way four or five hundred Pounds a Year. This, as near as I can remember, is the Substance of what I said before.

Mr. *Robins*. My Lords, I shall presume to take up very little of your Lordships Time, in observing on what has passed at this solemn Assembly of the two Houses of Parliament.

The Occasion of it has been to examine into the Conduct and Behaviour of a Member of your own august Body, during the Time he had the Honour to serve his most sacred Majesty in the high Office of Lord Chancellor.

And the Commons have faithfully discharged their Part, by omitting no one Circumstance or Ingredient, that could possibly serve to heighten and aggravate the Crimes they have thought fit to lay to his Charge.

But whether after all, the Mistakes, the Inadvertencies, the Example of others, and the Frailties even of human Nature itself, are not the whole, the Sum total of all this solemn and pompous Trial, will I believe with many remain for ever the Question.

It would not perhaps be for the Service of this noble Earl to say, that every Step he took, every Advance he made, for the Benefit and Relief of

the Suitors of the Court where he presided, was the best that could possibly have been invented; 'twill, we hope, be sufficient to say, that he sincerely thought them the best: And if better have been since found out, which have proved more effectual to the same end, it only proves him not to have been infallible, which surely is no Crime.

And if the Actions of his private Life, his Justice, his Piety, his Charity, and his Compassion for others, may be allowed to cast any Light or Reflection on his publick Conduct and Behaviour, I believe, my Lords, I may presume to affirm that those who are acquainted with his Innocence in the one, will never be brought to think him criminal in the other.

My Lords, I am afraid many are the Abuses, the Corruptions and the Evils which have sprung up in our Courts of Justice, even to the Disparagement and Discredit of Justice itself. And Complaints of this kind have been made in almost all Ages, though at the same Time they have been justly placed to the Account of some of the lowest, and most inferior Officers and Ministers, which are necessarily and unavoidably made use of in the Dispensation and Distribution of Justice.

And if an effectual Method of Cure could be found out for these; if those who are to give the last Hand to the Completion of Justice were pure, the Streams would then run clear and undisturbed to the end.

But, till that is done, till Means are applied for the purging and clearing these Channels, thro' which Justice must be conveyed, 'tis no wonder that the Fountains themselves look as it were muddy, and polluted by Reflection.

But, my Lords, how desirable soever these Ends may be, they are only the Work of the Legislature; a Chancellor, or a Judge, may sit by and lament, but they cannot help them.

They are only to be effected by that Power, which has a Sort of Omnipotence; and when they are effected, I believe none will rejoice and congratulate themselves more, than the many learned, great, and upright Men, which preside in our several Courts of Justice.

In the mean time, my Lords, as the Sentence which is prayed against this noble Earl, will be of little Avail to stop the Mischiefs; as 'twill in some sort be a Punishment of the Innocent, and letting the Guilty escape: We are too well acquainted with your Lordships just and righteous Proceedings, to be in any Pain for this noble Earl.

Let selling of Places, taking of Presents, or any other the known and usual Profits attending great Preferment, be for ever abolish'd by a plain and explicit Law; and I believe I may presume to say, that no Complaints of this kind will ever be made more; that *Westminster-Hall* will never again be named in an Impeachment, and that your Lordships will have no Trouble of this kind for the future.

But this, my Lords, I am sure I may venture to say, and I will say no more; that if it had been the Fortune of this noble Earl to have liv'd in such happy Days, his Name would never have been transmitted to Posterity in an Impeachment.

Mr. *Strange*. My Lords, we are now come to the Close of the Defence, wherein to avoid Confusion, I have hitherto confined my self to the particular Part which it was my Duty to open;

your Lordships will therefore permit me to take Leave of this august Assembly with some few short Observations both upon the Charge and the Defence.

Your Lordships did for four Days successively sit to hear this noble Earl arraign'd as the most corrupt, oppressive, and avaricious Person upon Earth: It was done too, my Lords, in a Manner, from which I should have thought the Relation he bears to your Lordships would have been a sufficient Protection; and without which the honourable Managers might very well have discharged their Duty to the House of Commons, in laying the Case before your Lordships.

But, my Lords, whatever Repentment this Treatment of one of your own Body might raise in your Lordships, I must for my own Part confess, that I heard it all with Pleasure; as it was an open Acknowledgment, that all honest Art and legal Liberty were necessary in aggravating the Charge, and possessing your Lordships with that Opinion of the noble Earl, that the Gentlemen of the House of Commons desire you would entertain.

My Lords, the Charge in one general View consists of an Accusation against the noble Earl, either for doing what his Predecessors did before him, or for not doing what it is not pretended they ever did: A singular Misfortune to this noble Person, that the following such great Examples should in every Instance be imputed to him as a Crime.

As to the accepting Presents for Offices, my Lords, we have fully proved to your Lordships, that the same was done by the Predecessors of the noble Earl within the Bar; and we must humbly insist, that if the Statute of *Edward VI.* be taken as laying a Restraint upon that Practice, yet having put the Case, and said what should be the Consequence, your Lordships cannot go out of that Statute to punish the noble Earl.

My Lords, it is the Misery (I may say the Slavery) under which other Nations groan, that the Punishment for Crimes is arbitrary and variable, and that he who commits the smallest Offence may be put to undergo the most rigorous Punishment: But God be thanked, my Lords, *he hath not dealt so with this Nation*, but that *this People hath Knowledge of the Laws*; Crimes here are stated, and so, my Lords, are their Punishments; and give me Leave, my Lords, to say, that this is one of the main Channels through which our Ancestors have deliver'd down to us that Liberty, which is the Glory of this, and the Envy of all other Nations.

My Lords, the Act under your present Consideration puts the Case of accepting Money for an Office, and says, the Consequence shall be the Loss of Nomination: There are no Words that declare Offices were not saleable by Law, or that they shall not be saleable for the future, upon which to found a Prosecution by Indictment or Impeachment; though if such Words were in this Act, I should still humbly insist, that as well upon an Impeachment as upon an Indictment, the Statute, and that only, must be the Guide in ascertaining the Punishment.

My Lords, the Articles have bestowed many Epithets upon this Action; such as illegally, corruptly, extorsively, &c. But your Lordships will not find them in this Act of Parliament.

And

And as to its being an Offence at Common Law, give me leave, my Lords, only to put you in mind of three Proviso's in this Act, which speak the contrary in the strongest Terms. The first is the Clause which confirms all Bargains then made, and which were to take Effect at a future Day. The next is a Declaration to what Offices the Act shall not extend, some whereof are of a publick Nature, as Keeper of a Forest, Manor, &c. And the third is that which takes Notice, that by Law the Judges might dispose of Offices, and therefore leaves them to the full Liberty they had before the Act.

And if in this Impeachment we stand clear as to the selling of Offices, then no Acts or Omissions towards raising the Price (if any such had been proved) will make the Earl criminal, which is the whole of the Charge.

My Lords, your Lordships were told in a very moving manner, that the noble Earl was pursued hither by the united Cries of Widows and Orphans——But we have heard none: No Instance has been given of any one Preference in Judgment, of one Penny taken during the whole Course of his administering Justice to these Kingdoms, or of any one voluntary Complaint that has been made against the Earl; and yet, my Lords, he has been represented as if his Crimes were full blown, as if he had divested himself of Humanity, and taken Pleasure in the Misery and Distress of his Fellow-Subjects: as one, whose only Motive of Action was inordinate Gain and wicked Lucre; and as one, overtaken by the Commons, triumphing in the Luxury of unpunished Crimes. You have been told too, my Lords, That *in him* Oppression usurped the Seat of Justice; and that *by him* the Beauty of Justice was deformed, and *through his Means* Justice stood afar off, and Equity could not enter.—How little Ground, my Lords, there was for these Complaints, may, I think, be fairly inferred from the Defect of Evidence in this Particular; since, after the strictest Scrutiny both into his publick and private life, your Lordships have not had one Witness appear at your Bar against him.

But, my Lords, since the Cries of Widows and Orphans were so much mentioned by the honourable Managers; we, who are Counsel for the noble Earl, thought it our Duty to shew your Lordships, that those Cries were not *against* him as an Oppressor, but *to* him as a Reliever. And how little soever this noble Earl thought of having an Account of these Matters brought to your Lordships Bar, yet surely, my Lords, this is now a Circumstance, under which it is lawful *for the left Hand to know what the right Hand doth*. And these Acts of Charity and Generosity, which were not treasured up for your Lordships Bar, but for a greater, are however proper to appear in this Place, in Vindication of the noble Earl against a Charge of Covetousness and Corruption.

And now, my Lords, give me leave to add, That tho' the private manner in which these Charities were performed, has made it necessary for us to enter into a particular Account, and an Account that takes in some of them only; yet the noble Earl has a Merit to plead, of which I am sure there is no Occasion to call a Witness. Your Lordships all remember the Time when he presi-

ded in the Queen's Bench, and saw (unmoved) the Tide of Preferment rolling towards a distant Shore. The true Interest of his Country in the present Royal Family was then his steady Pursuit, and his Merit consisted in advancing it to the utmost; and his Majesty, who was best able to judge of the Greatness of his Services, thought they deserved a Reward proportioned to the most exalted Merit, and therefore added him to your Lordships Body.

E. of *Macclesfield*. My Lords, I beg leave that I may have the liberty to lay before your Lordships some Observations on the several Parts of the Evidence given on both Sides.

Your Lordships will easily imagine, that a Charge of this Nature must have affected me very much, and the great Fatigue I have undergone hath not allow'd me the liberty to consider every Part so as to make the proper Reflections fit to lay before your Lordships.

I hope your Lordships will give me a little Time to recollect my Thoughts, that I may speak in such a manner as is fitting to your Lordships. I desire your Lordships will give me leave to make my Observations on *Monday* next.

Then the Managers and the Counsel withdrew; and the House adjourned to Monday Morning next, the seventeenth Day of May.

Monday the seventeenth of May, 1725.

The Eighth Day.

THE Lords being seated in their House, the Serjeant at Arms made Proclamation for Silence, as also the other Proclamation, that all Persons concerned were to take Notice, that *Thomas Earl of Macclesfield* now stood upon his Trial, and they might come forth in Order to make good the Charge.

Lord Ch. Just. King. Mr. Serjeant Probyn, you may proceed.

Mr. *Serj. Probyn*. My Lords, I am humbly to ask your Lordships Pardon for some Omissions we have made in the Evidence we were instructed to lay before your Lordships in Behalf of the noble Lord impeached the last Day we had the Honour to attend your Lordships upon this Occasion: We had some Witnesses to offer more than were examined at that Time, and we hope your Lordships Indulgence will continue to hear them now; they are but very few, but yet such as we apprehend are extremely material to the noble Lord's Defence. The last Evidence we laid before your Lordships related to several Charities given by the noble Earl, in order to shew that he was not of that avaricious Temper as hath been represented in Support of this Prosecution; and that the constant habitual Course of his Life and Actions hath been directly contrary to any Disposition of this Kind; but we apprehend it would still have greatly added to the Weight of this Evidence, had it at the same Time appeared to your Lordships what the Funds were, out of which these Charities arose; that the real Estate which this

noble Lord hath purchas'd, does not amount to more than 3000 *l.* a Year, and that his personal Estate scarce exceeds 2000 *l.* When we have shewn this, it must satisfy your Lordships, that the noble Earl hath been much more charitable than, according to his Circumstances, he could afford. There is another thing I beg leave to take notice of, to obviate an Objection I am apprehensive we shall hear of from the other Side; and that is, that these Charities were not given by the noble Lord out of his own Pocket, in regard there is a Sum of Money called Box-Money, which is laid out and distributed in private Charities by the Chancellor every Year. But to explain any Suggestion of this Kind, we shall shew that this Box-Money, though anciently used to be considerable, yet of late Years it hath not amounted to more than 172 *l.* a Year: And as there have been always particular Objects of Charity recommended to this Bounty, so this Money hath been apply'd by his Lordship in the same manner it usually was apply'd by his Predecessors; and that no Part of this Money ever went in any of those several Charities, we have already given your Lordships an account of.

Mr. *Serj. Pengelly.* My Lords, we beg Leave, on the Behalf of the Managers, to offer to your Lordships Consideration, some Reasons why they ought not to be permitted, at this time, to go into the Evidence offered, after the Indulgence of many Days, and Defence made on the Articles, and the Evidence summ'd up by the Counsel for the Lord impeach'd; and a Day is only given to hear the Lord himself, at his own Desire, to sum up or defend himself against the Charge against him; they ought not now to be allow'd to enter into a new Defence, or to give new Evidence. It is a new Method of Practice, after the Conclusion of the Counsel upon the whole Evidence, to say they have more Evidence to some of the Facts. My Lords, I don't know any thing of that Nature ever allowed, especially after the Examination closed, and an Adjournment for a Day or two. Besides, as to that Part of the new Evidence which the Counsel have opened, relating to the particular Estate and Circumstances of this Earl, how can the Managers be provided to give an Answer to it? There is nothing in the Articles leading thereto; they do not charge him with having a great and large Estate, though that hath been formerly a proper Article in an Impeachment. But it is not made one in this Case; the Charge of the Commons is confined to particular Sums received. If the Managers had gone into the Enquiry of any other Sum, at least without particular Notice to him, I believe it would have been objected against by the impeached Earl. Therefore to go into this sort of Evidence, where there is no Charge by the Commons, is putting the Commons to answer what is not in Question, which if they do, must lengthen out the Trial unnecessarily. If the Circumstances of his Estate be material, there must then be a further Time given to contradict their Proof, which possibly may be done as to his real Estate: But as to his personal Estate, how is it possible for any Man to give an Account of that? Doth not this lie in his own Knowledge entirely? No body can open his Chests or Cabinets at home: So that it is

impossible we should know any more of it than what serves his Purposes. Therefore, my Lords, we submit it, Whether they shall be permitted to go into this sort of Evidence? or, whether your Lordships will enter into any farther Examination?

Mr. *Lutwyche.* My Lords, we think it is of great Consequence to your Lordships, when an Evidence hath been so full, and with so great Patience heard to every particular Article; when that Evidence hath been summed up, and enforced by Counsel, and every particular of the Articles animadverted upon; we think there is no Precedent in any Court of Justice, where new Witnesses have, in such a Case, been permitted to be examined. Witnesses here have been produced; there hath been an Interruption of two or three Days for the noble Lord, at his own Desire, to make his Observations on the Evidence; to offer now to produce Witnesses that they had omitted to produce before, is perfectly new and unusual. I suppose they had these Witnesses in their Briefs, and, if they had thought fit, they might have called them. I know of no Instance of the like in any Court of Justice; if the Gentlemen of the other Side will tell us the Precedent, they may. I think it is of dangerous Consequence, not only in this Case, but in all other Proceedings in Courts of Justice. If your Lordships think fit to let them into one or two Witnesses, I do not know why your Lordships, with equal Reason, may not let them go over another Course of Evidence.

My Lords, as to the other Matter about this noble Lord's Estate, that is not a Matter insisted upon by any Evidence that we have given; and I submit it, Whether it is proper, or any way conducive in this Case, to any thing that is material for your Lordships Judgment in this Matter, for this Reason, because if it was material, it is impossible for us to know the Truth of it. We have no Right to examine this noble Lord upon Interrogatories as to his Estate, especially as to his personal Estate; a Man may in these Days have the Opportunity of being worth 100,000 *l.* and People not know where it lies; as to his real Estate, it might be known if it was material; but we submit it, Whether it is incumbent upon us to enquire, at this time of Day, into the noble Lord's Estate?

It is impossible, in the Nature of the Thing, that your Lordships should have that satisfactory Account, or that we should have such Notice of it as is proper to make any Defence of it to us material; but we submit it, that it is not material at all; and therefore we hope your Lordships will keep to the Rule kept in all Cases in all other Courts of Justice, where People have made their full Defence, or else there would be no End of Things.

Mr. *Plummer.* My Lords, we did not lay to the Charge of this Earl, that he was possessed of a great Estate; we have only laid to his Charge what he hath unjustly possessed, we have only charged him with Matters of Fact, which we think we have made out; and therefore hope your Lordships will oblige him to answer to that, and to that only, and not to go to another Thing we have not charged.

Mr. *Serj. Probyn.* My Lords, we apprehend it is

is frequently practised, that where Counsel have omitted material Evidence, even after Summing up, the constant Indulgence of the Courts below lets them go into Evidence to supply that Omission.

We take it to be our own Fault. We had in our Instructions, and it is in your Lordships Breast, whether we shall not supply that Omission, we shall not run into a long Evidence, our Witnesses are but two or three.

Dr. *Sayer*. My Lords, I beg leave to think, that as we point out a particular Fact, distinct from any we have examined to before, there can be no Apprehension of any Danger at all; and if, as the Gentlemen have inform'd your Lordships, it is what is usual in Courts below, that such Omissions have been always permitted to be supply'd, your Lordships sure will act with equal Equity in this Case. What we undertake to prove is the Circumstance of his Estate; and though the Gentlemen of the House of Commons did not make it a Matter of Charge in their Articles, yet in his Answer the noble Earl takes Notice of it, and it will shew that the Earl had not his Heart so intent upon Gain, when it shall appear that his Fortune is so much less than the World might have imagined it to be, and when at the same Time we shew his Generosity, and that by means thereof his Estate was much lessen'd and check'd.

I would take Notice of the other Matter, with regard to the Evidence of the Charity: It is only to explain and prevent a Mistake, lest it should be imagined that these several Instances of Charity were out of the Box-Money, or Fund for Charity in the Court of Chancery. But, I believe, we need not trouble your Lordships with this, for that the Noble Earl is so well satisfied with the Integrity and Honour of the learned Managers of the House of Commons, that he is under no apprehension to have that turn'd upon him. The principal Matter is relating to his Estate.

As we have in great Measure left it to the Earl himself to sum up the several Evidences, and have done but little ourselves, the Objection of the Evidence being closed and summed up is not so strong as in other Cases; we submit it, whether your Lordships will not indulge us so far as to produce a Witness or two to this Matter.

Mr. *Com. Serj.* My Lords, we do not ask this as a Matter of Right, but as a Matter of Indulgence. I own the Rule that the Gentlemen of the House of Commons have laid down is a general Rule for the Government of Evidence.

We can't controvert that, but I believe it will not be controverted on the other side, that such a piece of Indulgence was hardly ever denied, and we hope your Lordships will not deny it upon this Occasion.

Earl of *Macclesfield*. My Lords, I don't apprehend that this is a thing so very extraordinary, or so dangerous, as hath been represented. It would be extremely severe, if, in a Cause of so great Length, and so much Fatigue, I should have Witnesses ready to give your Lordships an Account of some Facts material for my Defence; and my Counsel happening not to call them, although they were attending, and there should be a certain Form that should exclude me from having the Benefit of their Evidence; I don't know what this is founded upon, I never heard of such a Form or Rule.

There is no Instance that where Counsel hath been summing up the Evidence, and, before the other Side have replied, an Omission hath been discovered, that that Omission hath not been allow'd to be supplied. And,

I appeal to my Lords the Judges, Whether they have ever known this piece of Indulgence denied upon any Trial whatsoever in the Courts below. My Lords, with great Submission, the Evidence is not yet finished; I am sorry I must yet give your Lordships the Trouble of observing a good many Things that have been hitherto omitted: This is a Matter the Counsel had Directions about, the Witnesses were attending, but they were omitted to be called for; I hope your Lordships will not, for such a Mistake, exclude me the Benefit of their Testimony: Had it been calling fresh Evidence to any Matter that hath been examined to before, there might possibly be some Grounds for an Objection of this kind; but I mean only to call one or two Witnesses to fresh Matter, that hath not been enquired into before. There hath yet been no Witness examined as to the Box-Money, or my real or personal Estate; and yet those two Things are material, and it may greatly turn to my Prejudice if I have not the Liberty of producing this Evidence in relation to them.

It hath been represented that I have an Estate vastly more considerable than in Truth I have; and this Matter of the Box-money, as I have been informed, gave Birth to a Report abroad, as if what I gave for Charity was out of that Fund.

As to this latter, I dare trust the Candour of these Gentlemen, that they do not believe it; and if they do not insist that what I gave was out of the Box-Money, it will be needless for me to prove that it was not. But as to the other Matter, I hope I shall not be precluded from having those Witnesses examined, because it was before omitted; wherefore I humbly beg your Lordships Directions thereupon, whether I shall be at Liberty to lay their Evidence before your Lordships or not.

Mr. *Onslow*. I would beg leave to set your Lordships right as to that of the Box-Money. The Noble Lord insinuates as if something of that had been mentioned by the Managers; nothing hath been mentioned of it, either by the Evidence or by the Managers.

Earl of *Macclesfield*. No, I beg leave to explain myself; I did not say the Managers had insisted upon it, but only said it is a Matter that I have heard without Doors; but I believe I may rely upon their Candour that they will not make it an Objection now, in Case they oppose my giving Evidence to the contrary.

Mr. *Lutwyche*. My Lords, I am a little surprized, why the Noble Lord mentions this of the Box-Money, when not one single Word hath been said of it, either by the Evidence or by the Managers: Why then should this Noble Lord himself mention it? And why should he call Evidence to a Thing that hath no manner of relation to any Thing that hath been said? If his Lordship will please to give us leave to reply; if we then say any Thing of it, he may then give an Answer to it; but it is improper now to be giving an Answer to an Objection that was never made, and to which the Evidence hath not said one Word.

Lord Steward. If the Noble Lord thinks this a Point to be insisted on, it is then necessary for all to withdraw.

Order'd to withdraw, which was done; and being afterwards called in again,

Lord Chief Justice King. Mr. *Serj. Probyn*, it is the Opinion of their Lordships, that the Evidence offered by the Earl of *Macclesfield*, with respect to the further Account of his Charity, be not now admitted; and they are likewise further of Opinion, that the Earl of *Macclesfield* be not now permitted to give Evidence of the Value of his Estate, either real or personal.

Earl of Macclesfield. My Lords, your Lordships were pleas'd to indulge me to this Day to lay before your Lordships what I had to say in my Defence, against the Charge brought against me by the Commons, and against the Proof supporting that Charge, which your Lordships with so much Patience heard. From the Time your Lordships were pleas'd to allow me this liberty till now, I have applied myself with the utmost Diligence to prepare my self for my Defence.

To this End it hath been necessary to look over the Notes, taken of the Evidence given on both sides, and likewise of what was said by those Gentlemen who are Managers for the House of Commons. I find it very necessary to lay before your Lordships many Observations on the Evidence, which depend upon an exact comparing of them together. It being a matter that hath taken up so much Time, and there being such a Distance between the Evidence given on the one side and the other, I have been employ'd wholly from the last Time till now in the Consideration of it; and I can say with Truth, I have not slept five Hours these two Nights, and yet I have not been able to get through it, and I am not now prepared to lay before your Lordships what I have humbly to offer for my Defence; there are many Things exceeding material to be submitted, and I beg therefore, that your Lordships will indulge me a farther Time, so that I may be able to do it in such a manner, as may set the Evidence and Observations upon it in such a light as your Lordships may pass a proper Judgment. I don't do this out of Delay; I believe your Lordships will easily imagine I should be glad to have this matter over, whatsoever the Event may be, for I am quite spent, and my Strength and Spirits wasted with the Fatigue I have already undergone. My Lords, I have been so far from any Delay in the Course of this Prosecution, that when I put in my Answer, as your Lordships were informed by one of the Gentlemen of my Counsel, tho' it was not finish'd till between three and four a-Clock in the Morning, yet I chose to get it ingross'd, and put in the same Day, rather than there should be the least Appearance of any Delay on my Part; and I do not know whether by endeavouring so very much to dispatch this Work, I have not rendered myself unfit and unable to go on with it: Human Nature can hardly bear what I have gone through.

At my Years, if I should undertake to do it by To-morrow, I am afraid I should sink under the Weight of such a Task, and not be able to come before your Lordships prepared as I ought to be; therefore I hope your Lordships will be pleas'd to allow me till the Day after; the Fatigue

I have already undergone has been very great, and I hope your Lordships will allow me such a Time as you will think competent; the Work I have to do will take up a great many Hours; there hath been Variety of Evidence, I hope your Lordships will indulge me till *Wednesday*; it is of very great moment to me, and I am sure I should be unwilling to mispend your Lordships Time; and delay this Matter unnecessarily: It really gives me the greatest Uneasiness to find myself in that Condition, that I cannot think of being able to do it sooner; I was before afraid that I should not be able to do it by this Day, but yet resolv'd to do all that was possible for me, and therefore declin'd asking then for any longer Time.

I hope your Lordships will indulge me; if your Lordships knew the Fatigue I have undergone, and the Effect it hath had upon my Health, I am sure in Humanity you would make no Difficulty of granting me farther Time to prepare myself in a proper manner, in a Case that is of so great moment to me; and I hope the Gentlemen of the House of Commons will not be against it; if they should overpress this matter, I don't know but the Fatigue of it may bear so hard upon my life, as to save your Lordships the Trouble of passing any Judgment upon this Occasion.

Mr. Serj. Pengelly. My Lords, we don't apprehend the Lord properly applies to us in this Instance.

All Parties were directed to withdraw, which being done.

The House adjourn'd till Wednesday Morning Ten a-Clock, the 19th of May, 1725.

Wednesday, May 19, 1725.

The Ninth Day.

THE Lords being seated in their House, the Serjeant at Arms made the two usual Proclamations, as on the former Days.

L. Ch. Just. King. Mr. *Serjeant Probyn*, if you please to proceed.

E. of Macclesfield. My Lords, I am first to return my most humble Thanks to your Lordships, for the Time you have been pleas'd to indulge me with, for recollecting my Thoughts, and looking over the Evidence that has been offered on either side, during the Course of this tedious Proceeding; that I might be able to put those Observations I have made upon it in such a light, as became one who was to speak in a Case of so great Importance, at your Lordships Bar.

My Lords, I have been under some Misfortunes in this Prosecution; your Lordships must, no Doubt, have observed the Disappointments I have met with, in Questions I asked of some Persons, who appeared as Witnesses in the Course of this Trial, which it was impossible I could have had any Inducement to propose, but from my own Knowledge of the Answers that should have been returned. My Counsel, thro' the great Hurry that usually attends Proceedings of this Nature, happened

happened not to be instructed in some Particulars, that were extremely proper to have been laid before your Lordships upon this Occasion: Besides that, the Variety of the Facts, continued to be given in Evidence from one Day to another, has in this particular Case been carried on to such an unusual length, that they have not been able in the end to make themselves so perfect Masters of the Evidence, as the Importance of the Case required.

I should trouble your Lordships with an Apology for my own Inability to supply this at present, both from the extreme Fatigue I have undergone during the whole Course of this Prosecution, and because that my last Illness has broke my Memory to a great Degree. But whatever Difficulties I have laboured under, when I consider your Lordships are my Judges, I cannot doubt but your Candour and Goodness will have a due Regard to them, and make Allowance for the Want of Order or Accuracy in any thing I have to lay before you; and therefore, rather than ask any more Time of your Lordships for preparing myself, I will endeavour to go on now as well as I can.

My Lords, the Charge brought against me is very heavy, as laid in the Articles, and highly exaggerated by the Gentlemen that are appointed Managers by the House of Commons.

That which I think is charged as the Foundation of the whole, is,

My entertaining wicked and corrupt Purposes, to raise and procure to myself excessive and exorbitant Gain and Profit.

This it is that hath made me extorsively and illegally take Money, upon the Admittance of Masters, and Disposal of other Offices.

And the being set upon the Gain arising from the Masters Places, with the Desire to advance it, or keep it up, is represented to be the Source of all the rest of the Things complain'd of, which seem to me to be charged only as Contrivances for that Purpose.

This is such Corruption of Heart, and carries with it such a Malignity, that it makes every Action and every Omission criminal: Every rash Word, every Neglect or Imprudence, nay Things perfectly innocent in their own Nature, or perhaps commendable, are so infected by it, as to deserve the severest Censure and Punishment.

Whether I wait in Expectation of the Application of the Suitors, with Respect to *Dormer's* Deficiency, or of myself endeavour to get it made good, or even pay my own Money towards it, it is all one, so wicked a Heart corrupts all.

And the Violation of my Oath as Lord Chancellor, and of the great Trust in me reposed, contrary to the Duty of my Office, is made the Aggravation of almost every Article.

I shall endeavour to shew your Lordships, that the several things charged upon me are either not true, or not criminal; or if your Lordships shall judge otherwise of them than I do, yet that they were the Effects, not of Wickedness, but of Mistake; and if I have ever done any thing for the Service of my Country, of the Constitution, of his Majesty, and of the Royal Family, and the present Establishment, and for the Administration of publick Justice, it might not be unsuitable to

the unparalleled Goodness of this Reign, for your Lordships to have Compassion upon the Errors, Mistakes, and Weaknesses of the faithful, steady Servant of a Prince, whose Mercy has been so often extended, in so great a Degree, to the highest Crimes of his bitter Enemies.

Before I enter upon my particular Defence, I beg leave to take Notice of something that has been said with Relation to the Answer which I have put in to these Articles of Impeachment, as containing a Plea of a Pardon at the same Time that I insist upon my Innocence; and its not being a full Answer to all the particular Charges in the Articles. As to the first, my insisting on his Majesty's most gracious, general, and free Pardon for all things before the twenty-fourth of July, 1721,

My Lords, I hope, and am myself of Opinion, that I have not done any thing that is criminal, or needs a Pardon;

But when so many Gentlemen of Learning and great Parts, undertake to make out, that That is a Crime which I thought and still think not so; should I opiniatre to that Degree, and be so confident that your Lordships will be of my Opinion, as to refuse the Benefit of a Pardon, which his Majesty has so graciously granted to all his Subjects?

When little Imprudences, and so many Omissions, and even idle Words, loose Talk, and unguarded Expressions, are laid to my Charge as Crimes, and made the subject Matter of an Impeachment; and some of them charged without mention of any Time, or the Name of the Cause in which it is pretended they were spoke, or any other Circumstances by which I might be enabled, either myself to recollect or to make Enquiry of others, in order to prepare for my Defence; it had been Folly in me not to have taken Advantage of the Pardon.

And as for the Reflexion intended, to expose the Absurdity of pleading Innocence and a Pardon to the same Offence; what is more consistent than to say, I ought not to be punished, because the Fact charged is no Offence, or if it be one it is pardoned? But had the Gentleman who made it, been pleased to have read the last Act of Grace carefully through, he would have found that it expressly provides, that the Pardon shall support the Plea of Innocence, and upon *Not guilty* pleaded, the Act may be given in Evidence to prove the Person not guilty. And, in the Notion of our Law, it wipes away whatever Guilt there was, and leaves the Person innocent, that is, as a very great Lawyer and a very wise Man expresses it, *it takes away not only poenam but reatum, the Guilt as well as the Punishment.*

As to the Reflexion made upon my Answer in another respect, as if it were not full and direct, and that in Chancery, the Court where I had presided, it would be held an insufficient Answer; Probably it might be so; but that is, because that a Plaintiff there has a Right to require a Discovery of all such Facts as are material for his Advantage, upon the Oath of the Defendant. And therefore the Answer is not only the Party's own Defence, but it is to supply the Plaintiff with Evidence, who therefore may except to it as insufficient, so far as it is short of answering to, and giving

ving an Account of all, of every minute Circumstance that he charges.

But do they imagine that to be the Case in a criminal Prosecution? or that the Defendant there is obliged to furnish Evidence, or to confess any thing that may tend to affect or charge himself? No, my Lords; the Answer there is only for the Defence of the Person accused: And Not guilty is a full Answer.

And my Lords, I insist upon it, I have given a full Answer to all the Articles at the end of my Answer, where I have pleaded the general Issue, and in express Words said, That *I am not guilty of all or any the Matters contained in the Articles, or any of them, in manner and form as they are therein charged against me*; which is of itself a direct and full Answer, without more.

And tho' I have set forth other Facts, it is only where I have thought some things might be farther explained. But there is no need to make any Proof of a Word in my Answer, if the Charge in the Articles is not supported by the Evidence given against me.

And I still hope your Lordships will be of Opinion, that tho' some of the Matters mentioned in the Articles are proved, and indeed some are expressly admitted by me, and others never disputed; yet that none of them is admitted or proved in *such manner as it is charged in the Articles*.

Having said thus much, I proceed to consider what has been offered in *Proof* against me.

My Lords, the Preamble of the Articles is intended for an Aggravation of my Crimes, by shewing what Oath I had taken, which I had violated; and what Favours I had received from his Majesty, and was not satisfied with them.

As to the last, give me leave to say, that I can never express the Sense of my Heart for his Majesty's Favours and Bounties, and that it ought to be a high Aggravation, if I have abused them.

I pretend to no Merit, but that of a Heart full of Duty and Zeal for his Service; but his Royal Grace and Goodness has exceeded, not only my poor Services, but even my Desires and Wishes.

And whatever becomes of me, in whatever State of Life I am, my Gratitude and Duty shall never abate.

As to the Violation of my Oath, no such Crime is made out against me.

The Oath of Office taken by the Chancellor when he enters upon that Office, has no relation to what is laid to my Charge: I have set it forth *verbatim* in my Answer, and no Argument has been attempted to be drawn from it.

But it was said the other Day, that I had taken an Oath upon the Statute of the twelfth of *Richard II.* which I had *forgot, both in my Answer and in my Conduct*.

As to my Answer, I beg leave to observe, that the Answer is suited to the Charge. I am not charged in the Articles to have ever taken any Oath upon that Statute, nor is the Oath supposed to be taken on the third of *November* at all mentioned.

The Words of the Preamble, which is the only Part of the Articles that mentions my taking any Oath, are these:

“ And whereas *Thomas Earl of Macclesfield*, in
“ or about the Month of *May*, in the Year of

“ our Lord 1718, by the Grace and Favour of his
“ Most Excellent Majesty, was constituted and
“ appointed Lord Chancellor of *Great Britain*,
“ and did *thereupon take the usual Oath* for the due
“ Execution of that High Office, whereby he did
“ swear well and truly to serve our Sovereign
“ Lord the King and his People, poor and rich,
“ after the Laws and Usages of the Realm, and
“ *such other Oaths as have been accustomed*; and the
“ said Earl continued in this great Office,” &c.

Where the *other Oaths accustomed*, as well as that particularly *described*, are confined to what I did *thereupon take*, that is, *upon my being made Chancellor in May 1718*. At least to my poor Understanding it appeared so. Nor did I at all imagine, that it referred to what was done the third of *November* after, which was but the same as had been done the third of *November* before.

And accordingly my Answer is confined to the *same Time* that I was sworn Lord Chancellor before his Majesty in Council, the fourteenth of *May 1718*, when I took the Oath of Office set forth in the Answer; and at the same time took the Oath of Allegiance and Supremacy. And there is no Pretence that I took any Oath upon the Statute of *Richard II.* at *that Time*.

The Words of the Answer are,

“ That in the beginning of *May*, in the Year
“ 1718, he the said Earl was, by his Majesty's
“ great Grace and Favour, appointed Lord Chan-
“ cellor of *Great Britain*, and was sworn before
“ his Majesty in Council the fourteenth Day of
“ that Month; when the following Oath, be-
“ ing the usual Oath of Lord Chancellor, was
“ administered to him, *viz.* you shall swear, &c.
“ And the said Earl, *at the same Time*, took the
“ Oath of Allegiance and Supremacy, but *no*
“ *Oath of Office besides that above set forth*.

My Answer therefore plainly relates to what was charged, and my taking no Notice of any Oath upon this Statute, ought not to be imputed to Forgetfulness, but to its not being charged. It is not charged, and therefore not answered to.

But it is now insisted upon, and great Stress laid upon it, that at the naming of Sheriffs, which is done in the Exchequer upon the third of *November* every Year, I took an Oath upon the Statute of 12 *Richard II.* which extends to the Disposal of the Office of Masters in Chancery.

To judge of the Truth of this new Charge, your Lordships will be pleased to consider what it is that is yearly done the third of *November*, upon that Occasion of naming of Sheriffs.

The Managers were not pleased to open what passes every Year upon the Nomination of Sheriffs, which had been proper before they called the Witnesses to prove it; if they had, it might have saved me the Trouble of asking any Questions.

But the Examination, and the Testimony of a Witness that spoke indistinctly and low, tended, as I thought, to have the Statute entered in the old Book of the Exchequer in obsolete *French*, and so ill read as hardly to be understood, to pass for the Form of an Oath then administer'd

administer'd upon the Statute which had been just before read in *English* to your Lordships at the Table; and so it might be taken to be an Oath conceived in the Words of the Statute, extending to all Nominations of Officers, and to all Times, and not confined to that Occasion.

I did therefore ask some Questions, not to quibble away an Oath, as one of the Managers was pleas'd to express it, but to have the Matter laid before your Lordships in its true Light, and which came out to be thus.

The Lords of the Privy-Council and the Judges, being assembled for naming Sheriffs for the following Year, at the Time and Place appointed for that Purpose, the Act of Parliament of 12 *Richard II.* is read, directing several Persons to be sworn, concerning their naming of Sheriffs, and of some other Officers specify'd in the Act, and with general Words extending to more; then an Officer gives a Bible to every one of the Privy-Counsellors and Judges present, who all, one after another, kiss it; but nothing is said to them by the Officer or any one else, nor are any Words spoken by them.

I know it has been much doubted how this could be called Swearing, or taking an Oath.

But that is not at all what I insist upon.

There being something sacred in the Ceremony, I agree the Action should be consider'd as a solemn Undertaking in Nature of an Oath, to observe that Statute in the Business we were then entering upon; and so it is an Engagement to proceed then to name Sheriffs according to the Direction in that Statute.

And accordingly this is repeated every Year upon the like Occasion, though the Persons are the same, and has been so by me for seven Years together, before I was Chancellor, and for as many since.

But to extend this farther than that Occasion, is, I humbly insist upon it, going beyond what the Action then done imports.

The Statute plainly relates to Nominations or Elections, where Numbers of Persons are called together to name Officers; the very reading the Statute shews it, and when I come to speak of the Construction of that Act of Parliament, it will be yet more plain.

And when it provides, "That the Chancellor, Treasurer, Keeper of the Privy Seal, Steward of the King's House, Chamberlain of the King, Clerk of the Rolls, Justices of the one Bench and of the other, Barons of the Exchequer, and all others, *who shall be called* to ordain, name, or make Justices of the Peace, Sheriffs, Escheators, Customers, Comptrollers, or any other Officer or Minister of the King shall be firmly sworn, &c." I take it to mean that they shall be sworn when they are so called together, and met. And the Practice is accordingly.

There are some old Statutes that say, that the Chancellor with the Council shall appoint Justices of the Peace, the Treasurer with some others shall name Customers, &c. But the Usage at this Time is, (and it has been so for some Hundreds of Years) that the naming of Justices of the Peace, is in Fact in the Chancellor only; of Customers and Comptrollers, in the Treasurer; and many of the Persons named in the Statute

meddle not with naming any of the Officers comprized within either the particular or general Words.

If therefore, my Lords, the Bishops were desired to draw up a Form of an Oath to be taken upon this Statute by all the Persons attending on the third of *November* for the Naming of Sheriffs, I presume they would confine the Oath to the particular Occasion.

I submit to their Consideration, whether they would draw it up so, that every one present should swear that he would observe this Statute, or not go contrary to this Statute, in the Nomination of Officers which he has not any Right or Power to name, nor is ever called to name: Whether they would frame such an Oath, whereby the Judges should swear that they would not name Justices of the Peace, Escheators, Customers, or Comptrollers, for Gift or Brocage, Favour or Affection, when they cannot name them at all, either by Provision of Law or by Usage.

I apprehend this would be an improper, if not a vain Oath.

And a constructive taking of an Oath, which is all that can be insisted upon here, ought not to be carried farther than would be proper to express in Words at length.

And therefore, as all the Persons assisting there certainly take the same Oath, and many of them have nothing to do with the Choice, or naming of any of the other Officers in the Act besides Sheriffs; and as this Action yearly repeated on this particular Occasion, shews it to be intended to relate only to Sheriffs; I have always thought that it went no farther than to oblige me; that in the Affair, which we were then entering upon, I should act according to that Statute.

And I am persuaded, that in this Case, I have the universal Concurrence of the Judgments of others. For I do not believe that ever any Person that assisted on that Occasion, had the least Apprehension of his then taking an Oath, which related to any thing but that particular Occasion.

But if they all did take an Oath so extensive as to reach to the Disposal of all other Employments, (which is the Sense wherein I believe the Managers would have the Words of the Act to be understood,) God knows in what Guilt many of them have involved themselves.

It is a Part of the Statute, and Part of that to which the Persons called to name Officers are directed to be sworn, *That none who sues by himself; or by any other, in private, or openly, to be in any manner of Office, shall be put into the same Office, or any other.*

Will these Gentlemen urge that every Lord Treasurer, Lord Commissioner of the Treasury, or other Lords in great Employments, that give Places, or name Persons for Places to the King, and have once attended at the naming of Sheriffs, have been guilty of a Violation of this Oath, in every Instance, where they have named any Person to any Office, who, by himself, or his Friends, ever asked for the Place given, or for any other?

I can-

I cannot imagine that they will attempt to carry it so far. But if they do, I will yet presume, that your Lordships will not, by such a new Construction, condemn so many Persons that are innocent, or thought themselves so.

Hence I think myself not to have taken any Oath upon the Statute of 12 Ric. II. which any way extends to Masters in Chancery; and I hope your Lordships will think so too.

What is the particular Meaning of this Act, and what Arguments may be drawn from the Provision therein, I shall not trouble your Lordships with at present, but shall reserve the Consideration of it for another Place: But as to the Charge of violating an Oath founded upon it, let the Observations I have made, from the Frame of the Act and the Nature of the Action at present suffice.

The subject matter of the first Articles, as they stand in Order, and which I believe has given rise to this Prosecution, is the taking Money for the Places of Masters in Chancery; long practised without Blame, though made my great Crime.

What has been urged from the Nature of the Office, the Oath which the Masters take, and the Commissions granted to them, together with the Master of the Rolls and the Judges to hear Causes in the Absence of the Chancellor, will not have any Weight in the Question, whether it be criminal to take Money on admitting them.

I beg leave to say, that the Office anciently was quite different from what it is now, so that it is in a manner forgot what it originally was. One Branch of their Office anciently, and then reckoned of Importance, was the framing Writs, which are now made out by the Curfitors; and that which is their greatest Business now, there appear no Footsteps of being done by them, or any others anciently.

Their Business now is chiefly preparatory to the Determination of the Court of Chancery upon References made to them by the Court, in order to their stating Things to the Satisfaction of the Parties; or reducing the Dispute to some few Heads, in which they differ, for the easier Determination of the Court.

And that which they are most generally employed in thus, is matter of Accompts.

Very frequently the Parties, after having had the Items examined and proved, agree before the Master the whole Accompt, and almost always the greatest part of it. And if the Parties are dissatisfied, they are at Liberty, by Objections in Writing which are called Exceptions, to state to the Court the distinct Items which they dispute, by which means the Court is eased of the Consideration of all the rest of the Items of the Accompt. And the Master makes no judicial Determination; but when he makes his Report has only done the Drudgery of an Accomptant, compared Vouchers, heard Objections, convinced the

Parties as far as he could, and then stated the whole Accompt so as he thinks is right; which at last has its Force, not from him but from the Court, which confirms it if not disputed, or examines the disputed Points if desired.

Upon References to them whether Answers are sufficient, they are to compare the Words of the Answer with the Words of the Bill, and state whether they find them full: And if the Parties do not acquiesce in the Master's Opinion, the Court takes the Trouble to make the Comparison.

They are likewise Cashiers, not of the Court but of the Suitors, and always at their Prayer.

And the Parties have this Advantage in having the Masters for their Cashiers, that they have a ready Method to compel Payment by Order of the Court, and a Commitment of the Person or Sequestration, (that is seising all their Estates and Effects,) or both, upon such Order, in a short and cheap way; whereas against other Cashiers they must be put to the Charge and Delay of a tedious Suit, if the Money be not paid.

And other Officers, whose Places are allowed to be sold, do the same Things, make Reports to state Facts on References, are Cashiers of the Money brought in, and tax Costs, which is another thing the Masters do.

As to the Oath; it is the old Oath, before the Office was so greatly changed; what Advice to be given to the King it refers to, will be hard I believe to explain, and has not been attempted; but if the Writs requiring their Attendance here were looked into, possibly it may be thought, that anciently they attended your Lordships in a manner different from what they now do, and have done from before the Time of our Memory.

And as to the Commission to hear Causes in Absence of the Chancellor, that makes no more Variation in the Nature of their Office, than it doth in the Office of Clerk of Assize, (expressly allowed in the Statute of *Edw. VI.* to be disposed for Money) that the Clerk of Assize is constantly joined with the Judges in the Commissions of *Oyer* and *Terminer* and Goal Delivery, for the Trial of Criminals, even for capital Crimes.

To proceed therefore to the Points of the Charge.

It is founded singly, upon the *taking Money* for admitting the Masters into the Office; and the *Manner* of taking it extorsively, without reference to any want of Qualification in the Party admitted; and therefore cannot be maintained, unless the taking of Money be in all such Cases criminal, or that the Manner of taking or extorting it in these Cases make it so.

Therefore I will first speak to the general Question, whether taking Money upon Occasion of putting in a Master, is in all Cases criminal in itself, or by the Common Law, or made so by any Statute which subjects it to any Judgment or Punishment,

ment, which can be prayed in this Prosecution; as I have expressed it in my Answer.

And that which I humbly insist upon as to the first, that is, whether it can be said to be wicked or criminal in itself, or from the Reason and Nature of the Thing, is this:

An Office may be considered in two Respects; First, with Respect to the Duty; that is, the Concern of the Publick; that the Person be duly qualified to discharge his Office well. Secondly, with Respect to the Profit and Advantage; and that is merely private, and concerns the Officer only. And whilst he discharges his Duty well, without Extortion, or other Misbehaviour, the Publick is little concerned in it, whether the Profit be more or less. As in those Offices, which are very numerous and of great Consequence, that may be executed by Deputy; provided the Deputy behave himself well, the Publick has never concerned itself what his Salary or Allowance from his Principal is, whether it be greater or less.

And as the Person who is put into a very beneficial Office, such as one of these, for his Life, has not any antecedent Right to the Office, and therefore not to the Profits arising thereby; and he that prefers him is not bound to give it him; therefore when he puts him into it, he in effect grants him all the Profits of the Office for his Life: And if the Officer make him a Present for it, either unexpected, by way of Thanks after he is put in, or expected, which he had told him of before, or give it at the Time, or before that he is admitted; I see not any Immorality either in the Giver or Taker. It is Money given for Profits to be received during Life.

The Publick is concerned only in the Goodness of the Officer, not how advantageous to him the Grant of the Office is, nor in the Inducement which he that appointed him had to put him in; whether Friendship, Acquaintance, Relation, Importunity, great Recommendation, or a Present.

I agree, that a Person taking a Present and putting in an unfit Person, when he knew him to be so, or had just Ground to believe him so, is criminal: Not because he has taken a Present, but because he has prejudiced the Publick knowingly: It may be an Aggravation, that he had taken Money; but the Crime is, the Wrong done to the Publick in the Person advanced. It had been the same Crime, had he done it for the sake of Kindred, or Friendship, or for Recommendation, or any other Reason.

But if a Person very well qualified be placed in an Office, and the Publick has all the Advantage from him that it can have from an Officer in that Post, and so I who placed him, have well discharged my Duty to the Publick; is it material how well I loved him, how nearly he is related, who it was that persuaded me to prefer him, or what he gave me on that Account, whether before, or after he was put in? Will any of these Circumstances make me criminal in an Action by which I served the Publick well? If the Publick have all the Benefit it can have, where is the Immorality? where is the Crime, if I have an Advantage too? especially if Usage has in some sort annexed that Advantage to my Office, which is taken from his?

Obj. I know it may be objected with great Appearance of Reason, that this Practice is dangerous,

it leads to Inconveniencies, it is a Temptation to him that disposes of Places to make ill Officers, and a Temptation to the Officers to extort Money and abuse the Subjects, in order to get up their Money again.

Ans. But is it therefore a Crime, where the Temptation is resisted, and a very good Officer is put in, and he behaves himself perfectly well?

The Point of the Charge now under Consideration rests singly on this, that I took Money for admitting Mr. *Francis Elde* (for instance); and tho' taking Money is a dangerous Practice, and may be a Temptation to let in an ill Man, is it therefore a Crime to put in *Francis Elde*, who is not allowed to be an ill Man or any way unfit, and is really an excellent Master?

This Argument concludes, only that the allowing it to be generally practised is inconvenient, and may in the Deliberations of the Legislature be properly used to prove it fit to be restrained by a Law: But is not of force, in a Court of Justice, to prove it to be a Crime in every instance, because it may occasion a Crime in some.

Farther, as to the Matter of Temptation to put in one unfit:

The Liberty of preferring Relations to Offices is a Temptation to put in Persons unfit; and, without doubt, has often prevailed. Supposing therefore it might be proper matter of Deliberation in the Legislature, how far a Restraint should be put upon it; yet, in the mean time, is advancing a Relation to an Office, which he is fit for, a Crime, because in other Instances it has occasioned a Crime, or may do so, or is a Temptation to it? And would it be a sufficient Charge of a high Crime against me, to say that I *illegally* and *corruptly* put into such an Office *A. B.* my Son or my Brother? I apprehend not.

Till a Restraint is laid, the Thing may be innocently done.

If a Restraint be laid, the Law will operate upon it, so far as the Restraint extends; but farther than that, and the Consequences declared to ensue thereupon, it will remain as before.

Considering this therefore in itself, and upon the Reason of the Thing, where is the Force of the Argument? You took 5000*l.* for putting in Mr. *Elde* or Mr. *Thurston*, a very fit Person and an excellent Master, and therefore you are criminal, because some body else at another Time may put in another Master not fit, upon his giving a Present.

If this then be not criminal in itself, how do they prove it to be so by the Common Law?

The only Case they have instanced as any Authority for that Purpose, is that of *Stockwith* and *North* in *Moor's* Reports.

But here give me leave to say, that it was proper and just for the learned Managers to produce, in making out their Charge, all their Arguments on this Head of the Illegality of this Practice, that there might be a proper Opportunity of weighing them, and giving them a satisfactory Answer (if it could be done) at this Time of my Defence, and I presume they have done so. But if they should think fit to reserve any fresh Argument for their Reply, which we shall apprehend may want an Answer, your Lordships will, in that Case, give me leave to insist upon a Right of taking proper Notice of it afterwards, and not let them reap any

Benefit by lying by, in such an unprecedented manner, and expecting your Lordships Judgment, without hearing the other Side upon it.

The only Case, I say, which they have instanced in, is the Case of *Stockwith* and *North* in *Moor's* Reports 781. I have looked upon the Case as it is in that Book, and it appears to be thus :

“ *North* was fined in the Star-Chamber, for that he, being Sheriff of *Nottingham* in the 43d Year of Queen *Elizabeth*, took Money for the Goalership and Bailiwick for that Year ; he gave them first to his Servants, who sold them, but he himself received the Money. And this was adjudged to be letting to Farm of his County, contrary to the Statute of 4 *Hen. IV. cap. 5.* Yet there note, that the Statute itself gives a Penalty certain and pecuniary, and is *malum prohibitum, non in se.* But the Court took it, that in as much as Corruption follows upon the Covetousness of Officers, and they are forced thereto by the Prices which they give for Things which ought not to be sold ; that this putting to Farm and selling of Offices, is *malum in se,* and finable”.

It appears here, that this was a Prosecution upon the Statute of 4 *Hen. IV.* for the Point adjudged was, that this was contrary to that Statute, and therefore whether what was done, was against the Common Law, or *malum in se,* or not, was not at all in Judgment before the Court.

And the mention of that is introduced as spoke to remove a Doubt, how *North* came to be fined, when a particular Penalty is (as it is there said) given by the Act of Parliament.

But that is a gross Mistake in the Reporter ; the Act of Parliament is very short, I desire it may be read.

It was read, as follows :

“ *Stat. 4. Hen. IV. cap. 5.* Every Sheriff shall abide in proper Person in his Bailiwick for the Time that he shall be such Officer, and that he shall not let the Bailiwick to farm to any Man, for the Time he occupieth such Office ; and that the said Sheriff be sworn from time to time to do the same in especial, amongst other Articles comprized in the Oath of Sheriff.”

Your Lordships observe, that there is in this Act only a *prohibitory Clause* against the disposal of such Bailiwick, but no pecuniary or other particular Penalty of any kind, inflicted by that Statute : So that it could not be a question whether a Fine was proper, as that Reporter supposes.

The Exactness of the Report therefore is not to be rely'd upon, and what other Mistakes may be in it, I know not. Indeed it is a posthumous Work, uncorrect Notes taken for his own use, and not intended to be published.

But however, taking it for Truth, that some of the Judges did speak to the effect in that Report : It is a common Observation, that when Judges are proceeding in the Case of a plain and express Law, Words used by them that tend to discountenance and farther expose the Crime then censured, are of no great Authority.

The very same thing is done in Lord Chief Justice *Coke's* 12th Report, with respect to turning arable Land into Pasture ; against which there was then an Act of Parliament in being ; and farther to discountenance it, it is there said to be *malum in se.*

And in many Places, Usury is said to be *malum in se,* and with greater Colour ; and yet I believe a Prosecution for it, would scarce be thought maintainable, farther than the Act of Parliament will justify it.

But as to this particular Matter of a Sheriff letting his Bailiwick to farm, before it was specially restrained by Acts of Parliament for that Purpose, there are many Footsteps of its being an ancient and allowed Practice.

The *Stat. de attinētis, Rast. Sheriffs 5.* containing several Provisions about Sheriffs, directs, that that Statute shall extend as well to those which were Sheriffs and other Ministers, that let to lease their Bailiwicks as to Sheriffs and other Ministers which hold their Bailiwicks themselves.”

Where the Sheriffs holding their Bailiwicks themselves, or letting them to Lease, which is letting them to Farm, is spoken of as perfectly indifferent.

Nor is the Expression supposed to be used in *Moor,* pretended to be built on any precedent Authority or Fact, but is barely the Reasoning of whoever he was that used it, from the Temptation to which Officers that pay Money are exposed ; and how just it is, I submit upon what I have laid before your Lordships on that Subject. Tho' the Danger from that Temptation is much greater in the Case of Bailiffs and Sheriffs that have only ignorant People to deal with in remote Parts in the Country, where it is difficult and chargeable to obtain Redress, than in the Case of Masters in Chancery, that act under the View almost of a Court of Justice, and where Persons wronged have an easy Opportunity every Day to obtain Redress.

So that this loose Expression mentioned by *Moor,* (coupled too with a gross Mistake) not at all to the Point of Judgment, is of very little force to prove the Case to which it is applied to be against the Common Law, and of less to prove the present Case to be so.

What then is there farther offered ? Do they shew that by the Common Custom of *England,* which is properly the Common Law of *England,* the taking Money for Offices has been, from Time to Time, punished, or condemned as criminal ?

No ; it is admitted on the one hand, that there is not one Instance of its having been punished or condemned as criminal, at the Common Law :

And on the other hand, it is notorious, that in fact the greatest Offices have anciently been sold even by the Kings ; and that not in a clandestine manner, but so that the Price, and what it was paid for, have been entered upon Record.

The Instances have some of them been mentioned.

Richard the Son of *Alured,* in the 5th of King *Stephen,* was to pay fifteen Marks that he might sit with *Ralph Basset* for the Pleas of the King, which *Ralph Basset* was then Justicier.

And *Walter de Grey,* in the seventh of King *John,* gave the King 5000 Marks to have the King's Chancery for his Life, and the Bishop of *Norwich* engages for the Payment.

I have the Copies of both the Records here in my Hand, if there be any doubt of them.

Nor are our Histories quite silent. In *Hollinshed*, in the fifth Year of *Richard I.* (who was one of the intermediate Kings between the two Kings I have named) it appears what was done, almost with the Sanction of Parliament, certainly with their Notice, and not with their Dislike.

“ The King (says the Historian) called a Parliament at *Nottingham*, and the first day of their Session *Gerard de Camville* was discharged of the Office of Sheriff of *Lincoln*, and dispossessed both of the Castle and County. And so was likewise *Hugh Bardolf* of the County and Castle of *York*, and of the Castle of *Scarborough*, and of the Custody and Keeping of the County of *Westmoreland*. The which Offices (as he goes on) being now in the King’s Hands, he set them on Sale to him which would give most. Hereof it came to pass, that where the Lord Chancellor offered to give fifteen hundred Marks beforehand for the Counties of *York*, *Lincoln* and *Northampton*, and one hundred Marks of increase of Rent for every of the same Counties; *Geffery* Archbishop of *York* offered to the King three thousand Marks beforehand only for the County of *York*, and one thousand Marks yearly of increase, and so had the same committed to his Regiment.

And in the Case of *Magdalen College*, in the fifteenth of King *James I.* reported in *1 Rolls’s Reports 157*, Sir *Henry Hobart* then Attorney General, and soon after Lord Chief Justice of the Common Pleas, argues from it, as a Principle not to be contested, That if any one procure an Office to himself for 1000 *l.* of the Gift of the King, the Office is not lost by the Statute of *5 & 6 Ed. VI.* which shews the think not wicked, not *malum in se*, or against the Common Law, for the Prerogative cannot extend to what is so.

My Lords,

Whoever makes the Grant, or receives the Money, the King or a Subject, the Temptation under which the Officer who paid it lies, to reimburse himself, is the same. And if the Strength of that Temptation make the thing criminal, it will make it so in all Instances.

It has been taken notice of by those Gentlemen who are of Counsel for me, that the Provisoes in the very Statute of *5 & 6 Ed. VI.* prove, that this is not against the common Law, or criminal in itself, at the same time that it puts a particular Restraint upon the Practice of buying and selling Offices, or Deputations to Offices.

Give me leave to add some Observations upon the Provisoes in that Statute.

Sect. IV. contains a Proviso, that this Act shall not extend to any Office whereof any Person is seized of any Estate of Inheritance.

Suppose a Man that has an Office of Inheritance takes Money from a Person whom he appoints as his Deputy;

Is not that Deputy as liable to be tempted to reimburse himself by Extortion or Corruption, is if his Principal had but an Estate for Life?

Can a Deputy’s Behaviour turn upon the Title of his Principal? So that 1000 *l.* (for instance) paid by him, will certainly make him corrupt, if his Principal holds his Office for Life, but will not make him guilty of the least Misbehaviour, if

his Principal have the Inheritance of the Office?

This Proviso is therefore plainly founded only upon the Regard the Law-makers had to the *Propriety* and *Interest* of such Owner of an Office; which they would not prejudice, and therefore he is left at full Liberty to sell the Office itself, or a Deputation to it.

But if to take Money from a Person who is to have or execute an Office, were unlawful by the Common Law, or wicked in itself; it is impossible that the Owner of the Office could have a *Right to that wicked or unlawful Gain*; nor could the Law-makers have any regard to it.

And since here they are *careful* not to take it from him, they allow it. They in effect make a formal *Declaration* that it is *lawful*, and that the Provision made by that Act is not so necessary, as that it should in any degree interfere with his private Property in that Instance.

Farther,

Sect. III. makes void all Agreements, Bonds and Promises for Money, for any Office or Deputation. But Sect. VI. provides, that the Act shall not extend to Agreements, Bonds, &c. made or concluded before the first of *March* then next.

This supposes it the Practice at that Time, not only to give and take Money for Offices, but to make formal Contracts for that Purpose, which the Courts of Justice were to compel the Performance of.

Does it condemn them as criminal in themselves, by reason of the Danger?

No: on the contrary it does not esteem the Danger so great, as that to avoid it the Property arising upon these Contracts should be taken away, or at all impeached: but leaves a Remedy in a Court of Justice to enforce the Performance of a Contract, which must necessarily cause a publick mischief, if that were true that it is unlawful in itself, and that its Unlawfulness arises from the Mischiefs consequent upon paying Money on that Occasion.

Had the makers of that Law been of the Opinion which these Gentlemen seem to be of, and thought such Traffick a Wickedness, it had been impossible for them not to have put a Stop to it, and absolutely disannulled all Securities and Cautions for the Performance.

I do not suppose the Form of Expression used in this Proviso will be criticised upon, or that it will be urged that the Words of this Proviso only import, that those Bonds are left *in such Force as they would have been, if the Act had not been made*, and does not make them good.

That would be a poor Subterfuge. The Proviso makes them not good, ’tis true. Why? Because it plainly supposed them to be good before; but that Sect. III. would make them void, if this Proviso did not prevent it; and this Proviso is on purpose to prevent it, and for nothing else.

And would the makers of a Law, would these Gentlemen in making a Law, insert a Proviso that Agreements should continue of such Force as they were before, if they thought them of no Force before? Nay if they thought them not only void, but mischievous?

The saving a Right of Action upon such Bonds, and making a Proviso in Favour of them gives them such Countenance, that those that had any such would certainly insist upon them, and the Persons

Persons that were bound would be discouraged from disputing with them what the Legislature did not think fit to deprive them of, and would therefore pay without standing a Suit.

There is yet one Proviso more in this Act, material to the present Purpose.

Sect. VII. provides, that this Act shall not *extend or be prejudicial to the Lords Chief Justices or Judges of Assize* ——— “ *but that they may do in every behalf touching any Office to be given or granted by them, as they might have done before the making of this Act; any thing above mentioned to the contrary thereof in any wise notwithstanding.* ”

This plainly implies, that at that Time, and before, it was the Practice for the two Chief Justices and Judges of Assize to take Money for the Offices in their Courts, else nothing in this Act could extend to what they *usually did*, or be of any Prejudice to them.

And it shews too, that the Law-makers did not dislike the Practice.

I beg leave to submit to your Lordships, whether this doth not amount to a Declaration of the Law, that the taking Money for Offices, whatever Danger there may be from it in some Cases, does not necessarily in all Cases, cause bad Officers to be made; nor the paying it make the Officer extort: For the Nature of Things changes not with the Titles of Persons. An Officer that pays Money to a Lord Chief Justice, will be under the same Temptation to get it up again, as he that pays to a Lord Chancellor.

As to the Wording and Form of Expression of this Proviso, I take it to be very clear, that the Words [*as they might have done before the making of this Act*] are declaratory; that they might before the making of this Act take Money for Offices; and because in the Case of those Officers the Danger was not so great, it is still saved and preserved to them.

If it be said that nothing is saved to them but *the doing what they might have done before*, and that they *could not before lawfully take Money for Offices*; I beg leave to answer, that if that be so, the Clause is perfectly frivolous. A strong Prejudice against the Exposition that makes it so in all Cases, but much more so here.

For as the Judges are always Attendants in this House, and this Clause greatly concerns them; it is highly probable that it was drawn up and proposed by themselves.

And if taking Money for Offices were then esteemed criminal; if the Notion is right which is now contended for, that taking Money for Offices was against Law, was Corruption; and that this Law was then passing to lay farther particular Restraints upon it; is it possible that the Judges could presume to ask not to have a Difficulty or Discouragement laid upon their being guilty of Corruption, or their doing a thing unlawful?

Or is it possible that the Lords and Commons should consent to it?

Or if the Judges would ask it, would they not have made it effectual? Would they, by proposing the Proviso, in effect, own a corrupt Practice, and their Resolution to continue it, ask Provision for it, and be indulged; and yet not ask what would effectually justify them in it?

I hope therefore that what is charged against

me is not condemned by the Common Law or Usage of this Kingdom. If it be, it properly lay on them to make it out; but they have shewn nothing to prove it; not one Instance of its being punished at Common Law, or blamed; not one Citation out of the old Books of the Common Law, precedent to the Acts of Parliament made relating to Things of that Kind. On the contrary, I have shewn it practised in the highest Instances, without Blame or Censure: And that several Clauses in the Statute of *E. 6.* were plainly founded upon a Supposition of this Practice being allowed by the Common Law, and continue the Allowance of it, in some Instances, to this Day.

This is what I had humbly to lay before your Lordships, with respect to the Common Law. And I shall now consider it as it stands upon the Acts of Parliament.

And as to Acts of Parliament relating to this Matter, they have suggested only two, the Statute *12 Ric. II. cap. 2.* and the Statute *5 & 6 Ed. VI. cap. 16.*

As to the Statute *12 Ric. II.* The Provision of this Statute is to bind those who make or name Officers in the Cases to which it extends, under an Oath to observe the Directions of that Statute in their so doing. And I hope I have already fully answered the Pretence of my having taken an Oath upon this Statute, which extends to any of the Officers in the Court of Chancery, I shall now consider that Statute and what may be urged from it, a little more particularly. And,

1. As I have already mentioned, I take the Statute of *12 Ric. II.* to relate only to such Nominations as are in nature of Elections; that is, such where the Nomination is in several Persons.

In those Cases it is common with us to have such Oaths administered, but not in others. We find them in Colleges, and other Bodies of Men.

The great Use and main Intent of such an Oath in those Cases is, to prevent Combinations, Strife, and Brigues, where the several Persons concerned will naturally have several Views. And the Animosities and Contentions arising thence among so great Officers as this Statute takes Care of, might greatly affect the publick Peace.

The Things which cause most Contentions on such Occasions, are *Money, Affection*, (by reason of Kindred or Friendship) and *great Solicitations*.

Accordingly this Act extends to all three, and takes Care to forbid the last (*Solicitation*) wholly; and the being influenced by either of the former.

The Persons *called* to name, or make Justices of the Peace, Sheriffs, or any other Officer or Minister of the King, are *to be sworn, that they neither name nor make them for any manner of Gift or Brocade, Favour or Affection; nor any that pursues by himself or any other, privately or openly to be in any manner of Office, be put in that same Office, or any other; but that they make all such Officers and Ministers of the most good and lawful, and the most sufficient to their Knowledge and their Conscience.*

My Lords, in the next place,

2. The Words of the Statute plainly import as much; that the Nomination there meant, is what is made by several Persons when they are called together.

“ It is accorded and assented; that the Chancellor, Treasurer, Keeper of the Privy Seal, Steward of the King’s House, Chamberlain of the King, Clerk of the Rolls, Justices of the one Bench and of the other, Barons of the Exchequer, and all others who shall be called to name or make Justices of the Peace, Sheriffs, Escheators, Customers, Comptrollers, or any other Officer or minister of the King, shall be firmly sworn that they neither name nor make Justices of Peace, Sheriff, Escheator, Customer, Comptroller, or any other minister of the King, &c. for Gift or Brokage; Favour or Affection, &c.

I own, that there seems some Difficulty as to this, because I do not know of any law, at that time, that any of these Officers, except Sheriffs, were named by an Assembly of several Persons.

But though there were no law requiring it, there might be an Usage to do it, by some Direction from the Crown for better Information.

And what is now done in relation to Sheriffs, turns in some part upon such Usage continued down to this Time, without any law, that I could ever hear of, for to support it, as to *all* the Persons who now meet to name them.

For by a Statute of 9 *Ed. II.* called the Statute of Sheriffs, printed in *Rast.* Tit. Sheriffs 2. “ Sheriffs are to be assigned by the Chancellor, Treasurer, Barons of the Exchequer, and by the Justices.

By 14 *Ed. III. cap. 7. Rast. 12.*

“ *Sheriffs shall be ordained by the Chancellor, Treasurer and Chief Baron of the Exchequer, taking to them the Chief Justices of the one Bench and of the other, if they be present: And in the Absence of the Chancellor, by the Treasurer, the Barons of the Exchequer and the Justices. And that shall be done yearly on the Morrow of All Souls (that is the third of November) in the Exchequer.*

This is the Statute that fixes the Time and Place now observed.

But as to the Persons, though the Justices of both Benches are in the first Act, yet none of them, but the Chief Justices are in the last. And the Lord Privy Seal, Lord Steward, Lord Chamberlain, and the Clerk of the Rolls, and other Lords of the Council, are in neither. And yet by constant Usage, all these attend at the naming of Sheriffs; and, as they see occasion, give their Advice and Assistance, and all take the Oath.

And by like Usage, which we cannot now account for, there was probably some such Practice with respect to other Offices.

For it is to make the Statute absurd, which provides that such and such, and all *others that shall be called to name Justices of the Peace, Sheriffs, Escheators, &c. shall be sworn to name these Officers without Favour or Affection*, if neither they nor any others were called to name any of these Officers.

3. This is the stronger, because constant Practice, the best Expofitor, has thus expounded this Statute.

If the Intention of this Statute were, that all the Particulars first named, that is, Chancellor, Treasurer, Keeper of the Privy Seal, Steward of the King’s House, Chamberlain of the King, &c. were to be separately sworn, as to the respective Officers under each of them severally;

Then this must have been made part of their Oath of Office, or administered at the same time

with it, though in a distinct Oath.

But that has never been done, nor has it ever been administered to a single Person at that or any other Time. Which is the strongest Argument possible that it is not what was then meant, or ever understood to be meant, by that Statute. But on the contrary, in the single Instance where several are called together to name Officers, that is in the case of Sheriffs, the swearing of them, to observe this Statute on that Occasion, is never omitted to this Day.

Give me leave to observe one thing more, that a Chancellor, a Treasurer may possibly be several Years in his Office; I believe Treasurers have in fact been all or the greatest part of their Time without ever taking this Oath, which is never taken, unless they happen to assist at the naming of Sheriffs, which there is no law requiring the other great Officers to attend at, and which is now become little more than a matter of Form, the list settled in that Assembly being every Year departed from in many Counties.

And if this that I have thus offered be the whole meaning of the Statute; then at this Day, as the Usage now is, it has nothing to operate upon but the Nomination of Sheriffs, and therefore extends to no other Cases, and consequently not to any of the Officers in the Court of Chancery.

But may it not be said, that though the Oath required by this Statute extend not to the present Case, yet will not this Provision amount to a Declaration of the Sense of the law-makers, that the Things thus provided against are such as should not be done, and consequently that the doing of them after such Statute will be against law?

To state this distinctly, would take up more Time than is proper upon this Occasion.

But this I beg leave to say, and it will be as well applicable to the Statute of *E. VI.* as to this, and perhaps more directly.

Acts of Parliament that contain political Provisions for making Regulations, or for avoiding Things not wicked, but which may be inconvenient, have not always this Consequence, that Actions done contrary to what they designed in the very Cases then in view will be criminal, and much less in Cases not in view.

Our law is sparing, in making the doing a thing a Crime, which may be rectified and redressed another way.

There are several Acts of Parliament to restrain Ecclesiastical Persons from making long leases, to prevent the Inconveniencies such leases may bring upon their Successors; those Acts declare such leases void, which therefore are against the Intent of those laws; but it was never thought that the making or accepting such leases was criminal.

The Sense of the law-makers is to have no Consequence, but what necessarily follows from the Provision by them made.

What they intended was, that the Successor, if he pleased, might set them aside; which would have this Effect, that none would take such leases, or they would do it on Terms advantageous to the Successor, or with a Resolution of being so good Tenants, as that the Successor would not take Advantage of it: So that either the lease would be vacated, or the Inconvenience would be prevented without, which fully answers the

the End of the Act. And this is very applicable to the Statute of *Ed. VI.*

In this Act of *Ric. II.* The Inconvenience provided against is only in Elections or Nominations by Numbers; the Provision is by taking an Oath.

If such Oath be taken and broke, that is a Crime; for that is the necessary Consequence of the Provision made, Violation of an Oath being undoubtedly criminal. But where no Oath is taken, much more where none is required, I do not see how doing the thing can be a Crime; merely because in some Cases it is in this manner provided against, and would be criminal if in doing it an Oath had been violated.

One thing intended to be entirely prevented in Cases within this Statute is Solicitation, or desiring a Place.

But has it ever been construed, in consequence of this Provision, that if I put a Person into an Office, who ever asked that or any other, I should be a Criminal, though I never took this Oath?

Then the Consequence will be, that the asking a Place, or the modest offering a Man's self for it, (which would be suing or pursuing for it in the Words of the Act,) will lay him under a perpetual Disability of having that Place, or any other.

Nay, since asking a Place is what the Statute has made a Provision to prevent; whoever asks a Place, does a thing intended to be prohibited by the Statute, and is therefore criminal.

Was this ever the Construction of this Act?

Nay, every one that assists in what was thus intended to be prevented will be criminal, and so will every one that asks for another at his Request.

My Lords, at this rate the Statute will be very extensive.

I would beg leave to mention one Case more, and hope the Gentlemen of the House of Commons will not take it amiss, or look upon it as any Disrespect to them.

By the Statute *1 Hen. V. cap. 1.* "*It is enacted, That Knights of Shires be not chosen unless they be resident within the Shire where they shall be chosen, the Day of the Date of the Writ of Summons. And that the Citizens and Burghesses of the Cities and Boroughs be chosen Men, Citizens and Burghesses, resident, dwelling and free in the same Cities and Boroughs, and no other in any wise.*"

The Statute *23 H. VI. cap. 15.* recites this last part of that Statute, and enacts, that it be *duly kept in all Points.*

And this is the Statute upon which Actions used to be brought, in our time, for false Returns of members to Parliament.

This is in direct Words a *Prohibition* of any Person's, being *chosen* that is *not resident*: But since the natural Effect of this Provision would be, that (the subject matter thereof being the Case of a legal Authority conferred by the Choice) Persons chosen, not being so qualified, might in consequence of this law be rejected.

If this political Provision be not complied with, is there another Consequence to follow, instead of redressing it this way, and the Parties concerned to be therefore made criminal?

Is it criminal in those who chuse for their

Representatives in Parliament, Persons not only not *resident*, but whom they never saw?

Is it criminal in those unqualified Persons, to presume to take their Places in the House?

Is it criminal in the other members, knowing such to be amongst them, not to turn them out *ex officio*, even though no Complaint be made from without Doors?

I think not.

Yet I apprehend that will be the Consequence, if laws of that Nature are thus to be explained; and every Action is to be judged criminal, which any Act of Parliament has made any sort of Provision to prevent.

As to the Statute of *5 & 6 Ed. VI. cap. 16.*

Although it has made Provision against the Sale or Disposal of Offices for money, yet nothing can be inferred from thence in Support of this Prosecution.

But that your Lordships may take a better View of that law, permit me to lay before you a few Observations.

The Preamble sets forth the End for which this Restraint was laid.

"For the avoiding of *Corruption* which may hereafter happen to be in the Officers and Ministers in those Courts, and Places, and Rooms, wherein there is requisite to be had the true Administration of Justice, or Services of Trust:

"And to the Intent that Persons worthy and meet to be advanced to the Place where Justice is to be administered, or any Service of Trust executed, should hereafter be preferred to the same, and no other.

Here is mention made of *Corruption*, but it is that which may happen in the Officers appointed, it calls not the taking money upon the appointing them *Corruption.*

It in effect says, what I have before said.

That giving and taking money is a *Temptation* to those who dispose Offices, to put in sometimes unfit Persons; to those who buy to extort and be corrupt: And consequently that if this Practice continue, there will be Instances, in which this Temptation will so far be yielded to, that Persons not worthy will sometimes be preferred, and those Persons will some of them venture upon being guilty of *Corruption.*

But to avoid all the *Corruption* which may happen in those Instances, and to the intent that this *Temptation* may in no case prevent, but that worthy Persons be advanced, and no other in any Instance, the Statute is made.

The main End whereof is answered, if worthy Persons be advanced, and they be not corrupt, but behave themselves well.

What then is the particular Provision made by this Statute? Not making way for an arbitrary Punishment, by declaring it to be *Corruption*, or criminal, or against the Provision of any former Law, to give or take money for an Office.

Not declaring that it shall be criminal for the future.

Not even enacting, that no Person shall take or give money for an Office: which might make the Contravention of this law, a Crime for the future:

For it is remarkable, that this Statute has not so much as any prohibitory Words in it;

But the whole Provision is barely putting the Case by way of *Supposition*, "*if a Person do take money,*" &c. and

and declaring the *Consequence*, which Consequence is, that the *Person taking* the money, if it were for an Office, *shall lose the Nomination to that Office*; if for a Deputation, he shall lose his Interest in the Office: And the *Person paying* shall be adjudged a *disabled Person* to have, occupy, or enjoy the Office or Deputation. That is, as appears afterwards, he is *disabled, so far as concerns himself*, his right to have it, and to *continue the taking of the Profits*: But not so far as the *Publick has benefit* by him: For by a Proviso for that Purpose, all *Acts done by him are valid*.

The Effect of which is, that the Officer who comes in for money holds that Office *precariously*, which would otherwise have been for *Life*, and is *wholly at Mercy*, if he gives the least *Occasion of Complaint* against him; and since he that put him in has lost the Nomination, there accrues to the King a Right to fill the Place with a better man in case he thinks fit.

And therefore I will not controvert, but that the Right or Power of Nomination to an Office may, by a Prosecution grounded upon this Statute, be taken from the Person who enjoyed it, and vested in the Crown.

But as there is no *such Power of Nomination* to these Offices *now in me*; but I *have lost it with the Office of Chancellor*, and therein have suffered a *much greater Loss* than that of those *Nominations* only; No *Judgment can be given against me upon this Act*, and therefore neither can there be founded upon it any Prosecution against me; for that is but a method of praying and obtaining a proper Judgment.

And to adjudge, that upon the Case which has happen'd, (supposing it to be within the Words and meaning of this Statute) any *Punishment* shall be inflicted, or any *Consequence* follow, beyond the *Loss of the Nomination*, is (with great Submission) to go quite out of this Statute.

Thus I have endeavoured to make out what I first propos'd, that the receiving a Present upon these Occasions is not criminal in itself, or by the Common Law, and that there is not any Act of Parliament whatsoever by which the same is made Criminal, or subject to any Punishment or Judgment which can be pray'd in this Prosecution.

My Lords,

All this Reasoning is greatly fortified by Usage, by my Predecessors; which Usage is expressly proved before your Lordships by all the masters, who could not refuse giving Testimony; that is, all the present masters admitted by my Predecessors, who are indemnified by the Act of this Session for that Purpose: And, I think, is proved too by the former masters now living, who declined giving an Answer to the Question, when asked, what they gave or knew given; making this their Excuse, that by our law no man is bound to accuse himself, and that to own they had given money would expose them to the Penalties of this Act. For whatever might be the Consequence of owning they gave money; there was no Danger in saying they gave none. And they might have given an Answer in the Negative safely, but that the Truth and their Oath would not allow them to do it.

And this Refusal of theirs to answer, was not a Contrivance of mine, they were supported in their Objection by the Gentlemen that are managers, who were pleas'd to give their Assistance to defend

them from answering the Question.

And might I have been allowed to have given Evidence of what has been from time to time declared, by Parties concerned, who are now dead; it would have been proved much farther.

But I apprehend the Thing is notorious; altho' some Proofs have been offer'd for Form-sake, yet it was equally well known before; known to all the World.

Give me leave likewise to argue farther upon this whole matter from what I said once already, that it is admitted there is not one Instance; that such taking money has been punished either at Common Law or upon Act of Parliament; that this, according to the Rules of our Law, is one of the strongest Arguments that it is not punishable. For it is not to be presumed, but that it has been often done; the Statute of *Ed. VI.* takes notice of the Practice; not only of doing it, but of entering into formal Contracts and Bonds for that Purpose.

Littleton, our most celebrated Lawyer, upon a Question, whether an Action would lie upon a certain Act of Parliament, rests upon it as a decisive Argument in favour of the Negative, that it was never seen or heard that any Action was brought upon that Statute; alledging, that if any Action might have been brought for this matter, it must be taken, that at some time or other it would have been put in practice. And the Lord Chief Justice *Coke*, in his Commentary upon *Littleton*, observes, that as Usage is a good Interpreter of laws, so Non-Usage, where there is no Example, is a great Intendment (as he calls it) that the Law will not bear it. Not that an Act of Parliament (as he goes on) can by non-user lose its Force; but that it may thereby be expounded, or declared how the Act is to be understood.

This is what I have to submit to your Lordships, that the taking money for Offices is not criminal, which, I apprehend, is the whole Charge in the Articles, except the *manner of taking it* varies the Consideration, which I shall take Notice of afterwards.

There is not the least Pretence, that money was given for putting in Persons unqualified, the suppos'd Crime is singly the taking money.

And as to what has been said by way of comparing it to the Case where any judicial Order or Determination is made for a Bribe; give me leave, with great Submission, to insist upon it, that there is not the least Parity at all betwixt that and the present Case: For in matters of Judgment, if the Party have a Right to what he sues for, he ought not to be put to buy his own; and much less, if he has not a Right, should he be at liberty to purchase of the Judge, that which is the Right of another.

But this here is not matter of Justice, but matter of Favour and pure Bounty; whether I put in this man or that man into a Place in my Disposal, depended wholly upon my own Choice and Pleasure; so that the Cases are not at all alike.

A Bribe strikes at the Root of the equal Administration of Justice; it is a professed Byass, and can mean nothing but to destroy Indifferency, and to render the Judgment partial.

It is therefore disallowed in all Nations, and in all Ages; and is expressly forbid by the Law of God: And had the Gentleman who touch'd upon the Text which condemns Gifts, been pleas'd to
cite

cite it at large, it would have appeared to relate to Bribes given in Cases of Judgment, *Deut. xv. 18, 19. "Judges and Officers shalt thou make thee in all thy gates — And they shall judge the People with just Judgment. Thou shalt not wrest Judgment, thou shalt not respect Persons, neither take a Gift. For a Gift doth blind the Eyes of the wise."*

As to the manner of taking money in the several Articles V, VI, VII, VIII, the Case stands thus.

V. There are in all, eight Articles relating to this matter; but they have proceeded only upon four: The first of which is the fifth Article, and relates to the money taken on Mr. *Kynaston's* Admittance.

Upon their own Evidence it appears, that Mr. *Kynaston* was well recommended by Mr. *Bayly*, a Person of a very good Character; that the first and only message brought to me, with relation to his Admittance and the money to be paid, was this; that he desired to be admitted on the Surrender of Mr. *Rogers*, and would make a Compliment of 1500 Guineas, or, if I did not think that enough I should please myself; and my Answer was, I was pleased with the 1500 Guineas, and he was admitted.

It has been endeavoured to make what was then done odious; by representing, that Mr. *Kynaston* first offered 1000 *l.* but Mr. *Cottingham* would not propose it; that it was work'd up by Mr. *Cottingham's* telling him that he had bought a good Office; that Mr. *Rogers* had told him he usually made 1700 *l.* and sometimes 2000 *l. per Annum* of it, and that he understood the Profits arose out of the ordinary Profits of the Office, and the Use of the Suitors money together.

As to the Offer of 1000 *l.* Mr. *Cottingham*, a Witness produced by themselves, denies it. And Mr. *Bayly*, their other Witness, who first broke the Affair to Mr. *Cottingham*, and at his Return from him, told Mr. *Kynaston* that Mr. *Cottingham* said 1500 Guineas would be expected, swears, that Mr. *Kynaston* immediately submitted to what Mr. *Cottingham* had so mentioned, only he said he thought it had been but 1500 *l.* And this was before Mr. *Kynaston* saw Mr. *Cottingham*.

So that Mr. *Kynaston's* Oath is directly contradicted by the Oath of Mr. *Cottingham*, one of their own Witnesses; and is highly improbable from what Mr. *Bayly* another of their own Witnesses swears.

And as to what Mr. *Cottingham* said about the goodness of the Office, he swears it was after the 1500 Guineas were agreed to be paid. And indeed upon that depended not so much what he was to present to me, as what he was to pay to Mr. *Rogers*, which had been agreed upon before Mr. *Cottingham* was spoken to.

So that here is nothing but my accepting a Sum of 1500 Guineas, which was proposed to me as a voluntary Offer, when I was at the same time told I might have more, if I would insist upon it; without one aggravating Circumstance, with relation to the Person admitted, or what I did.

VI. The next of these Articles is the sixth, which concerns Mr. *Thomas Bennet*, and the money given me by him, on account of his being admitted Master upon Mr. *Hiccocks's* Surrender.

And the whole of the Fact, so far as I was con-

cerned in it or knew of it, was but this. That Mr. *Cottingham* informed me of a voluntary Offer made by Mr. *Bennet* of 1500 Guineas, which I accepted. I believe he thought himself not ill used, and I being then extremely ill, he pressed to be admitted, for fear (as Mr. *Cottingham* swears he thought) of falling into worse Hands. On *Thursday*, and in the Nights before and after, I remember I lost near 50 Ounces of Blood; in about 24 Hours. And that Night Dr. *Mead* told Mr. *Cottingham*, that if the Distemper had not a Turn very soon, I could not live 24 Hours. On *Friday* Mr. *Cottingham* says, the Doctor told him the Distemper had a Turn: On *Saturday* morning Mr. *Bennet*, after great importunity, was admitted while I was in Bed, but Company kept out of the Room as much as could be.

This is what they have proved by Mr. *Cottingham*.

Mr. *Bennet*, who mentions nothing at all of me of his own Knowledge, but of the Kindness with which I spoke to him, and told him that he was admitted by a dying Chancellor, is their other Witness, who is to shew invidious Circumstances. And very solicitous he seems to be to do it.

He takes care to say, that he was ordered to come alone, and bring no body with him; as if it were the better to keep secret the Payment of the money, tho' he knew my great Weakness was the Reason.

He affects to say, the Bank-Notes were taken out in feigned Names, and that it was not thought proper to use my Name or his. Tho' upon another Article, when he is examined again, it comes out, that the feigned Name was that of his Clerk, whom he sent to take out the Notes, and it was merely *Bennet's* own doing.

He says, he offered 1000 *l.* to *Cottingham* at first, and tells a long Dialogue they had about it, but *Cottingham* himself upon his Oath denies it all.

So that here, at last, nothing is proved that passed with me, but the 1500 Guineas being offered to me and accepted.

And give me leave to observe, that the two Sums in these two Articles, were certainly not paid out of the Suitors' money. For whatever other Objection may be made against taking the Present before Admission, it has this Effect, to shew that it came not out of the money of the Suitors.

And yet there being a Pretence (without stating the Circumstance of Time, which I have just taken notice of) that they were paid out of that money, and that the Suitors were in danger of being Sufferers; I brought the money into Chancery, to be subject to the Orders of the Court.

The two other Articles, the seventh and eighth, were upon Admissions to Places vacant by Death.

VII. The seventh Article concerns the Case of Mr. *Elde*; and the Fact, as they have themselves proved, is thus:

Upon the Death of Mr. *Fellowes*, the former master, 5000 Guineas is offered and given to me by Mr. *Elde*; 6000 *l.* is offered by another.

It is admitted, that *Thomas Bennet* about three Quarters of a Year before, upon coming into his Place gave his Predecessor, who surrendered to him seven thousand five hundred Pounds, and to the

the Great Seal 1576 *l.* in all 9075 *l.*; and that Mr. *Kynaston*, two years before him, gave his Predecessor 6000 *l.* and to the Great Seal 1575 *l.* in all 7575 *l.*

And Mr. *Elde*, a Man of unblemished Character, of a good Estate, and not one Objection to his Fitness, is admitted, though he pays so very much short of what others had paid, and less than was at the same time offered.

And of this that he paid, 3400 *l.* was returned to him, and only 1850 *l.* retained.

I will not trouble your Lordships in relation to what my private Intentions were in that Transaction; if they were capable of being proved, I believe your Lordships would not dislike them.

Some little Reflection has been made upon the Money being brought in a Basket, as if it were for Privacy, and even to conceal it from Mr. *Cottingham*.

Whereas it plainly appears to have been without any Design, and only Mr. *Elde*'s making use of a Convenience he accidentally had in his Chambers.

But if there had been an Intention to conceal it from Mr. *Cottingham*, why was he the Hand to convey any thing? why was he the Person to bring up the Basket? Mr. *Cottingham* knew 6000 *l.* had been offered by another, and might rather guess this to be more than less.

And had Mr. *Elde* not been himself examined (which at that time it was not expected he would be) and Mr. *Cottingham* proved, that Mr. *Elde* had told him he would give 5000 *l.* for the Place; that another offered 6000 *l.*; that he had told me of it; that Mr. *Elde* after delivered him a Basket, which by its weight he believed to have Money in it; that he brought it to me; and that Mr. *Elde* was that day, or very soon after, admitted: According to the Candour of construing my Actions, this would have been said to be a convincing Proof, that there was 6000 *l.* in the Basket, or more: it being impossible for the *avaricious temper of the Earl of Macclesfield*, for his *Impotency of Mind*, his *constitutional Weakness in matters of Money* not to take the greater Sum.

VIII. The 8th Article concerns the Case of Mr. *Thurston*.

There, upon Mr. *Borrett*'s death, 6000 *l.* was offered me by another worthy Gentleman, but Mr. *Thurston* was admitted.

He says he gave upon that Occasion 5000 Guineas, but that all above 2000 *l.* was returned.

My Lords, Since what passed relating to that matter is not capable of proof, I will not trouble you with the particulars of it, which might be material.

Mr. *Thurston* is likewise a Person unexceptionable; Mr. *Baron Gilbert*, now one of the Lords Commissioners for the Custody of the Great Seal, gave me an extraordinary Character of him, and that determined me in his favour.

But there is no Objection to him neither, and therefore there needs no proof.

This is the State of the Fact upon these two Articles.

This is so far from *Extortion*; the Money is voluntarily offered.

So far from *Avarice*; the greater Sum is refused, and a less taken. And even the greatest part of that returned, 3400 *l.* in the one case, and 3250 *l.* in the other.

And the Persons such, that, were I to go through *Westminster-hall*, I cannot easily pick out two better Men.

Upon the whole, all that can be pretended to be in my hands now, upon these four Articles concerning Mr. *Kynaston*, Mr. *Tho. Bennett*, Mr. *Elde*, and Mr. *Thurston*, which are all the Managers have proceeded upon, relating to Money received from the Masters, is but 3850 *l.*; that is 1850 *l.* from Mr. *Elde*, and 2000 *l.* from Mr. *Thurston*; the rest having been all returned.

And as to that which was given back to Mr. *Thurston*; he has sworn, that he was sent for several times, in order to have part of his Money returned, and received it before the first Seal after *Michaelmas*, near a Month before any Order by the Lords of the Council to call for the Accounts, and while every thing was in the same State as when he paid it, and from his Evidence, it cannot be judged to be any thing but the effect of Generosity.

Mr. *Elde*'s was not returned till after the Accounts were begun to be taken, he continuing a long time in the Country; but when he came to Town, he had it.

IX. The 9th Article relates to 100 Guineas given me by Mr. *Tho. Bennet*, upon his disposing of his Office of Clerk of the Custodies or Lunaticks to Mr. *Hamersty*.

The Evidence is quite contrary to the Charge, as it is laid in the Articles, and amounts but to this, That *Bennet* having agreed to dispose of his Office to another, sent me a Present voluntarily of 100 Guineas upon that occasion, and tho' I, at that time, knew that more had been given in the like case, I was contented with that, and accepted it.

This is within the same reason, as the Case of the Masters; it has been practised by my Predecessors, as a Right of their Office, upon Dispositions of this Office, and others of the like nature.

Besides the proof of what had been paid to the Great Seal, upon another disposition of this Office; it has been proved, that another of my Predecessors, the late Lord *Cowper*, declared his Opinion, that he thought it his right to have a Present: And he having then passed a Grant of this very Office, without having had a Present, upon the Party's having pretended and assured him that it had not been usual to give any for that Office; he expressed great dissatisfaction, and declared that he thought he had been imposed on, that he saw no reason why that Office should not pay as well as others of the like nature. Which implies both the Fact of receiving Gratuities, or Presents upon Transfers of such Offices, and his claiming a Right to receive them.

As to the discourse Mr. *Bennet* pretends to have had with Mr. *Cottingham*, Mr. *Cottingham* denies it; and as they both are produced by the Managers to this point, this is a clashing between their own Witnesses; and that cannot be said to be proved by them, which is affirmed by one of their Witnesses, and positively denied by the other.

And if there had been any such Discourse, it is not brought home to affect me; for there is no pretence that I knew any thing of it.

But as to the whole Fact, wherein they differ, I think, from the Character that has been given of Mr. *Cottingham*, and what has appeared of Mr. *Bennet*, it will be no question at all, which of them two should be believed.

X. As to the 10th Article, there is no Evidence given.

XI. The next Article is the 11th. And the Substance of it is, *That in order to advance and increase the illegal and corrupt Gain arising to myself from the Sale and Disposal of the Offices of the Masters of the Court of Chancery, in violation of the Trust reposed in me for the Care and Protection of the Suitors, I did admit several Persons to the said Offices of Masters, who at the time of their Admissions were of small Substance and Ability, very unfit to be trusted with the great Sums of Money and other Effects of the Suitors lodged in their Hands.*

The Masters are not by this Article charged with the want of any other Qualification whatsoever, but that of Estate; nor is there the least Proof, or Pretence, that they were not in all other respects, Men of Abilities equal to the Duty to be discharged by them, honest, and unexceptionable in point of Reputation; but the single Objection to them is, that they were Persons of a small Substance.

The Proof offer'd upon this Article is this:

They have produced three Orders made in the Court of Chancery in the Months of *January* and *February* last, whereby it appear'd that *Mr. Conway*, *Mr. Kynaston*, and *Mr. Tho. Bennet* had not at that time brought in all the Money that appeared to be then in their Hands belonging to the Suitors of the Court. This is their whole Proof.

But I am intirely at a loss to know, how this can be stretched to prove, what Ability they were of at the times of their respective Admissions, or indeed that they are not of ability now to pay their whole Ballances, merely because on such a particular Day they had not paid their respective Ballances into Court.

Nor is there the least Proof that I had any reason to suspect their Ability, when I admitted them.

Mr. Conway had an Estate of between 5 and 6 hundred Pounds *per Annum*.

Mr. Kynaston was represented to me as a Man of Substance: Now, that he comes under another Article, to swear it down, he owns that he has an Estate of 4 or 5 hundred Pounds a Year, with Timber upon it worth 2500 *l*; and had likewise, at that time, in Money in the Funds, to the value of two or three thousand Pounds.

Tho. Bennet was esteemed a Man of a very good Estate and Substance. He is the Person to swear himself now worth nothing. And, to do it effectually, he sticks not at owning, that he has mortgaged part of his Estate for more than it is worth. Yet there is upon your Lordship's Table, the Particular given in by him to the Court of Chancery, wherein his Estate, besides that which he says he purchased since he was Master, appears to be about 500 *l. per ann.* and he owns he had, when he was admitted, a Place for Life of 250 *l. per ann.* which he after disposed of. He says he was worth 20,000 *l.* and had been sufficient still, but for the Losses in 1720, which he owns were not known to me, nor generally suspected.

But, my Lords, these two Gentlemen are making their Circumstances mean, in order to get back the money they paid for their Offices; which they could not do by their own Oaths, directly for their own Uses: and therefore they have thought fit to keep back so much of the money of the Suitors, when called upon to bring it in, that so the Suitors may complain to the Court of Chancery, and then their Oaths may be made use of, for the Suitors to found a Demand upon against their Predecessors.

And it is pretty remarkable, that their Deficiencies are neither more nor less than the Sums they at first paid to their Predecessors and to me, upon their being admitted to their respective Offices. In this therefore I apprehend your Lordships will think their Oaths are of very little value. It is hardly to be imagined, that they should have been so long in their Offices, and have just saved nothing, nor wasted; and that they are not a single Farthing either richer or poorer.

But whatever your Lordships Opinion, with respect to that, may be; I own, I cannot but think, that there is something very extraordinary in the Attempt; that these two Men have agreed with two Masters, that were in possession of two good Offices for Life, to give one of them 6000 *l.* the other 7500 *l.* for their Places; and now, that they are got into possession, would have the money back, and continue in the Places too: That is, in short, they are tricking those Masters out of their Places, under pretence of buying them.

But whatever their Behaviour or their Estates may now be, they appeared to me Persons of Reputation, and Fortune, when they were admitted: And I do not observe, that the Article hath so much as suggested, that I knew any thing to the contrary.

One of the managers wondered that I should let in Persons of no Fortune; and he solves it only by this, that they would give better Prices.

That had been something, if the Price had been given to me; but leaves it incredible, that I should let in any, that I had the least Suspicion had no Fortune; for the old Masters to receive 6000 *l.* and 7500 *l.* at the same time that they represent me acting upon the view of burying the Masters, and having the whole Price myself.

Where I was to have the whole Price, and the Temptation was greater, there is no Pretence I took in Men of no Fortune. And is it possible to think I would do it, where the Masters were to have the Price, and I so small a Proportion?

Great Strefs has been laid on comparing the Sums in the Masters hands, with their Estates; in order to shew their Unfitness to be trusted with those Sums.

How that Proportion is to be adjusted, I own, I am a little at a loss. Here is a Master, that has an Office that brings in a considerable Profit, and is worth 5000 *l.* which cannot be run away with: He has a handsome visible Estate of 4 or 5 hundred Pounds a Year; and a good Reputation. How much money may he be properly trusted with? I do not mean as a Borrower, who may be presumed in some want, of one sort or other, because he borrows; but as a Cashier for the Suitors? There are very few Bankers that have such a Fortune to set up with. And I do not see that any of those Bankers, that is a Man of good Reputation, and good Credit (tho' perhaps he has not a good Fortune of his own) is thought the worse of by those who deal with him, because he is trusted with very great Sums, far more than he is worth. The more he is intrusted with, the more are his Gains, and the safer all think themselves that have money in his hands.

There is in the Close of this Article another Charge, that I did publickly in open Court, falsely represent the Masters admitted by me, as Persons of great Fortunes, and in every respect qualify'd for the Trust reposed in them, to the manifest Deceit and Injury of the Suitors.

My

My Lords, as to that, I think nothing can more plainly shew, than this Article, and what has been said upon it, the forced Constructions put upon what I do.

Mr. *Waller* proves, that in July 1723, I declar'd in Court, that *the Masters were Persons of as good Fortunes and Abilities as any Set of Masters had ever been before them.* Which is spoke of the whole Body of Masters, and not of those only who were admitted by me. He says he was *astonish'd at it.* But he has given no Reason why. If he knew any thing, that any of them were not such as I described them; a little Candour would have made him believe, that I was not rightly apprized of their Characters; and a little Concern for the Honour of the Court, wherein he was a Practiser, would have made him set me right.

But, my Lords, is there any Reason assigned, why I should think otherwise than I spoke?

Mr. *Lightboun* is examin'd, to prove, that he told me, some of them were suspicious: But he does not say any such thing. All he says is, that he took notice to me of Mr. *Dormer's* misfortune, and told me, he knew not how soon the like misfortune might happen to others; which might be, (though they were all sufficient) if the Person, with whom they should deposit Effects, upon going into the Country, should fail.

But his Expression is a little remarkable; that he cannot say he told me any of the Masters particularly were suspicious, "*For he did not know how far he might be liable to an Action.*" An Action! what! for one Master informing the Chancellor, of the Circumstances of other Masters, in order to have proper Care taken! could he fear it? Who was to be the Witness? What must be the ground of the Action, if he told nothing but what was true?

But I think, he said he had not any particular Grounds for his Suspicion; and he says, *I was unwilling to believe it* of any of them. Why? because (as he says I told him) *I had had very good Characters of them, and therefore I hoped they were all good Men.*

It was not very kind, in that Gentleman, to call it an *Unwillingness* to believe, there was Ground to suspect them; when I assigned some Reasons, why I should not suspect them; and he gave me none, why I should.

So that here appears not any Reason, why I should believe otherwise than what Mr. *Waller* heard me say.

But to what end should I say it, if I did not believe it? Or how were the Suitors injured, or deceived by my saying so? Mr. *Waller* was not deceived; was any body else deceived? Or could any one be injured? But they have discover'd a reason, why I said it. They say that Mr. *Fellowes* was just dead, and there was a Master's Place then vacant: And that fact they have proved. But can any thing be more strained, than their Inference from it? Did I design, by saying these Masters were men of Fortunes and Ability, to raise the Price of that Vacancy? or to tempt Beggars to come in, that cared not what Price they gave? Does not what was then done, clear me of all Suspicion of that kind? Mr. *Elde* was the Person then admitted, a Gentleman of a very good Estate, of very good Character in *Westminster-Hall*, and 750 *l.* more offer'd by another, that was no Beggar neither, refused. And after that, Mr. *Thurston* was admitted, preferably to one that offer'd 6000 *l.* Is it possible, that I should give better Proof that I had not that avaricious View in it, that is suggested?

It was observ'd by one of the Gentlemen, that open'd the Evidence, that this was upon a *remarkable occasion*, when the Master of the Rolls had made an Order upon one of the Masters, to make a Suitor some Compensation out of his own money in the Master's hands, and I set it aside. And Mr. *Waller* began to tell something of the merits of the Case. But a very learned and a very judicious Gentleman, one of the managers, was pleased to say, They did not dispute the Justice of my Order; nor is there any Charge of such Injustice in the Articles.

XII. The next Article is the 12th, which sets forth

" That whilst the said *Thomas Earl of Macclesfield* executed the Office of Lord Chancellor, an unjust and fraudulent method was practised in the Court of Chancery upon the Sale of Offices of Masters of the said Court, and upon the Admission of new Masters, that the Prices or Sums of money agreed to be paid for the Purchase of the said Offices, and for the Admission thereinto, were satisfy'd and paid out of the monies and Effects of the Suitors of the Court deposited in the Hands of the respective Masters, surrendering their Offices, or dying; either by way of retenir of the Purchase in the hands of the Master resigning, or of replacing the money disburs'd for such Purchase or Admission by the succeeding Master, out of the money and Effects of the Suitors coming into his hands; by which Practice the Price and Value given upon the Sale of the said Offices, and Admissions thereinto, during the Time aforesaid, were greatly advanced, and several Persons of small Ability and Substance were encouraged to contract for the said Offices, upon a Prospect of the easy method of paying for the Purchase of the same, by means whereof great Deficiencies have incurred in the Offices of several Masters of the said Court, admitted by the said *Thomas Earl of Macclesfield*, which they have not been able to answer and make good; and although the said Practice was notorious and publick, and the said Earl was well inform'd thereof, and fully acquainted therewith, yet the said *Thomas Earl of Macclesfield*, in order to increase his own unjust and corrupt Profit in the selling the said Offices and the Admissions thereto (which in consequence of this evil Practice was rais'd and receiv'd by him out of the Effects of the Suitors, for whom he was intrusted) did not at any time, whilst he continu'd in his Office of Lord Chancellor, use or take any measures to reform the said Abuse, or to prevent the same; either by causing proper Schedules to be taken of the money and Effects of the Suitors deliver'd over and transferr'd, or by appointing any Person in his behalf, to inspect or supervise the Transfers or Deliveries thereof, or in any other manner. But on the contrary, the said *Thomas Earl of Macclesfield*, unjustly, corruptly, and contrary to the Duty of his said Office of Lord Chancellor (to whom the Superintendency of the said Masters and of their Accounts did appertain) did suffer the said fraudulent Practice to proceed and be exercised without any Controul or Check, whereby great Embezzlements have been made of the Suitors money and Effects, to their great Loss, in the Offices of several of the Masters of the said Court, who have not been able to answer and pay their respective

“pective Ballances owing upon their Accounts, in
 “breach of the Trust reposed in him for the pre-
 “servation of the Estates and Effects of the Sui-
 “tors; to the dishonour and discredit of the said
 “Court, and to the great injury and defrauding of
 “the said Suitors in a Court of Equity, established
 “for their Relief and Protection.”

My Lords, In support of this Article, two of the Masters, Mr. *Kynaston* and Mr. *Tho. Bennet*, have sworn, that their Predecessors stopt the price of the Places out of the Suitors money, which was to be delivered over to them: and that they gave the greater Price for their Places, because they found this an easier way of purchasing them. Indeed I must confess, that, according to the manner of proceeding of these two Gentlemen, it will come out to be an exceeding easy way, which they have discovered: since, if they can prevail in their present Attempt, they will have paid no price at all for them; they are to have their money back again, and not to be in the least impoverished by the Transaction. But is there any proof, that I was (as the Article charges) well informed of it? Or that I knew any thing of it at all? Not in the least, but only upon the Oath of Mr. *Tho. Bennet*, who swears that in a Conversation with me about a Treaty between him and Mr. *Hiccocks*, I took notice of an Article in his Account, delivered in to the Lords of the Council, wherein he mentioned 9075 *l.* of his Cash to be in the hands of Persons of Ability, meaning, as he after explained it, in the hands of Mr. *Hiccocks* his Predecessor and myself; and said, I was sorry for it, because it was discovering the method of paying for their Places out of the Court money, which I had taken care constantly to deny.

This (supposing my meaning to be what he would have) is surprizing. He says, that at the beginning of this discourse I was so cautious, that I would not speak to him about returning the money I had had, because probably he might be examined about that Conversation in another place. And yet he pretends that in the same Conversation I told him this. But does even he pretend, that I ever knew this, which I had taken care to deny? And was this a time to tell him of it, when he says, I expected he might probably be examined about his Conversation with me?

But I believe your Lordships will not give him the least credit, in this or any thing else that affects me. I beg leave to remind your Lordships that I asked him whether he did not then tell me, that, if Mr. *Hiccocks* would give him 2000 *l.* he would pay the rest of the money (which was to shew that he was worth at the least all but that 2000 *l.*) He denied it. My Lords, I then told your Lordships I could not disprove him in that, for I cannot be a Witness for myself. Therefore I asked him to another thing, wherein, if he did not tell the Truth, I might be able to falsify him; I asked him, if he had not said so to somebody else? He positively said, No. He said there was such a report, but he denied the thing. At last he did own that he had said, that if Mr. *Hiccocks* would repay 2000 *l.* he would stand it, or run the hazard, but never told any body he would pay the rest; he was not able. But Mr. *Holford* swears, that Mr. *Tho. Bennet* sent a message by him to Mr. *Hiccocks*, that if Mr. *Hiccocks* would repay 2000 *l.* he would discharge the Article in the Account, and take care to pay the rest, and he believed that Mr. *Bennet* was able to pay it, or he would not have carried the message. And

another Gentleman swears, that he said he would make it up, and a third that he could or would pay it. So that he stands contradicted in this particular, which I apprehend is material, by three Witnesses.

As to the method of Payment mentioned in the Article, it is stated to be, that the *Price of the Office was satisfy'd out of the Effects of the Suitors, either by way of Retainer of the Purchase Money in the hands of the Master surrendring, or of replacing the money disbursed for such Purchase by the succeeding Master, out of the money and Effects of the Suitors coming to his hands*: and the Methods suggested for preventing this, are, *causing proper Schedules to be taken of the money and Effects deliver'd over, or appointing Persons to inspect or supervise the Deliveries*; but I took not these measures, nor any others.

My Lords, the method of *paying by Retainer* could only be upon *Surrenders*. And why should I there assist to raise the Price? why assist to get a higher Price for one, whom I was to have no more to do with, only to have a poorer man come in, that might bring Disgrace upon the Court and upon me?

As for the other method, the *replacing the money paid*, that is, as I understand it, borrowing the money to make payment, and then when the Effects are transferred, discharging the Debt out of them: How was that to be hindered? not by *Schedules*, and seeing *the Effects deliver'd over*. The *Delivery of the Effects* is necessary to put that method in practice, and is far from hindering it.

But is this delivery over of the Effects so very material? Mr. *Meller* did not deliver over the Effects to Mr. *Borret* for some time: had they been still in his hands, had it been the worse for the Suitors? Whatever a Master does not deliver over, he continues responsible for, and the Suitors have the same Security for them, as they had before. *Hiccocks* and *Rogers* did not deliver over the Effects, but stopt Part for Payment; the consequence is, that they are compelled to bring them in. Had *Schedules* been made, and the Effects deliver'd over, and so *Kynaston* and *Bennet* been forced to pursue the other method, the Suitors had not had either *Hiccocks* or *Rogers* at Stake.

Indeed I never apprehended it necessary for me to see the Orders for Transfers obeyed, any more than any other Orders of the Court. It is the Interest of the new Master to call for the Effects, and of the old one to have a regular Discharge, which I do not see how he can have, without an Inventory of the Particulars, and a Receipt upon it; which is what I understand to be a Schedule, tho' it be never filed; tho' I apprehend the word Schedule is taken in a different Sense in the Report to the Council. And this I did believe the Interest of the Parties had made them do. Nor has it yet been shewn, that it was my *Duty* to look after these Transfers. By what Law, by what established Practice, where does it appear, that a Chancellor is bound to see such Schedules made, and the Effects transferred? If it be his Duty, without doubt there is some method, by which it may appear he has discharged it, in cases where he has done so. But is there ever any Entry made of it? Are the Schedules filed with any Attestations, that the Effects were actually delivered over in presence of Persons appointed by the Lord Chancellor? The Effects in Mr. *Holford's* Case were deliver'd over, I think, the day of his admittance, in Mr. *Lovibond's* in about a Week, in Mr. *Bennet's* in a short time; whether in presence of Inspectors,

appointed for that purpose, or not, has not appeared. Yet, my Lords, the Question is not now, Whether it be wiser and better to have Schedules prepared and filed, and for a Lord Chancellor to give Orders to see it done: But whether it be his *Duty* so that it is a *Crime* not to see it done? If the Suitors desire to have Schedules filed, in order to be the better able to know how much the new master is charged with; it is their part to search and make Application; and upon such Application, it is the Chancellor's part to make proper Orders; which they again are to take care to draw up, to enter, to prosecute, and see executed. And as to my desire, and Intention, to increase my own unjust Gain; which is to give the Tincture of Guilt to this, and make it criminal; can it be conceived, that I, who take not advantage of a higher Price, when I may have it, should, in order to raise the Price, refuse to check a Practice which the masters are supposed to make use of, to the prejudice of the Suitors, and only for their own Gain?

XIII, XIV, XV, XVI, XVII.

The 13, 14, 15, 16, and 17th Articles all relate to *Dormer's* Affair; and contain several supposed Stratagems to conceal his Deficiency: all founded upon the same View, and to prevent the Gain upon Sale of Offices from being lessen'd. Without that View to gain, I do not see any thing in these Articles, that is criminal. And therefore, if, in your Lordships Judgment, I shall stand acquitted of that, upon a full examination how my Heart stood affected in that Particular, I think all must fall to the ground.

XIII. As to the 13th Article particularly; It sets forth *That from an Apprehension that a publick Discovery of Dormer's Deficiency might lessen the unjust Gain I propos'd to make to myself by selling and disposing the Offices of Masters, I neglected and declined either to secure his Person or Estate, or to make a proper Inquiry into the Deficiency; but endeavoured by many indirect Practices to conceal from the Suitors the true State and Condition of his Office, as well with respect to his Effects, as to his Debt to the Suitors.* And the latter part of the Article says, *That upon Motion made in the Court of Chancery (after I knew Dormer was absconded) to have the Effects of some of the Suitors transferred to another Master for better securing them, I, to delude the Suitors into a Belief that the Effects were safe, and thereby prevent a publick Inquiry, there said, That the Parties need not be in haste, that Dormer was only gone to take the Air in the Country, that he would return in a little time, and all would be well.*

As to this latter part, they have not so much as examined a Witness to prove it: So that what Evidence has been offer'd upon this Article, amounts in truth to no more, than a Proof of *Dormer's* being deficient. But as to any Endeavour of mine to conceal the State of that Affair? or any refusal or neglect to do my Duty? there is no Proof.

It appears, that he went off in November 1720, that his Clerk and his Servants by his Order, gave out, that he was only gone into the Country for a while. But he was gone into *Holland* for fear of a Gaol. I knew nothing of it till after *Christmas*, and then all the Steps were taken that were thought most likely to get as much as possible for the Suitors. His Chambers were searched by some of the masters, and directions were given to stop the

transferring his Effects in the public Funds. And it was carried on so far, that he was stripp'd of all, and with Tears begged, that Application should be made to me, for some Allowance out of it for his Subsistence; which Mr. *Cottingham* refused, because the Estate fell short, and he knew I could not order him the money of other People. And it is not now pretended, that any thing was not discovered by him, but only a parcel of Hops; and that plainly was not concealed fraudulently; for he made no advantage of it; the Hops are unfold to this day.

But the Charge of concealing *Dormer's* Affair being the Foundation of so many Articles, give me leave here to say something of it, tho' they have made no Proofs of it, or of the other Facts in this Article.

My Lords, He going away in *November*, and never appearing more in Court, or in his Office, but another put into his Place in *May*; it is impossible his failing was, or could be, kept a Secret. Must not all the Suitors, who had money in his hands, know that he was gone? For my own part, I never imagined it was a Secret. And as they, and their Agents, could not but know what was doing; had they not been satisfied, that the Court was taking the best measures to make up the Deficiency; would they not have made Application for some Relief? I did believe the masters would make it good, Mr. *Cottingham* swears he told me so from them: He indeed does not now rightly remember the time, and answered not at first very readily whether it were before, or after *November 1721*, when the second Letter about the Accounts was wrote. But, of necessity, it must be before; because Mr. *Edwards* says, Mr. *Cottingham* told him it would be made up, just about the time of his being made master, which was in *May 1721*; and it is not pretended, there ever was any Thought, that it should be made up any other way, but by the masters. Mr. *Edwards* says too, some of the masters told him it would be made up; he does not remember by whom they said it should be made up; but I think he says, he thought, I believe the thing speaks, it could be by no body else but the masters. And even Mr. *Lightboun's* letter in 1722 takes notice of it as a thing always under deliberation, how the masters should make it up; and that he differed from the rest only in the manner; and in insisting that at the same time care should be taken, that the like Accident might not happen again, and they be exposed to another Contribution. If I was too credulous in believing this, sure it is no Crime. And I am apt to think, your Lordships will be of Opinion, that the Suitors believed the same, or those, whose money lay so that it might probably continue some Years, would have applied to have an Account taken, and that their Proportion should be reserved. But nothing of that kind was done by them. Afterwards there breaks out a Dispute between the masters and the master of the Rolls; thereupon Mr. *Lightboun* informs your Lordships, that many Orders were made in prejudice of the masters in other Branches of their Office; the Language of the Court varied (as he expresses it) in orders; and the money put into another Channel; whereby they lost, not only any Advantage that might be made of the money, but many Fees and Perquisites, that arose thereupon, and in the other Branches of their Office. Had not this happen'd, or should it be cured, I am persuaded that *Dormer's* Deficiency would all be made good. Contrary measures may prevent it.

There was some little Reflexion made upon that part of the evidence, which related to the message I first sent to the Bank; and also for that the Order, which was afterwards sent, and a Copy of it read, was never enter'd with the Register.

But your Lordships have had an Account that the effect of my message to the Bank (tho' there was no formal Order made) was, that a memorandum was entered in their Books, that no Transfer should be made without leave from the Court of Directors, or Court of Chancery, which had the desired effect. But it is true I made no formal Order, because I did not apprehend, that I had Authority to hinder them from permitting him to transfer, by an Order of Court to be entered in a Cause, wherein they were no Parties. And that which was sent after, was only to deliver them from the Restraint, they, it seems, look'd upon themselves to be under, by that message; and to answer the Entry in their Book.

And as to its not being enter'd; I must likewise observe, that even the Directions sent in *November* last to the masters by advice of the Committee of Council, for preparing and bringing in their Accounts were never entered: And yet the Gentlemen will not imagine, that that could be with a design to have it kept a Secret; but the true and only reason of it was, that those Forms are not necessary, but in adversary Suits, or unless there be occasion to enforce the execution of such Orders by the Process of the Court.

But they charge and argue, altho' they have proved nothing, that I have neglected my Duty.

My Lords, It is proved that I did a great deal more than they have proved to be my Duty. And what did I omit?

Obj. I did not (say they) secure his Person.

Resp. My Lords, was that a Crime? He was in *Holland* out of my reach. When he came into *England*, it was to deliver up all he had to the Suitors, and on promise of Liberty.

But if I had, would that have been of use to the Suitors?

Obj. I issued no Sequestration to seize his Estate.

Resp. The Estate was got without one, which is much better. The most usual Allowance upon a Sequestration is 6 s. 8 d. a day to every one of the Sequestrators that are employed to put it in execution, which would soon have eat up great part of the Estate. And I do not know that the Sequestrators would have found out the poor parcel of Hops, which is all that was not got then; and it was not imbezzled, but has been brought in now without the help of a Sequestration.

Obj. I did not examine him upon Interrogatories.

Resp. I order'd *Cottingham* to propose to the masters, whether they would have one; and they thought he would make a fair Discovery without, and were afraid lest that appearance of Distrust and Hardship might drive him away again, but if they should find it requisite, they would apply. No application was ever made to me to have it, nor does there any fraudulent Concealment appear, nor any thing diverted from the Satisfaction of the Suitors. And if he made a fair and honest Discovery of all, what imports it, whether he were sworn, or not sworn to it?

But I would beg leave to ask, Why should I neglect what was proper?

The Reason they assign is, That if I had done these things, it would have made a Noise and brought the Matter out.

My Lords, what could make a greater Noise, than that a master in Chancery absconded, and no money was received or paid, nor Business done in his Office from *November* to *May*, and then another put in his Place.

One of the Gentlemen expresses his Astonishment, how it could enter into my Heart, that this could always be concealed, or that so ghastly a Wound could ever heal of itself, without the Application of proper Remedies.

My Lords, it is yet more astonishing that it should enter into my Heart to endeavour to conceal it, for those Reasons which he supposes I had in view. And I should have thought the Arguments that raised his Wonder at my having done so, strong Arguments that I never did it; and indeed it is impossible I should endeavour or hope to conceal that, which I knew was so notorious and publickly known. Nor was I without Endeavours towards healing the Wound: Some of those Endeavours are attempted now to be made part of my Crime.

XIV. The 14th Article suggests, "That the said *Fleetwood Dormer* having towards Satisfaction of the Suitors of the said Court, assigned to *Henry Edwards*, Esq. (who succeeded him in his Office of Master of the said Court of Chancery) a Debt of 24046 l. 4 s. or some other great Sum due from *William Wilson*, a Banker, to the said *Fleetwood Dormer*, to the intent that the money received on the Account thereof, should be applied and disposed of, as the said Court of Chancery should order and direct, the said *Thomas Earl of Macclesfield*, whilst he continued Lord-Chancellor of *Great-Britain*, for the unlawful Purposes aforesaid, without Regard to the Interest of the Suitors, by Colour of his Office, did, in an unwarrantable, clandestine, and unusual manner, authorize, direct, and establish, a precarious and trifling Composition with the said *William Wilson*, upon the Terms of the said *William Wilson's* paying the Sum of 1463 l. 2 s. 1 d. and assigning 10000 l. part of a Debt of 22060 l. 12 s. 5 d. pretended to be due to the said *William Wilson* from *Edward Poulter*, or to that Effect, in discharge of the said Debt: And to that End, upon the Report of *John Hiccocks*, Esq. then one of the Masters of the said Court, without any Attendance ordered or had thereupon, and without Notice to the said Suitors, did by a private Order not made in open Court, order the said *Henry Edwards* to accept of the said Composition, in full Discharge of the said Debt, which said *Edward Poulter* was a Person insolvent, and has since absconded for Debt, and none, or a very small part of the said 10000 l. has been, or is ever likely to be received."

This Article your Lordships observe relates singly to the Composition with *Wilson*, which is charged to be authorized by me to the unlawful Purposes aforesaid, that is, to conceal *Dormer's* Deficiency, and keep up the Prices of the Offices.

Suppose this Transaction had been publick, nay suppose *Wilson* had been openly sued for this Debt; would that have fallen the Price of Offices, or discovered *Dormer's* Deficiency? If his absconding and assigning his Place to Mr. *Edwards*, did not discover it; would the Proof of his assigning this Debt to Mr. *Edwards* have discovered it? What End then could the Privacy of this Transaction serve?

But tho' it does not answer the Purpose, that is charged; yet it is insisted upon to be *prejudicial to the Suitors*, and giving up a great part of the money due to them from *Wilson*, and done in a clandestine manner, and without their Knowledge.

What Proof then is there, that this Composition was prejudicial to the Suitors? A small one it is indeed, but for a desperate Debt; and what Proof is there that they could have had a better; or that it had been better to have had none?

It is said, that *Wilson* paid to some of his Creditors their whole Debts.

It is true, that was said, but it has not been proved. If it had been proved, and the Circumstances shewn, probably it would have appeared, that he had a particular View in paying those their whole Debts, and it might be more beneficial to him to do so, and keep them his Friends; than if he had paid them only a part, as he did to his other Creditors.

And as small as the Sum is, my Lords, give me leave to say, it had never been got in for the Benefit of the Suitors, if this Composition had not been made. So that 2463 *l.* has been got for the Creditors, tho' no more should be recovered from *Poulter*, than the 1000 *l.* already got from him; where nothing had else been had, for what appears.

Obj. But *Poulter* was insufficient, and the Debt assigned from him worth nothing.

Resp. As to *Poulter's* Circumstances at that time: Some Persons have been called, who have proved ('tis true) that he was insufficient at that time, and could not pay more than three or four thousand Pounds; but the same Witnesses give an Account, that his ill Circumstances were then known but to four or five Persons of his Acquaintance, and that by all other People, who had any Knowledge of him at that time, he was looked upon to be very sufficient; he had left off his Business upon having raised an Estate; he was of good Reputation; he lived at *Hackney* in a House making a good Appearance, with good Furniture, and a great quantity of Plate, till the last, till the time of his being put in Prison, which was not till last Year, that he surrendered himself in discharge of his Bail.

But suppose he was not sufficient, how does that affect me? I was not obliged to concern myself with it, and left the Composition to the management of the masters; they made it: *Wilson* had sworn an Affidavit in Writing of his Circumstances, and that this was as much as he could pay to the Suitors: Mr. *Hiccocks*, a Gentleman of very good Reputation, was the master, he being then senior master, to whom I referred the Consideration of it, according to the course of the Court; he was upon his Oath in what he acted therein, and made his Report, that he was of Opinion this Composition would be for the Advantage of those to whom the money was to be paid. And upon that I grounded the Order.

Obj. But the Suitors had no Notice to dispute it.

Resp. The Consequence of that is only, that Mr. *Edwards* being their Trustee, and *Wilson* knowing it, whatever could be done between them would not bind the Suitors, if it were any way de-

trimental to them: Therefore they have the Benefit of all that has been got in upon it, and yet have still a right to enquire into the true Circumstances of Mr. *Wilson*, and to recover, in proportion with his other Creditors, any Effects he shall appear to have unfairly concealed.

Upon the whole of this Matter, could the Master, or I, have any indirect End to serve, by allowing *Wilson* to compound at an under rate? It is not pretended I knew him, or could intend him a Favour. Why then should I designedly lessen *Dormer's* Fund, which was before deficient, and which I was endeavouring to make up?

Obj. But it is said, that this was by my Direction.

Resp. Suppose it were; they have not proved any thing to induce a suspicion that it was not perfectly innocent, nay beneficial to the Suitors, or probable to be so.

But the Proof is only, that Mr. *Edwards* spoke to me about it, and asked me, if he might compound it of himself. I thought not: But Mr. *Hiccocks* having afterwards informed him that it was usual to do things of that kind upon a Report grounded on the Party's Oath, and an Order founded thereon; he proposed that method, and I thought it might be so done. And he did it.

But whether this was prudent, or imprudent; where is the Crime? This tended nothing to conceal *Dormer's* Affairs: he was known to be broke; and *Wilson's* Debt was esteemed desperate. There was no other View, nor could be, but to get somewhat towards *Dormer's* Deficiency, and no body is at all hurt by it.

Obj. But this was unusual.

Resp. In what?

Obj. No day was appointed to hear Counsel upon it.

Resp. My Lords, There was no occasion for Counsel; there was nothing for Counsel to be heard to; there was nothing for them to argue. The Order is in direct pursuance of the Report.

Indeed, upon carelessly reading the Article, one would imagine the Charge to be, that this was an Order made upon Mr. *Edwards*, without giving him Notice, or hearing Counsel for him. And that would be very unusual and unjust; if it were not that it is ordered upon his own Petition, and at his own Request.

Your Lordships will likewise observe, that this was the 3d of August, after the Seals were over; and if I must have appointed it to come on, upon a publick day (not to have it concealed) it must have waited till *October*; And by that time *Wilson*, and his Effects, might probably have been gone, and the Opportunity of getting any thing lost.

As to some few new Observations made upon reading these Proceedings, I see not how they tend to prove any Crime in me.

Obj. They are not filed.

Resp. That is not my Affair. And if they are never filed, they will affect no body, and cannot possibly do harm.

Obj.

Obj. Some Lines or Words appeared raised out: which import that Mr. *Edwards* should be indemnified.

Resp. If he acted fairly in this matter, he would be indemnified, tho' those Words were out; and if he did not, they ought not to be in.

In short, here is not the least Evidence, but that this Composition was made with a View to get as much as could be for the Suitors, out of a desperate Debt; there is no body hurt by it; and if it be not of advantage to the Suitors, they may avoid it.

XV, XVI. The 15, 16, and 17th Articles were opened together: But one Gentleman spoke more particularly to the 17th, as being of different nature from the others; and therefore I will speak to it separately.

The principal Subjects of the 15th and 16th Articles are 4500*l.* raised by the masters, and 1000*l.* by myself, towards *Dormer's* Deficiency.

In the last Article I spoke to, the Crime was, the lessening *Dormer's* Effects by a trifling Composition; in these, increasing them 5500*l.* is a Crime.

At first sight, one would think this commendable, but, by I know not what Fatality, every thing grows criminal by my having any concern in it. My Intention infects all. It is said that I intended by it to carry on my corrupt Purposes, that is, as one of the Gentlemen explained it, to conceal *Dormer's* Deficiency.

But all that appears upon the Proofs offered relating to my Intentions is, that here was a strong Desire to make good *Dormer's* Deficiency; and that way of concealing it is surely not blameable.

But then as to the 4500*l.* is it said, that I induced the masters to pay it by colour of my Authority.

How is this proved?

Mr. *Conway* produces, and proves, the Receipt he had given him by Mr. *Edwards*, for 500*l.* voluntarily contributed by him towards Mr. *Dormer's* Deficiency; and says, that he had promised it in February, and paid it accordingly in August.

Mr. *Edwards* says, that in 1721 he received 500*l.* apiece from all the masters, but Mr. *Lightboun*.

Mr. *Lightboun* says, that when Mr. *Cottingham* spoke to him of it in February 1720, he told him, all the other masters had agreed to it; but Mr. *Lightboun* refused it: That I never spoke to him of it till January 1722, which was near two Years after; that then, I was so far from making use of my Authority, that when he asked me, whether it was my Proposal or the masters; upon its being said, it came from the two senior masters, he took occasion to speak more freely against it; and though I used some Arguments with him, yet he says I left him to his own Inclinations.

My Lords, these are their Proofs. But they are to be helpt out by some Constructions.

Obj. It is said, that the Letter which I caused to be sent in February 1720 to require them to give in their Accounts, was in order to terrify them to

come into a Composition: for it is said, when that had its effect, and the money was paid, they were not obliged to bring in their Accounts.

Resp. This then, I suppose, is that Colour of Authority by which (according to the Charge in this Article) I induced them to contribute.

But in the first place I beseech your Lordships to consider, whether it can be thought, that any of the masters would pay 500*l.* rather than let me know what was in his hands; which was all the Consequence of my having an Account? If it cannot; why should it be, without the least Proof, imagined, that I should expect it?

In the second place I must beg leave to observe, that the masters best know, what effect that Letter had upon them, and what was the motive of their advancing that money; but none of them have sworn, that they were in the least induced to pay the money by the fear of that Letter, or by the apprehension of being forced to give in their Accounts if they did not comply. Nor do the Circumstances shew it. For Mr. *Conway* came in but in that February, and had but little money in his hands, and a very short Account to make. Mr. *Kynaston* and Mr. *Tho. Bennet*, who are now deficient, were not then masters. Mr. *Holford* had got an Account ready, yet he paid. Mr. *Lightboun* gave in no Account, and yet he did not pay.

So that upon a View of the Evidence, here is a good Action done, very beneficial to the Suitors; and no indirect Practice to bring it about,

And therefore the Charge not being proved, I am according to my general Plea, not guilty of the matters contained in this Article, or any of them, in manner and form as they are therein charged against me. And there is no occasion to make out what I have stated in my Answer, to have made this matter more clear, in case they had given occasion, by having produced Evidence to maintain their Charge.

However I have shewn a second Letter, written by my Order, in November following, requiring those Accounts with more earnestness. Mr. *Cottingham* produces the Draught of it, and tho' he will not swear positively that he delivered or sent it; because he does not find any memorandum of it: he verily believes he did, and has not the least ground to suspect the contrary.

Your Lordships will observe, how very particular the Account was directed to be.

The first Letter was wrote the 14 of February, 1720, Your Lordships will give me leave to read the Copy kept of it.

[Reads.]

“ 14 February 1720.

“ I am commanded by my Lord to signify to you, that you do, with all convenient speed, lay before his Lordship an Account in several Columns.

“ 1. Of the Cause.

“ 2. Sollicitour, or Agent.

“ 3. The Date of the Order.

“ 4. For what Purpose the money was brought in.

“ 5. How much was brought in.

“ 6. When.

“ 7.

- “ 7. How much in hand.
- “ 8. How much on Securities.
- “ 9. How much paid out.

A distinct Account of Securities.

- “ 1. Cause.
- “ 2. From whom the Security is taken.
- “ 3. What the Security is.
- “ 4. In whose Name taken.
- “ 5. For how much each Security.
- “ 6. The total of the several Securities.
- “ 7. In whose hands lodged.

A distinct account of Money paid out.

- “ 1. Cause.
- “ 2. By what Order, of what date.
- “ 3. When paid.
- “ 4. To whom.

The second Letter is dated the 7 November 1721. And is in these words:

[Reads.]

“ By my Letter of the 14 of February last, I signified to you my Lord Chancellor's pleasure, which was that you should with all convenient speed lay your Account before his Lordship, the method whereof was to be in several Columns subscribed at the foot of that Letter. I am now farther to acquaint you, that his Lordship is very much surprized to find that in all this time no such Account hath been laid before him; and therefore hath commanded me to tell you, that it is expected to be delivered on or before the last Day of this Term; and if this is not complied with, you will oblige his Lordship (tho' very unwillingly) to think of other measures, which I doubt not but you will avoid by a ready compliance with what is a second time required of you. And to the end there may be no mistake as to the method of your accounting, I have subscribed it again at the foot of this Letter.”

And Mr. Cottingham explains what he apprehends was meant by that Passage of *other Measures*, that I would make an Order in form, that is, an Order of Court to be entered with the Register. He tells your Lordships what Representations they made of the Difficulties of drawing up such Accounts: And I did not afterwards insist upon them. And your Lordships will be pleased to observe, that the Letter sent by me, in Form of an Order, in November last, by Advice of the Lords of the Council, was for an Account much in the same manner. The words are these:

[Reads.]

“ Dated 3 November 1724.

“ Let the several masters of the High Court of Chancery forthwith prepare and deliver to me a perfect Account of the money in their Hands, therein distinguishing in several Columns.
“ The Names of the Parties to the Cause.

Vol. VI.

“ The Dates of the Orders for } { Money or
bringing in } { Securities.

“ The Time of bringing in each Sum.
“ Particularly expressing the Sums transferred and paid to them at their coming into their Offices, in the first Place.

“ How the same hath been disposed,

“ What Sums paid out, and to } { when and
“ whom, } { by what
“ What invested in Securities, } { Order.
“ Specifying the Securities by Dates, Numbers, &c.

“ Where the Securities are at present,
“ What money remains in their Hands,
“ Where the same now is.

Mr. *Holford* tells your Lordships, that another Account was carried in by my Order instead of one so particular; for that an Account drawn up in that manner, would have taken up several months: And in February 1721 or 1722 it must have taken up many more; because there were then masters, who had been much longer in their Offices, than Mr. *Holford* the now Senior master had, in November last, been in his. And those Accounts must have gone through their whole Time. And, if your Lordships will be pleas'd to look upon the Report on the Table, it will appear that the Judges and Directors reported, that no regular Accounts could be taken, unless they were brought down from the Beginning of the time, that each master had been in his Office; and yet the Lords never insisted on any such Accounts afterwards (tho' I had made an Order for them by their Advice) nor the Lords Commissioners since; which what is it, but falling into the same Sentiments that I had done before? The requiring the Dates of the Orders on which money was paid, and the Solicitors Names (which I found not one of the masters was able to give me) was intended by me, that I might be able to make some Examination into the Truth of the Accounts, that should be given in. And for want of that, your Lordships know, what methods the Lords Commissioners have been forced to take; to have the Accounts of the several masters printed and publish'd, and dispersed throughout *England* at a publick Expence; that People may come in voluntarily to make a Surcharge. And yet it is well known, that the preparing the present Accounts, short as they are, containing only the Balances of Securities and Cash, which the masters owned to be then in their Hands in each Cause, so took up their Times, that the Business of the Court before them stood still for some time, and their Attendance in Court was dispensed with. No Wonder then if I did not insist on these Accounts, which were to be attended with so troublesome, so tedious, and so fatiguing an Enquiry.

These are some Facts, that I have not indeed examined to; but with Submission I do not stand in need of them: If I did, they are notorious; and I believe the managers, some of them at least, know them, and will not deny them; and the masters, being your Lordships Attendants, may be asked to them, by any of your Lordships, who shall think

think there needs any farther Satisfaction to be given concerning them.

Obj. But why then did I not content myself with the shorter Accounts, and take them at least, such as were deliver'd into the Committee of Council?

Resp. As to those Accounts; I shall beg leave to say something upon them under the 18th Article, which, I flatter myself, will give your Lordships intire Satisfaction on that Head.

Upon the 16th Article I take the Liberty to say as to the 1000 *l.* paid on Mrs. *Chitty's* Account; I never expected that an Act of Humanity to Mr. *Lockman* should be made a Crime.

The supposed Crime, I think, consists in this, That it was in *farther Prosecution of my unjust and corrupt Purposes, that is, Keeping up my gain in selling Places, by concealing Dormer's Deficiency.*

How is this proved?

Mr. *Lockman* tells of his applying to me, and my saying to him at first, that it should be paid; but telling him after, that there were not sufficient of *Dormer's* Effects left; that the masters were in great Apprehensions of losing the Profits of their Places, and were not willing to advance any money; that he told me of a Composition he had made, that the Time was near; that then I said, I would order *Cottingham* to pay the money; but told him, that if Mrs. *Chitty* had nothing else, he might by marrying her make himself worse; for there would be no more money paid her thence. And he swears that he did not look upon that Sum to be paid out of Compassion, but only as it was due. He says, it was about a fortnight before the 1000 *l.* was paid, that I told him no more would be paid. Upon some Questions put to him by me, he said, he asked for another 1000 *l.* on account of Mrs. *Chitty's* Children: But that after I had told him, no more than the first mention'd 1000 *l.* would be paid, which was a fortnight before it was paid, he asked it no more; and deny'd that he apply'd for the Payment of 500 *l.* or 574 *l.* after I had promis'd the 1000 *l.*

My Lords, all this, supposing it true, does not prove that I paid this money to conceal *Dormer's* Deficiency; for he says I told him before, that *Dormer's* Effects were all gone; and at the Time when I made the Promise of that money, I told him no more of her money would be paid.

And is it rightly collected from this Action, without farther Proof, that my Intention in paying this money, was to *conceal* the very thing, which I at the same Time *expressly published*?

But, my Lords, it is fully proved on my Part by Mr. *Cottingham* and Mr. *Elphinstone*, that this 1000 *l.* was advanced out of a generous Compassion, and not out of any by-end: That his Application was founded on this, that he was to marry Mrs. *Chitty*, and was to have this 1000 *l.* to pay a Composition for his Debts; that I had sent him word of the Deficiency, and that he could not have the money; so the great Secret was out: But that he afterwards appear'd in the utmost Distress and Agony, in Danger of laying violent Hands on himself, and desperate: This Distress moved me; I told him, I would order the money to be paid out of Compassion to him; he afterwards spoke of it with the utmost Acknowledgment: I told him this, and gave the Order accordingly on *Monday*, and it was paid the *Thursday* following, which was the 30th of *July*;

and as to Mr. *Lockman's* Testimony, who denied that he apply'd for a farther Sum; it has been proved, under his own Hand, that he apply'd for 574 *l.* for Mrs. *Chitty*, on Pretence she could no otherwise spare him the whole 1000 *l.* and this after the time was appointed for Mrs. *Chitty* to receive the 1000 *l.*

Here the Earl of *Macclesfield* informing the Lords, that he found himself so far spent, as not to be able to proceed at present, the House adjourned during Pleasure, and after some time the House being resumed, the Earl of *Macclesfield* went on.

My Lords, when your Lordships were pleased to allow me to retire, I was just upon Mrs. *Chitty's* 1000 *l.* and had spoke of that Part of the Transaction that related to Mr. *Lockman*. And as to the next, which is the Charge of endeavouring to persuade the masters to advance that 1000 *l.* and using the Arguments in the Article mention'd for that Purpose:

Upon the Evidence it does appear, that there was a meeting of the masters at my House in the latter end of *July* last; and some such Arguments used as in the Articles, but not (as is charged) to have a present Purpose of paying the 1000 *l.* answered, but to have *Dormer's* Deficiency all made good, by small annual Payments out of each Office. A View, which I hope your Lordships will think very innocent and commendable, whether likely to be successful or not. And this was so much the Intent of my desiring the masters to come together, that tho' that 1000 *l.* was the immediate Occasion, that discover'd the Effects to be then all gone, and so might naturally be mentioned, and I doubt not but it was, I do not yet remember that I persuaded the masters to pay it; Nor does Mr. *Lovibond* remember it; and Mr. *Holford's* Expression was (if I took him right) only, that he apprehended it was mentioned *as if* the masters should contribute to make up that 1000 *l.* However, my Lords that was not the End which I aimed at and mentioned; and upon the whole Evidence all agree, that the Discourse about the 1000 *l.* was soon over, and ended with my saying, That I would take, or had taken Care of it. Mr. *Lightboun* says, he is not sure which of the two Expressions I made use of. And even Mr. *Tho. Bennett* says, that when I had said so, nothing was afterwards said of that, but of *Dormer's* Deficiency; and then came in the Discourse of the Parliament. Mr. *Holford* represents it, that after some Discourse of the 1000 *l.* I spoke of *Dormer's* Deficiency; and particularly of the mischief, which was what Mr. *Edwards* had a little before said, that some had had all, and others none (which would not at all be cured by Payment of this 1000 *l.*) and that then I mentioned, that that might make great Clamour, and possibly occasion a Parliamentary Enquiry: Where if it were resolved that buying those Places was against the Statute of *Ed. VI.* it might affect me in the Disposal of the Places, and the masters in the Enjoyment of their Places: He says several things were proposed, but nothing agreed on. One Proposal was, whether if the masters were continued on the same Foot they had been; it would not be worth their while to contribute?

The masters have not had so good memories in this Case as I hoped. But Mr. *Lovibond* does swear,

swear, that all or the greatest Part did then agree, that if their Offices were establish'd, as they had been for forty Years, they would make an annual Contribution towards *Dormer's* Deficiency. And he heard no body say otherwise, only he himself (he says) did not agree to it.

So that it appears upon the whole, that what I said was not with Intent to supply a present Purpose, as is charged; for I had declared to them, I had taken care of that, or would take care of it. And if I could, by setting such an Example, or by any Arguments I could use, induce them to contribute by Payments, as they could be spared out of the Profits of their Offices, to make good the whole Deficiency, or if not all, yet to make good the Proportion of those who had had no part of *Dormer's* Effects, I see no harm; and I am sure there was no Fraud in it. It is to conceal it and prevent Clamour or Inquiry about it, only by paying it; which would leave no Room or Occasion for Clamour or Inquiry; or if they could not pay the Whole, by paying the Proportion which any one could be intitled to.

And this Proposal, to have it paid by Annual Payments out of the several Offices, did not tend to raise the Price of them, but on the contrary by laying a Burden upon them, would greatly diminish their Value.

Whether the Design I had, or the Arguments I used, were prudent, or discreet, or proper, I submit to your Lordships Judgment; but the Arguments were not used for the Purposes in the Article, but for the Benefit of the Suitors of the Court.

But to give this some appearance of a Crime, they are forced to attribute it to criminal Views and Designs, of which they have made no Proof; nor shewn any Probability, scarce Possibility, that they were the Principles of this Action.

I might farther observe, that the paying the 1000 *l.* and leaving the 500 *l.* (which in the very same Order is directed to be paid to the Plaintiff) unpaid, and the 574 *l.* demanded by Mr. *Lockman*, unpaid; would not at all hinder the Deficiency from breaking out.

As to the Expression charged in the End of the Article, to be used by me, I agree, I used one very near it; but with other Expressions along with it (which the Witnesses in effect owns) that shew, I could not possibly have any ill Design in it; nor could any Inconvenience ensue upon it. No Question had till that time been laid before the Court relating to *Dormer's* Deficiency: *Chitty's* was only an Application for Favour, for a Sum then particularly wanted, because there were at that time no Effects; and was paid by me out of Compassion; there was no Question of Right about it to be decided, as was here, when the Dispute was, who was to bear the Loss, if any, and could be determined only upon Circumstances. I at the same time was so far from endeavouring to have it believed, that there was no Deficiency in *Dormer's* Office, or that I knew not of it, that I declared a great deal, which I knew about that matter.

As to what they object, that the Order is drawn up in such a manner as implies (as they say) my being wholly ignorant of the matter, by directing an Enquiry whether there was likely to be any Deficiency or not:

Give me leave to say, that if I had known more

of it; if I had known to a Farthing what *Dormer's* Deficiency would be; I could not as a Judge found an Order upon my own private Knowledge, but must make it in the same manner as if I had known nothing at all; and accordingly that Order is worded in the same manner, as it must have been, if I had never heard of *Dormer's* Failure before.

Besides, it had been then talked, that *Wilson* had not dealt fairly in his Composition; and if so, and if he were worth it, the Suitors might recover near 22,000 *l.* more against him. A matter extremely proper for the master to enquire into.

XVII. As to the 17th Article, which relates to Orders for payment of monies deposited with *Dormer*; which Mr. *Edwards* (as is charged) was directed by me to pay, without regard to that Proportion, which ought to have been observed in a defective Fund.

They have read four Orders made by me, and no more, three of them in one Cause; and only one of them directs the whole money to be paid out. I said in my Answer, that I did not know that I had made any other Order than that of *Chitty*; but believed the Court might have made others; which gave occasion, it seems, to some of the Gentlemen to wonder at the Distinction between me and the Court. My meaning was, that such Orders might have been made by the Court in my absence, for ought appeared; that is, by the master of the Rolls and Judges, with others in Commission for hearing of Causes.

But as to what was done by me; the proper Answer to this Article, the true one, and I hope a satisfactory one, is, that I acted so as I thought would be most for the good and benefit of the Suitors. I fully believed all along, that the Whole would be made good, to which I contributed all I could; and I acted accordingly. If I was mistaken, I hope it is no Crime.

XVIII. As to the 18th Article, three Neglects are charged upon me in this Article.

1. Not taking proper care of the Securities lodged with the masters.
2. Not taking Security for the Cash.
3. Not taking the masters Accounts.

There is another thing expressed, which is permitting and encouraging the masters to traffick with the Suitors money and Effects. But that I apprehend means only, that the not taking due care to hinder them, is permitting and encouraging them. So that it does not make a distinct Branch of the Article; but is only a supposed Consequence of the rest.

As to the Securities and Cash, what I am charged to have omitted doing, was never done before by my Predecessors, nor desired then of me by the Suitors. And, therefore I suppose, there is a particular Reason assigned why it should have been done by me, tho' not before; and that is Mr. *Dormer's*

mer's Failure, which is charged to have been chiefly occasion'd by his taking upon himself *unduely to dispose and employ* the money and Effects of the Suitors in his hands. And this the Article charges that I knew.

My Lords, as to this particular Reason: To add a new Duty to my Office from it, and to lay me under an Obligation to do that, which my Predecessors were not obliged to; it ought to be clearly made out that the Fact is true, that this was the Cause of *Dormer's* Failure; that I knew it to be so; and that thereby it became my Duty, unasked by the Parties interested, to make the new Provision expected. But there is no Proof that *Dormer* did unduely dispose of or employ the money and Effects of the Suitors in his hands; much less is it proved, that I ever knew it, or had the least reason to suspect it; but the contrary.

The Account Mr. *Parkhurst* gave of what passed at the time of *Dormer's* going off, was this (which was represented to me, and never shew'd to be false) That Mr. *Dormer*, who was his Uncle, informed him, that having happened to receive a greater Sum than ordinary out of the Exchequer, and going into the Country in the Long Vacation 1720, he knew not where to leave it safer than with Mr. *Wilson*, an eminent Banker; and he left it with him to the value of 24,000*l*; that upon his return to Town, he found Mr. *Wilson* stopt payment; and that therefore he would withdraw himself, for fear of a Goal; that accordingly he went into *Holland*, and wrote a Letter from *Rotterdam* to Mr. *Parkhurst*, with one inclosed, to be shewn to the masters, and sent to me or Mr. *Cottingham*; he gave some account of the Letter, that it set forth the Case to the effect above; and the Draught thereof is in the hands of the managers, which they might produce, if they thought proper. This I took to be the true State of the Case; and never heard any thing to the contrary (except Mr. *Lightboun's* Gueffes, founded on no Fact, but on the greatness of the Sum, which this accounts for another way) till *December* last, when I was told, that *Wilson* pretended, he borrowed it of Mr. *Dormer* at an high Interest; but as this appears to be spoke in excuse of himself, an After-thought at four Years distance is little to be regarded, and however, if it were true, ought not to affect me, to whom it was never disclosed. But according to this that I have stated above, which was certainly the truth of the Case, or however what appeared to me; *Dormer's* Failure was not occasioned by his undue disposing of or employing the money and Effects; but it was a *Misfortune owing to the Year 1720*, and Circumstances peculiar to that Time; so not likely to happen again. On Dr. *Eddisbury's* Failure there appeared no Accident, but his own ill Conduct: Yet no Change was made by the Lord Chancellor, as to the Effects, or Cash, or giving Security.

But it was urged, that tho' this had not been desired of me by the Suitors, it had been proposed to me by the masters themselves:

And three of the masters were called to prove this. But only two of them pretend to have spoke

to me about it, Mr. *Lightboun* and Mr. *Kynaston*. Mr. *Holford* the 3d says, He never was once with me about it, only he liked some things which Mr. *Lightboun* told him he proposed.

Mr. *Lightboun's* whole Evidence, taken all together, clearly proves what I set forth in my Answer; that I had in view three things. 1. The making good *Dormer's* Deficiency. 2. Settling the masters in their just Rights. 3. Securing the Suitors from future Accidents. The 1st was the Principal, and always uppermost with me. The 2d was plainly necessary, in order to that. The 3d for securing the Suitors from future Accidents of that kind, I was likewise very desirous of; but, I own, at that time, while I thought the masters then in being Persons of Ability and Substance, and he gave me no reason to think otherwise, I apprehended there was no need of any extraordinary Expedition in it.

As to making good the Deficiency; It appears, that at the time of Mr. *Lightboun's* Proposal, the masters were all willing to contribute; only Mr. *Lightboun* stood out; and his Reason, which in his Examination to the 16th Article he says, he upon one Occasion mentioned to me as sufficient, was, that it would be a Precedent for his paying other Debts of other masters. And upon his Examination to this Article, he says, that he told me in discourse on that Subject, that as *Dormer's* Accident had happened, the like might again; and so often, that it could not be supported; and afterwards, that if any thing could be done to make good *Dormer's* Deficiency, and put things upon a secure Bottom, he would be as ready to contribute as any body. He then gives an account of the Proposals he made, which he says, I desired him to reduce into Writing for my Consideration, which he did; the Copy of it was produced and read, and I have the Letter itself here in my hand; and there only, I apprehend, is to be found the Proposal which is to affect me, and not that which he now from his memory mentions to be the Proposal, but differs from the Writing in several things; which not being in the Letter, if he had mentioned them cursorily in that Discourse, I must have looked upon them as what upon farther Consideration he did not think proper.

My Lords, The occasion of the Proposal was my speaking to him about contributing to *Dormer's* Deficiency; and both that and the Proposal itself shew, that it was really no more, than laying before me the Terms upon which he would contribute.

In those Terms, the principal thing insisted upon by him was, that the money should be continued to be brought before the masters; which, I apprehend, had then been a little broken in upon: Which is expressed in these Words, shewing the Improbability, that a Fact objected should happen, "if (as his words are) the money be directed as usual to be brought before the masters, both by your Lordship and the master of the Rolls; without which the masters cannot think themselves much interested in the Event of Mr. *Dormer's* Affair."

The other thing he insisted upon was, that he should be secure from being exposed to the like Inconvenience, by failure of another master; and therefore what he proposes, in relation to securing the Effects, is not a thing proposed to be done of itself, separately, but in company with the other Regulations.

That part that relates to the Rights of the masters, was afterwards pressed farther, as it was apprehended they were more broken in upon; and produced the Representation of the masters, which Mr. *Lightboun* the other day mentioned to your Lordships.

And this likewise explains several parts of his Evidence: It explains what he says, that he pressed me so often to do something, and thought that to be *Irresolution*, which was indeed my *Caution* to proceed upon sure grounds, in doing a thing, which, if not perfectly well founded, might have the Appearance of being contrived on purpose to advance, or keep up the Profits of the Offices of the masters. It explains his Apprehension, that if I did not do it, it would not be done by my Successor, unless the Seal should come into the Hands of a noble Lord, whom he named. It shews, that what he pressed, was not so much for the masters to give Security, or to make up *Dormer's* Deficiency, and retrieve the Honour of the Court, as to have Orders made, for the Benefit of the masters; which I thought ought to go together.

For it wanted no Resolution in me, or in any other Chancellor, to make Orders upon the masters, to secure the Effects of the Suitors in their Hands; had that been the thing pressed, and especially if, as is pretended, they themselves desired it. But it might require Resolution to support the masters against the Claims of an honourable Person, with whom they then had a Dispute.

This View of this matter will make your Lordships consider it in a different light from what the managers have endeavoured to set it in; and that my Slowness did not proceed from my concern for the keeping up of the masters Offices, but from my Caution not to be too precipitate in advancing them.

And had I taken the measures desired, and made Orders to prevent the master of the Rolls from directing, in his Decrees, the money to be brought before the Usher, and from referring Irregularities to the six Clerks; and to settle in their favour the other matters in dispute (tho' I will do them the Justice to declare, that I do, so far as I have seen of it, think the masters in the right therein) yet I am apprehensive, that at first sight it would have been matter of Complaint against me, as a contrivance to advance the Offices of the masters; and that the Schemes proposed by Mr. *Lightboun* for giving the Security he represents as sufficient, would not have been thought a Ballance to it.

Having said this, give me leave to weigh the Proposals.

And first, his Proposals for providing for *Dormer's* Deficiency.

The way of doing it, which he proposes, is this: Having stated, in the first page of the Letter, what he takes to have been the occasion of *this great Deficiency*, he goes on, "which I hope may be provided for, and the Credit of the Court retrieved and supported by every

"master advancing 2000*l.* or such other Sum as shall be agreed on, out of the Cash of the Court in his Hands; which being placed out at Interest, the yearly Income thereof, together with the Produce of Mr. *Dormer's* Estate, will answer the Demands that may be expected on his Successor, and will in due time make good the Debt upon the Office.

But as to this, I thought it both impracticable and insufficient; and I told him, and he very fairly owns it in his Evidence, that I could not make an Order of that kind; because it would indeed be ordering one man's money to be put out at Interest, to pay another's Debt.

His next Proposal relates to the *Securities*, lodged in the hands of the masters, which he thought of the greatest Consequence; because, as he now says, he told me that *Dormer's* Accident came by trafficking with *Securities*; which he inferred from a Supposition that there was not then so much Cash in his hands. This Fact is contrary to the Representation made as above to me, and the Supposition, with respect to the quantity of Cash, is obviated by his having just received a great Sum out of the Exchequer. And your Lordships have heard from the Report to the Lords of the Committee of Council, that the masters have brought in all their *Securities*; so that what Mr. *Lightboun* thought the greatest Danger, has proved to be none at all.

However, to prevent that, which he thought the greatest danger, he proposes the taking all Government *Securities* for the future, in the Names of two or more masters; his Words are in page the 2d. "Having before observed from whence this great Deficiency arose, I submit it to your Lordship, Whether the taking all Government *Securities* for the future, in the Name of two or more masters, may not prevent the like misfortune hereafter." He says now, that he proposed them to be taken in the Names of some masters, and of a third Person; but that is not mentioned in the Letter, nor does Mr. *Holford* mention it in his Evidence.

As to this Proposal, he has now sworn, as the Truth is, that I started a Difficulty upon that head, by objecting that this would not answer all Cases, particularly with respect to the *East-India* and *South-Sea* Bonds, by reason that they are payable to the Bearer. And his Answer was, That there was no necessity of taking these *Securities*; such might be taken as are transferable in the Books of the Companies.

On consulting others upon this, I found, that as to *East-India* and *South-Sea* Bonds, wholly to disallow the taking those *Securities* would be hard. Many People choose them, because there is little variation in the Price, only sometimes a few Shillings higher or lower; whereas in *Annuities*, and much more in other Stock, the fall of the Price, by the time the money was to be paid out, might eat up the Interest and more. That there would be a difficulty to dispose of those at that time in the hands of the masters; probably the Owners would not consent; it had been their choice, that had determined the laying out of the money upon those Bonds; that to send them to the market all together would occasion a fall of the Price, and a great loss, which would raise a Clamour, and give great Dissatisfaction.

I thought these several things had great Weight, and deserved most serious Consideration. I then thought of locking up these Bonds in Chests, with two Locks, one to be kept by the master, to whom they belonged, and the other by the next master after him, and to take the other securities in the Name of two masters.

But I was told by Persons of great weight, that that was but two masters instead of one, and would not be satisfactory: And should I join more of them, it would occasion more trouble, and possibly more charge; but they were still masters.

At last I resolved to take the Securities (other than the Bonds) in the Names of two masters, and a third Person to be named by the Parties. But still I stuck at the Bonds, and was never set right in that, till it was too late. But I have now learned, which neither I nor Mr. *Lightboun*, as your Lordships may observe by his Evidence, had skill enough to know, that they might be indorsed to two masters and a third Person, and so the Property be fixed in them; which, had I afterwards continued Chancellor, I was determined to have put in Practice.

As to the Cash, how that might be made secure, his whole Proposal is contained in these Words, in the second Page: "The Deposit to be put out at Interest, to raise a Fund for the Payment of Mr. *Dormer's* Debt, together with our Office, would in a great measure be a Security for the Cash, with which we should then only be intrusted." By the Deposit he means that of 2000 *l.* or such other Sum as should be agreed upon, as I before read to your Lordships.

This is the Nature of his Proposal, with relation to the Security for the Cash; which I apprehend must appear to be neither practicable, as I observed before, nor satisfactory. And had I built upon this, and made a Regulation accordingly, I was very apprehensive those that were before dissatisfied, would call it *trifling*.

He then takes notice of the money being lodged with the masters very effectually, tho' it is by way of answer to an Objection, that every master may not always have such a Sum in his Hand; to which he answers: "*I will venture to say, it's scarce possible that can happen, if the money be directed as usual by your Lordship and the Master of the Rolls.*" And then he adds (to shew the Strefs laid upon this) "*without which the masters cannot think themselves much interested in the Event of Mr. Dormer's affair.*" And says in the 3d Page: "If I have the happiness to have offered any thing thought practicable by your Lordship, when I have the Honour to be admitted to wait upon you, I hope to satisfy your Lordship, that I shall with Pleasure contribute, as becomes me, to facilitate any Undertaking of this kind."

I think this proves what I said in the beginning; and I submit it to your Lordships, whether I am criminal in not complying with these Proposals.

My Lords, I have told your Lordships several thoughts I had about the Securities. Give me leave to mention something of my thoughts, with relation to the Cash.

I thought to take a small Security would only shew that I was convinced that a Security was

necessary, and yet trifled in it; and those that were willing to find fault, would say, it was done only to amuse the Suitors, and lull them into a false Security.

And till I could adjust the matter of the Securities lodged with them, particularly the *East-India* and *South-Sea* Bonds, no Security, that it would be practicable for the masters to give, would bear any Proportion to what was in their hands, when it should be 50, 60, or 80 thousand Pounds.

But if I could contrive to make all the Securities safe, and reduce the Cash into a narrower Compass, by making Orders for putting out the money of course, whenever, through neglect of the Parties, or otherwise, it should happen to lie beyond such a time; then a Security might be given by the masters to answer it.

But, as I told your Lordships, the *East-India* and *South-Sea* Bonds were too hard for me, till the matter was before the Committee of Council; and had the masters behaved themselves, as I expected they would in the matter of their Accounts, I then intended to have laid my Thoughts before the Council, and to have had their Authority and Sanction for putting them in Practice.

The other Proposal supposed to be made to me, is spoke to by Mr. *Kynaston*, and him only. And though he says all, or most of the masters, agreed to it, and thereupon he waited upon me about it; I do not find that any of the rest know any thing of it. I observed, that neither Mr. *Lightboun* nor Mr. *Holford* (both produced to this Article) are examined to this great matter, upon which the masters are said to be agreed; nor is any other master called to it, tho' his Account of it is so very imperfect, and stands in need of being explained, as well as supported. As to the Securities, it reaches not all; the Bonds are left under the same difficulty as before. And as to the Cash, he mentions no Sum or Value in which the Security was to be given.

But, my Lords, upon the whole, both from what Mr. *Kynaston* and Mr. *Lightboun* say, it is plain they were consulting their own Interest, to keep the Office free from Incumbrances: And their Interest and mine (if I could have any in view) was the same: So that if it was their Proposal, what should hinder me from agreeing to it, but that I thought it insufficient?

The third thing charged in this Article is, That I did not take the masters Accounts, that is, Accounts of what Effects of the Suitors they had in their hands.

My Lords, It is true, this was proved to be done by my Lord *Cowper* at his Entrance into his Office, both the first and second time; it was done by another noble Lord, as has been proved at your Lordships Bar, once, and I believe it was done by that Lord oftner.

My Lords, Had I taken their Accounts too, I doubt in me it would not have had the same approbation, as it had in those noble Lords. In my Case it would have been asked, What care I had taken to be sure that the Accounts delivered me by the masters were true? Whether I had seen the Securities and Cash? And what

what Satisfaction I had; that they were able to make them good? I should, perhaps, have been told, that without that, the bare taking of an Account was of no use. And these Enquiries were of such a Nature, that if they were to be pursued effectually and with exactness, I own I had not strength to go through them.

Nor did I think the taking Accounts from the masters necessary, because I do still take the Liberty to say, I was fully persuaded, all the masters were good and honest men; and if they were not, I do not see it would be of any use to take such Accounts. For I would be glad to know, whether if I had taken an Account yearly from every master, he would have been one half-penny richer or poorer, or at all more able to pay the Suitors?

Obj. It is said indeed, that all these were wilful Omissions; and for fear the Price of Places should be sunk.

Resp. But of that there is not the least Proof. And the Circumstances of the Case above set forth, I hope, give a much more natural account of it. And the Difficulty what to do in such a case cannot be expressed by any Words I can make use of, so strongly as by what has passed, since I order'd the money and effects to be locked up, and lodged at the Bank, which were intended (and so the Order of the 17 December expresses it) to continue there only till the Affair could be more maturely considered, and a proper Provision made for the Security of the Suitors. Five months are now elapsed, and nothing has been yet done: Tho' the Suitors suffer vast Inconvenience. For, in order to get any money from thence, there must be a Master, and a Six-Clerk, and two Directors, and a Certificate from the Register, which occasions so great an Expence, that in the case of small Sums, People do not think it worth their while to go for them to the Bank, but choose to be without their Interest rather than come at it through so many Difficulties. And if the Lords Commissioners, three of them, such great men, have found this matter too difficult to settle to their Satisfaction; is it a Crime in me, that I was not able to discover a method for making things easy and secure?

This Article is closed with the great Deficiencies that have happened with regard to the Effects of the Suitors.

But, my Lords, give me leave to say, if that Deficiency have not happened by any fault of mine; if those misfortunes, which have befallen some of the masters, be not owing to any Crime in me; no part of all that is charged in this Article, ought in Justice to lie at my door. As I have observed before, the great danger, which was at first apprehended, and so often talked of by Mr. *Lighboun*, related only to the Securities, which the masters had in their hands; but that which happened related to the money only. And tho' this Accident fell out, whilst I had the Great Seal, yet it might as well have happened in my Predecessor's time, since nothing that I have done has given the least occasion to it.

But is there at last, any Deficiency made out to be in these masters, by which the Suitors are to be Sufferers?

Mr. *Thompson* has been called as a Witness to prove these Deficiencies; but he has only shewn an Estimate of *Borret's* Deficiency, and that some of the present masters had not paid in their Ballances at such a time; and how much the farther Sums they were to pay amounted to.

But have the Suitors therefore lost the money? No, my Lords, that does not appear; but on the contrary,

Mr. *Conway*, one of them, and whom they have themselves produced as a Witness, has sworn, that he has assigned an Estate sufficient to pay all his Deficiency.

One of the managers was pleased to own that he meant by Deficiencies, the money not yet paid in, nay the money not paid in at the time of making the Orders ready; and did admit, that since those Orders, there had been Satisfaction or Security for the most part.

But, my Lords, it is the Loss of the Suitors, that alone can give ground to complain.

The Order concerning Mr. *Tho. Bennet* mentions his Deficiency to be only 7500*l.* and 1575*l.* represented by him to be in the hands of his Predecessor and me.

The latter Sum of 1575*l.* is brought into Court. And we have shewn that Mr. *Hiccocks*, his Predecessor, has petitioned, that he may pay in the 7500*l.* which is the whole Deficiency. And here appears a considerable Estate, of I think 750*l.* per ann. of Mr. *Bennet's* besides.

Mr. *Kynaston's* Deficiency is represented to have been before *Christmas* 26,908*l.* 11*s.* 3*d.* $\frac{3}{4}$; arising all, but what he said was in my hands, and the hands of Mr. *Rogers* his Predecessor, only hence, that his Cashier was dead intestate, and Administration disputed; and so he could not come at the money.

There is paid in by me	1575 <i>l.</i>
There is offered to be paid by Mr. <i>Rogers</i> , and will be paid — —	} 6000
A Debt from Mr. <i>Delabay</i> , which he swears a just one, is assigned —	} 20,850
	—————
	In all 28,425
And the Deficiency being computed at —	} 26,908 11 3 $\frac{3}{4}$
	—————
This exceeds it in the Sum of	1516

And he has an Estate of between four and five hundred Pounds a Year, and Timber of the Value of 2500*l.* to make good any part that may not be got from *Delabay's* Estate, tho' his Effects

fects are in one of the Reports mentioned to have been then found to be in *London* alone above 20,000 *l.* And I have heard that the Lords Commissioners have ordered them to be brought into Chancery, and that 16 or 18 thousand Pounds are actually brought in.

What is said to be Mr. *Borret's* Deficiency, is the foot of an Account, which the Report that represents it, and Mr. *Thompson* in his Evidence, say could not be properly taken.

And when fully examined into, there may come out to be no loss there neither. Mr. *Godfrey* swears Mr. *Borret* to have been in good Circumstances when admitted; to have an Estate; to have sold an Office for, I think, 5000 *l.* upon the occasion of his coming in master; to have lived with small Expence, his Wife's Father maintaining his Family. And, as he enjoyed the Office four Years, there can be no great Deficiency, and probably will be none at all.

But, my Lords, it is extremely hard upon me, if by their producing an uncertain Estimate, I am to be obliged to state the Accounts of one, who is dead, whose Administrator is Solicitor against me, without their searching into his Papers and Affairs, and giving a perfect Account how they stand. It is exceeding hard, give me leave to say, that your Lordships should be judging upon me as criminal, from Facts of this kind, to which I am an intire Stranger, when there is nothing like Proof, that there will be a Farthing Deficiency at last, but only that the money is not yet come in.

I beg leave to observe one thing more, That the Masters; that are now called the deficient masters; are not one of them in Custody; though it is made an Article against me, that I did not commit Mr. *Dormer*, who was in *Holland*. Therefore, since they are at Liberty, it must be taken for granted, that the Lords Commissioners had good Reason not to commit them; and yet their Deficiency, which is not a Crime in them, sufficient to justify the committing them, is to be made a Crime in me, sufficient to support a Charge of High Crimes and misdemeanors. Your Lordships see how far this ought to affect me; and I submit, upon what I have said, whether it can support the Charge in this Article.

XIX. As to the 19th Article, which relates to what was done about taking the Accounts: It charges,

“ That whereas his most sacred Majesty, out of his Fatherly Goodness to his People, did in or about the month of *November* last, direct an Enquiry to be made into the Accounts of the masters of the said Court of Chancery, to the Intent that proper methods might be taken for the Security of the Suitors of the said Court; the said *Thomas Earl of Macclesfield*, being then Lord Chancellor of *Great-Britain*, and one of his Majesty's most Honourable Privy Council, in order to obstruct the same, and to prevent a Parliamentary Enquiry into the State and Condition of the Offices of the said masters, in Breach of the several great Trusts reposed in him, did give Advice

“ and Encouragement to the said masters to assist and supply each other with money and effects, and did represent to the said masters, that it would be for their Honour and Service, to appear able and sufficient; and that if they made a bold Stand now, it might prevent a Parliamentary Enquiry, or to that Effect; and did persuade several of them to make false Representations of their Circumstances to his Majesty, by adding a Subscription to their respective Accounts deliver'd to the said Earl, to be laid before his Majesty, to the Effect following, *viz.* That they were able to answer the money and Securities in their Hands, and were willing to pay the same to such Persons as were entitled thereunto; although the said Earl knew, or had good Reason to believe, that several of the masters were not then able to answer the Ballance of their Accounts, nor are they yet able to satisfy or make good the same; and when the said masters were afterwards required to produce the Cash and Effects of the Suitors in their Hands, some of the masters, according to such Advice and Encouragement given by the said Earl, did supply others of them with Cash and Effects, to make a false Shew and Appearance of their Ability and Readiness to answer the Ballance of their Accounts.”

My Lords, the two things, which are made the Heads of the Charge in this Article, relate to the Subscriptions of some of the masters written under their Accounts; that they were able to make good the Ballances; and their afterwards producing Cash, to make a false Shew and Appearance of their Ability. As to the first; I take it, that the material Part of the Charge is, that I *persuaded* them to make false Representations of their Circumstances by a Subscription which I *knew*, or had good Reason to believe, was false.

As there is not the least Proof offered that I knew or had reason to believe the Subscription false, this Charge I think intirely falls to the Ground.

Upon the Proof attempted to be made, I think it appears, that when Mr. *Holford* brought in his Account, pursuant to my Order, he (without my knowing any thing of it) had wrote a Subscription at the End of it, to this Effect: “ I have all these Securities standing in my Name, as in this Account is specify'd, and will procure Certificates from the proper Offices, that I have and had them before this Account, if your Lordship require it, and as to the money, I am ready to give your Lordship Satisfaction to a Demonstration, that I have it in my Power to answer it to every Person, that shall appear to be intitled to it, and who can give me a legal Discharge.”

They say, I read it, and spoke of it with Approbation.

There were only Part of the Masters ready with their Accounts; and Mr. *Lovibond* was the next, that delivered me his, and he had wrote to the same Effect in Substance; only as to the Cash, he wrote that he was ready to give Security.

My Lords, Every Body knows that he was able to answer it; and he swears he had it ready, and was able to have paid it the next Day; and he appears to have lent 10,000 l. to a Brother Master on that Occasion. I was therefore surprized to see him make use of an Expression, which looked as if he were not able to pay the money. And upon that it was, that he says, I recommended to him to make use of the same Expression, as had already been used by Mr. *Holford*; and so accordingly he did.

Thomas Bennet had subscribed, before he came, thus, "I have all the Securities standing in my Name as in the within Account are specified, as also the Tallies, Orders, and Bonds in my Custody;" but had said nothing of the money: He swears, that I said, I wished all would make use of the same Form as Mr. *Holford* had done: And that it would be for their Honour and Service to appear able and sufficient. He says, that Mr. *Lightboun*, as I remember, asked what was the meaning of bringing it before the Committee? and that I said, it would be a means to prevent a Parliamentary Enquiry; that I did not ask him whether he was able, but directed him to write; I suppose he means by the general Direction; for I do not apprehend he says, that I spoke it to him in particular: And it is not pretended, that he made the least Scruple of signing it as true, or expressed any Backwardness in it; and he in Effect owns he did not. But he informs your Lordships how extremely tender he was, not to write any thing but what was strictly true; and that therefore, in his Subscription, he took Care to leave out the Words *to a Demonstration*, which are in Mr. *Holford*'s. And Mr. *Holford*'s Subscription running, "And as to the Money, I am ready to give your Lordship Satisfaction TO A DEMONSTRATION that I have it in my Power to answer it to every Person that shall appear to be intitled to it, &c." Mr. *Bennet* could not come quite up to this; but he subscribes, "And as to the money, I am ready to give your Lordship Satisfaction, that I am able to answer it to every Person that is intitled thereto." This therefore, that he has subscribed, is, I suppose, if he is to be credited, *exactly true*: And if so, I have not persuaded him to make a false Subscription.

Mr. *Kynaston* says, it was recommended to them by me to make such a Subscription as Mr. *Holford*'s; that I said, it would look well to the Council, and prevent farther Enquiry or Parliamentary Enquiry, or some other Enquiry, he knows not which; so he comply'd. But, my Lords, his Subscription is not what I recommended. Mr. *Holford* only undertakes to shew he had it in his Power to answer the money, &c. that is, that he either had the money, or Effects, which being disposed of, would raise it. But Mr. *Kynaston* goes farther, he says, I am ready to pay it to the Persons intitled.

Mr. *Lightboun* heard nothing spoken of the Subscription; he went away to finish his Accounts, which were not compleat.

Mr. *John Bennet* was not there; but at his coming, being told what I had said to the others, he, without Scruple, subscribed, without my speaking to him.

Mr. *Edwards* says he was able to pay it.

Mr. *Lovibond* was called last; but I before gave an Account what he said.

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So that of the six masters who made Subscriptions, I spoke only to five.

Three of them have proved themselves able; and I believe no body doubts it.

Mr. *Thomas Bennet* made no Objection, or Difficulty, and has been curious not to let his exceed the Truth.

Mr. *Kynaston*, has voluntarily gone beyond what I desired. And I make no Question but he thought himself able to answer it, though I doubt his being ready.

But is there the least Evidence offered, that I knew Mr. *Kynaston* and Mr. *Thomas Bennet* were not able, or had Reason to believe or suspect it? No, on the contrary, Mr. *Lovibond*, their own Witness, who is one of the masters, and conversant among them, told your Lordships upon his Oath, that by their Conversation he believed they were able to make good their Accounts.

In the mean time, your Lordships observe, that these deficient masters had all their Securities ready, and voluntarily subscribed so to their Accounts, without my speaking to them. In which Point Mr. *Lightboun*, under the last Article, thought there was the most Danger.

As to the Words, *That it would be for their Honour or Service to appear able and sufficient*;

I will not be positive as to the Words, whether it were *to appear able, &c.* or *to make it appear that they were able, &c.* In a fair Construction, the Sense of the first is the same as the latter.

When Mr. *Holford* subscribes, That he is able to pay to every Person, who shall appear to be intitled; or, if I should say, Mr. *Thomas Bennet* appears not so fair or able a Man, as I formerly thought him; does it import only a false Shew?

As for what is said of preventing a Parliamentary Enquiry;

Mr. *Thomas Bennet* represents it to be spoke in Answer to the Question, What was the meaning of bringing it before the Committee? And says, my Answer was, That it would prevent a Parliamentary Enquiry.

If I said it, the Reason is obvious, and the Thing innocent.

It is notorious, that the last Summer there was a great Clamour against masters in Chancery, which was heightned by some Disputes they caused in the Court of Chancery; that it was generally believed, that it would come into Parliament; and I am persuaded it would have come into Parliament something sooner, if the Committee of Council had not taken this matter into Consideration.

I am likewise persuaded, that had the masters all been able to make good the money in their Hands, and proved that they were so; and that they had behaved themselves well; and that the Lords of the Committee, after finding their Accounts right, had proceeded to advise proper Regulations, the matter would never have come into Parliament with Respect to them, whatever it might as to me.

And as to them, I believe, they were not desirous to have the matter in Parliament, because of the vast Trouble it must give them, had there been nothing else in it. And it was natural for me to think, that nothing would more tend to

make them easy, in complying with what the Committee should think fit, than by letting them know, that if it gave them Trouble in one respect, it would ease them more in another.

And so far I thought it for the King's Service, and my Duty, to hasten the Accounts before the Council, and to use all means I could to have things carried on with Speed and Effect; that such members of Parliament, as had their Eyes on this Affair, might plainly see that proper measures were effectually carrying on by the Lords; so that there would be no Occasion to take up this Affair in Parliament, or for the Legislature to interpose.

But as to my own Share, I freely own I had not the least Apprehension of what has since befallen me.

I was so far from obstructing the taking these Accounts, that Mr. *Holford* has informed your Lordships, that when the first Order was such, as would require a very long Time to be complied with, I pressed them not to make use of that as an Excuse for Delay, but to bring in an Account of their present Ballances, and to let the Lords know the Reason, and then to ask Time for more perfect Accounts, if such should be required; which were not.

As to their making a *false Shew* of Cash pursuant to my Advice and Encouragement,

They have not offered a Word of Proof of any Thing said or done by me, or by my Order, concerning any Part of that whole Affair; if they had, I am sure, whatever had appeared to be done by me, would at the same Time have appeared not capable of the Construction in the Article.

But instead of that they have given a confused uncertain Account of something, that passed between Mr. *Cottingham* and the masters; but never called Mr. *Cottingham* to bring it Home to me, nor any way shewn that I knew any thing of it, either before or after. Nor do I really understand it at last. I do not apprehend that Mr. *Cottingham* advised them to furnish one another with money, but upon good Security; nor did they do it. Nor do I see, what harm it is, if a master, having Occasion for money, borrows it of another master, upon good Security.

The only Person that they seem to fix any Fraud upon, is Mr. *Conway*; and, which appears very odd, only by his own Evidence; and yet he seems to justify himself too.

But if not; there is no Proof, nor Ground of Suspicion, that I was any way privy to it, or assisting in it, or that I had any the least Share whatsoever in it:

And therefore I am not Guilty.

XX, XXI. On the 20th and 21st nothing has been offered.

My Lords, I have now gone through all the several Articles, that have been *endeavour'd to be supported* against me; and I think I may say as I did in the Beginning, that except those relating to the Disposal of Places, which are of another Kind and another Consideration, all the rest must, to be made criminal, turn upon that Aggravation in the Articles, from my *inordinate, wicked, and corrupt Designs of procuring to myself excessive and exorbitant Gains and Profits by divers unjust and oppressive Practices after mentioned.*

It is such a *corrupt Heart* only can change Actions, that in themselves are innocent, and

some of them perhaps commendable, into so many Crimes.

And yet it is very extraordinary, and scarce possible to be conceived, but that if there had been such a corrupt Heart, it must have broke out upon some other Occasion of my Life. Not one instance of my whole Life has been yet produced to shew it.

Several of those under me have been examined; several Officers immediately attendant on me, that received considerable Profits and Salaries, to the amount of Three or Four Thousand Pounds *per Annum*, and more; If I had set my Heart upon Gain, a certain Profit might have been there yearly made, amongst those whom I had wholly at mercy, and in private. But there has no Appearance been found of any thing of that Kind: And is it not more likely that I should have laid hold of a certain Profit, than be laying Schemes for Advantages upon the uncertain Contingency of the Sales of Masters Offices?

The Value of such an Expectation is a mere Trifle; and with Respect to the Probability of its happening, it was exceeding uncertain whether I should have an Opportunity of putting in one single master.

Three masters have happened to die in my Time; and two of those in less than the Space of a Year: But I think not one in nine Years before.

My Lord *Cowper* admitted but one in the last Time of his being Chancellor, which was four Years; and that was upon a Surrender.

There are 24 Curstors; only one has died in my Time: 30 Commissioners of Bankrupts; only one died in above six Years.

Surrenders of the Offices of masters are rarely till after 16 or 17 Years, sometimes 30 or 40 Years Enjoyment.

My Life was very uncertain: The Office of Chancellor much more so.

Little therefore was to be hoped from the Profit to be made by masters Places.

My Lords, in the next Place, I apprehend, that it appears I did not take the Advantage I might have taken.

When the Time came for me to reap the Fruit of all my Contrivances, all those Schemes and Stratagems, the Work of above three Years, (a great Space in the Time of a Chancellor) see, whether there be the least mark or Symptom of this impotent Desire of Gain!

What I did proves, beyond all Contradiction, that I never had any such Views, as these they lay to my Charge.

I took not the Advantage I might have done; I took a less Sum, when a greater was offered; and Part of the money was returned again to Mr. *Elde* and Mr. *Thurston*. And when Mr. *Thurston's* money was returned, only for being more than it was expected to be, every thing was in the same State as when it was paid.

And possibly your Lordships will think, from some other Evidence given, that amassing a great Estate was never my View; and that rapacious and base Ways of getting money are not consistent with my Way of laying it out.

As this is a full Answer to the Charge of my Desire of Gain; and the whole *Malignity* of all I am charged with arises from that supposed Principle of my Actions; without this, though there should have been Imprudence, Indolence, too

great Confidence, perhaps Credulity, Irresolution, or any other Defect or Weakness, there has been nothing wicked.

And, if your Lordships are satisfied of this one Thing, I apprehend the Sting of this Impeachment is taken out.

My Lords, Having thus gone through all my Observations, it may possibly be expected I should close them with offering something in General: But I think it properer to forbear.

I am not conscious to myself, that it is necessary in this Case to apply to the Passions; which is a common Artifice to assist a weak Defence. If I have done any publick or private Good (of which last some Specimen has been laid before your Lordships) it will, I am confident, have its full Weight.

I submit my whole Life and Conduct to your Lordships Judgment; and rely entirely upon your Justice for my Acquittal.

Mr. Plummer. My Lords, I am not going to make any Observations upon this Speech; neither did I interrupt the Lord in making it. But one thing I am to say for Form Sake: We produced to your Lordships a Copy of a Letter writ from Mr. Lightboun to my Lord, he hath now read the Original Letter; I desire that the Original may be delivered into Court, that we may have the Perusal of it.

E. of Macclesfield. I believe the Gentleman is perfectly in the Right of it. It is here.

The House adjourned to Friday Morning next, at Ten a-Clock.

Friday May 21, 1725. The Tenth Day.

THE Lords being seated in their House, the Serjeant at Arms made Proclamation for Silence: As also the other Proclamation, That all Persons concerned were to take Notice, that Thomas Earl of Macclesfield now stood upon his Trial, and they might come forth in order to make good the Charge.

Ld. Ch. Jus. King. Gentlemen of the House of Commons you may proceed.

Mr. Serj. Pengelly. My Lords, The Part assign'd to me in this Impeachment against the Earl of Macclesfield, is to reply to his Defence upon the Fifth, Sixth, Seventh, Eighth, Ninth, Eleventh, and Twelfth Articles.

Before I enter into the particular Examination of the Objections made against the Charge of the Commons contained in these Articles, and of the matters alledged, either in Justification, or Excuse of the Lord Impeached; I shall take the Liberty of observing,

That your Lordships are now exercising a Power of Judicature, reserved in the original Frame of the English Constitution, for the Punishment of Offences of a publick Nature, which may affect the Nation; as well in Instances, where the Inferior Courts have no Power to punish the Crimes committed by the ordinary Rules of Justice; as in Cases within the Jurisdiction of the Courts of Westminster-Hall, where the Person offending is, by his Degree, raised above the Apprehension of Danger, from a Prosecution carried on in the more usual Course of Justice; and whose exalted Station requires the united Accusation of all the Commons of Great-Britain, by their Representatives in Parliament.

This High Jurisdiction may be exercised for the Preservation of the Rights of the Lords and Commons, against the Attempts of Powerful Evil Ministers, who depend upon the Favour of the Crown;

Or, it may be put in Execution for the Ease and Relief of a good Prince, whose Honour has been betray'd by a corrupt Servant; and yet, whose Clemency makes him unwilling to punish; so that it becomes necessary for his faithful Commons to take into their Care the prosecution of such an Offender.

Former Reigns have supply'd your Journals with many Examples of the first Kind.

The present Reign produces an Instance of the latter Sort, wherein the Commons bring before your Lordships in Judgment a Peer offending, with the greatest Ingratitude, against a most just, and most merciful Sovereign.

For, the King's Royal Munificence bestowed upon this Earl, in the most abundant measure, could not exempt the Inferior Officers from his Exactions, nor protect the Suitors and their Properties in the King's own Court of Chancery.

The general Crime charged upon the Earl, in Five of these Articles, is *Extortion by Colour of his Authority as Lord Chancellor*.

The Offence alledged in the other two Articles, is *gross and wilful Negligence in his Office, to the great Damage and Loss of the Suitors of the Court, but to his own private Gain and Advantage*.

The particular Exactions are his taking One Hundred and Five Pounds from Mr. Thomas Bennet, for accepting the Resignation of the Office of Clerk of the Custodies in the Court of Chancery, in order to obtain a New Grant to Mr. Hugh Hamersley, and procuring the same to pass the Great Seal accordingly.

His exacting Fifteen Hundred Guineas from Mr. Kynaston, for the admitting him to be a master of the Court of Chancery, upon the Resignation of Mr. Rogers.

His exacting the like Sum of Fifteen Hundred Guineas from Mr. Thomas Bennet, for the admitting him to be a Master of the same Court, upon the Surrender of Mr. Hiccocks.

His exacting the Sum of Five Thousand Guineas from Mr. Elde, for the admitting him to be a Master of the same Court, upon the Death of Mr. Fellowes.

His exacting the like Sum of Five Thousand Guineas from Mr. Thurston, for the admitting him to be a Master of the same Court, upon the Death of Mr. Borret.

The last Article relating to Mr. Thurston is charged with this Aggravation, *That the former Master was Dead Insolvent, greatly indebted to the Suitors of the Court; and that the Earl did not secure a just Satisfaction to the Suitors*.

And the Exaction of the One Hundred and Five Pounds from Mr. Thomas Bennet, is alledg'd to be done when the Earl was one of the Lords Justices.

These Misdemeanors, as well as all the other Offences, of which the Earl is now accused, were committed by him *whilst he executed the Office of Lord Chancellor*.

From whence the Earl and his Counsel take Occasion to make a Triumph upon the supposed Justice and Regularity of his Administration and Conduct, when he presided in the Court of King's Bench; because the Commons have not produced any misbehaviour in the Execution of

of that Office wherewith to furnish out an Article against him.

This may be an Instance of the Lenity of the Commons, but it is no Proof of the Earl's Innocence; who best knowing his own Behaviour, declines to abide the Examination of his Actions during the six Years of his Continuance in the Office of Lord Chancellor;

But flies to a Sanctuary for Indemnity and Discharge; which shews, that the Earl esteem'd himself more secure under Shelter, than upon a Justification of his Conduct.

And the Success of the Commons, in the very strong and full Evidence, which they have laid before your Lordships in maintenance of those Articles, upon which they have proceeded, leaves very little Reason to imagine that they would have fail'd in their Proof, if they had extended their Inquiry into his former Life, or had enter'd into the rest of the Articles.

And after the strict and long Examination of Witnesses, which has entertain'd your Lordships for so many Days, I may venture to say, that the Consistency and Uniformity of the Proof given in Support of the Accusation of the Commons, upon so many different Heads, are sufficient to convince all the World of the Necessity, which there was, for the Honour of the King, and the Welfare and Satisfaction of the Nation, to carry on the present Prosecution;

And, I hope, have already fully satisfied your Lordships of the Truth and Justice of the Commons Impeachment.

But as there have been several Objections made on the Behalf of the Earl impeach'd, as well to the Foundation of the Charge itself, and to the Event and Consequence of it, as to the Sufficiency of the Evidence of the Facts alledged; it will be necessary for me to give an Answer to these Objections, and to maintain the Charge in these Respects; which I shall proceed to do by shewing, that *the Impeachment is well founded*, and that *the Facts in the Articles before stated have been plainly and fully prov'd*.

The Earl himself began with insisting, That his General Oath of Office has no Relation to the Offences charg'd; and that no Inference can be made to his Prejudice from the Tenor of that Oath.

But the Earl's Remembrance, or Explanation of his Oath, is very defective; he has set it out at large in his Answer, and thereby he swears, that *He will well and truly serve the King and his People in the Office of Chancellor, and do Right after the Laws and Usages of this Realm*; which comprehends the Observation of every thing, which is Part of the Duty of, or incident to his Office,

And the avoiding of every illegal and unjust Action in the Execution of it.

And the Omission of any Part of his Duty, or the Commission of any Offence against the Duty of his Office, is a Breach of this Oath of Office, altho' the Particulars are not enumerated in the Oath; and the contrary Opinion will open a Door to the Commission of all manner of Injustice and Rapine by Civil Officers.

The Earl likewise relies upon it, That the whole Charge turns upon his wicked and corrupt Intent and Views alledg'd in the Introduction, which (as he says) have not been made appear;

But these will be apparent from the Proof of the several Facts charg'd; which, if they are un-

lawful and unwarrantable, and do tend to the raising money by corrupt and extorsive measures, will manifest that Intent, and prove it as strongly as if he had declared his Designs in open Court; for such Acts cannot be done with a good and honest Intention.

The main Objection against the Article is, That there is no matter of a Criminal Nature contained in the money Articles; or if there is a Crime, yet that there is no Punishment annexed or incident to it, which your Lordships can now inflict upon the Earl, after he is removed from his Office.

In answer to which I shall insist That,

The Earl's selling these Offices, or disposing of them for money taken by him before the Admission of the succeeding Officers in the manner alledged and prov'd, is an Offence at the Common Law, and punishable by Fine and Imprisonment, upon Indictment or Information; as well, where the money was taken for an Admission upon a Resignation, as upon a Death.

To make out this, it must be consider'd, That

The King having the executive Power, or the Administration of Ordinary Justice, lodged in Him, is in Consequence obliged to provide and appoint capable and sufficient Officers, necessary for the due Execution of Justice, in his several Courts, for the Benefit of His Subjects: His Coronation Oath proves this.

And accordingly the Crown has always paid the Salaries or Fees of the Lord Chancellor; and other principal Officers of Justice, and also of many inferior ministers, out of the Royal Revenue; and other subordinate ministers were maintain'd by the chief Officer, to the End that the Subject should not be expos'd to Exaction or Oppression, under Pretence of any Demand of Fees or Reward by the ministers of publick Justice for the Execution of their Offices; which is the Source of all that Corruption, which at any Time springs up in the Courts of Justice.

The Antient Law of England was, that none having any Office concerning the Administration of Justice, should take any Fee or Reward of any Subject for the doing of his Office, to the End he might be free and at Liberty to do Justice.

And several Charters of former Kings, and Statutes declaratory of the common Law in that Respect, have been made to enforce the due Observation thereof, as,

Stat. Westm. 1. 3 Ed. I. c. 26. 20 Ed. III. c. 1.

My Lord Coke, 3 *Inst.* 146. says, the *Co. 2. Inst.* 74, 176, 209, 210. *Ed. III. c. 1.* is only a Commandment of the King; and that there is no Record of any such Act in any Parliament Roll, and yet necessary to be printed, because the 4th Chapter of this Parliament refers to the Pains contained in it.

Yet, if it be only the King's Charter, it is a Declaration of the Common Law at that Time; but it is printed in Old Rastal's Edition of *Statutes*, Fol. 89, and in all the rest of the printed Statutes.

20 *Ed. III.*

Co. 3. *Inst.* 224, 225.

Co. 3. *Inst.* 146. cap. 68.
of Bribery, Extortion, &c.

Item, *Que null Chancellor, Tresorer, Gardein de Prive Seal, Counsellor du Roy, * seurementez a Conseil du Roy, ne null autre Officer, Judge, ne Ministre du Roy, prenant Fees ou Gages de Roy, pur leur ditz Offices ou Services preigne en null Menere en Temps avenir ascun Manere de Done ou Brocage de nully pour leur ditz Offices et Services, a faire sur Peyn de respondre a Roy de la Treble de ceo que issi preignent, et de satisfaire la Partie et punys al Voluntas de Roy, et soit dischargez de son Office, Service, & Conseil pur toutz jours, &c.*

* N. B. The Printed Books have mistaken this Word.

This Statute is enter'd on the Parliament Roll of that Year, amongst the Records in the Tower; it is not indeed enter'd on the Statute Roll: But the Parliament Roll is the Original, and is the Warrant for the Statute Roll, and is therefore of greater Authority.

In the Margin of the Roll is enter'd thus, viz.

Respectuatur per Dominum Principem & Consilium.

For which Reason my Lord *Coke* says it was never printed in the Book of Statutes, of which he highly complains; and therefore has recited it at large, and caused it to be printed in his 3d *Inst.* Fol. 146. c. 68. of *Bribery, Extortion, &c.* and c. 101. of *Judgments and Executions*, Fol. 224, 225. which is one of the first Books relating to the Crown Law, read by the Students of the Law, and was thus published by that great Man, to impress an early Abhorrence of every thing which may tend to Exaction and Extortion; and must have often come under the Consideration of the impeach'd Lord.

These Statutes have indeed been opened, and alter'd by subsequent Statutes, as to several inferior Officers; and some small Fees have been anciently allow'd, and permitted in particular Cases; but it has been observ'd, that from such Indulgences many Oppressions of the People have ensued.

But the Common Law, and the several Acts of Parliament before mention'd, do not only still remain in Force, with respect to the Lord Chancellor, but have been confirmed and enforced by other Statutes.

And the Great Charter of our Liberties, *Magna Charta*, c. 29. Co. 2. *Inst.* 55, 56. does imply this,

Nulli vendemus Justitiam aut Rectum;

which according to my Lord *Coke's* Comment,

Is spoken in the Person of the King, who in Law is present in his own Courts of Justice, and repeating these Words, which (says He) extend to the End, which is Justice, and to the Mean, whereby Justice may be attained, which is the Law; or, as it must be understood, the Administration of the Law by the Officers of Justice; unless

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20 *Ed.* III. cap. 6. and more particularly the act of 11 *H.* IV. *Rot. Parl.* Num. 28. by which it is enacted,

Item, *That no Chancellor (this High Officer is mentioned in the first Place by Name) Treasurer, Keeper of the Privy Seal, Councillor of the King, * sworn of the King's Council, nor no other Officer, Judge, nor Minister of the King, receiving Fees or Wages of the King for their said Offices or Services, take in no manner in Time to come, any manner of Gift or Brocage of any Person for doing their said Offices and Services, upon Pain to answer to the King the Treble of what they so take, and to satisfy the Party, and to be punish'd at the King's Pleasure, and shall be discharge'd from his Office, Service, and Counsel for ever, &c.*

it can be supposed, that the Statute provides against the lesser Evil, but allows the greater Mischief; that it prohibits the Sale of a particular Decree or Order, which may be right and just in itself;

But leaves the King's superior Officer at Liberty to sell the whole Body of the Suitors of the Court in the Gross, to the Exaction and Oppression of the under Officers, in the Fees which they shall demand against Law and Right.

So that if the Earl impeach'd had exemplified this Rule of my Lord *Coke* in the Court of Chancery, where he immediately represented the King's Royal Person; and once in a Term sitting in Court between his Masters, who paid for their Places out of the Suitors Effects, had repeated to the Suitors this glorious Declaration,

Nulli Vendemus Justitiam;

He must have made a very inconsistent Figure, in the Opinion of the meanest Capacity.

It will then be plain, That as to such Offices, which are in the immediate Gift and Disposal of the Crown, they cannot in their own Nature be saleable, or disposed of for money; because the King himself cannot be supposed to suffer them to be put to Sale.

And the Ministers of the Crown, who have no immediate Right in the Office, and are only to execute and confirm the King's Pleasure in the Disposal of the Office, cannot sell that which is not their own;

Nor ought, or can they lawfully take any Fee or Reward, for accepting Resignations, or making new Grants, or Admissions into Places, or for conferring inferior Offices, with which they are intrusted by Virtue of their own Office; which would be the taking money for the doing of their Office, contrary to the Law, and the before mentioned Statute.

But there is another very good Act of Parliament, which has been read at your Lordship's Table, and proves this Practice of selling such Offices, to be an Offence at the Common Law, viz.

12 *Rich.* II. c. 2.
Co. 1. *Inst.* 134. a. Intituled, *None shall*
Co. 3. *Inst.* 145, 147, 148. *obtain Offices by Suit or for Reward.*

Item, *It is accorded, that the Chancellor (by express*

express Name) *Treasurer, Keeper of the Privy Seal, Steward of the King's House, the King's Chamberlain, Clerk of the Rolls; the Justices of the one Bench, and of the other; Barons of the Exchequer, and all other that shall be called to ordain, name, or make Justices of the Peace, Sheriffs, Escheators, Customers, Comptrollers, or any other Officer or Minister of the King, shall be firmly sworn, That they shall not ordain, name, or make any such Officers, nor other Officer or Minister of the King for any Gift or Brocage, Favour or Affection.*

The Act proceeds farther in a different Form of Expression, and to another matter:

Nor, that none which pursueth by him, or any other, privily or openly, to be in any manner of Office, shall be put in the same Office, or any other; but that they make all such Officers and Ministers of the best and most lawful Men.

The Earl apprehended the Strefs of this Statute, and how much it pressed upon him; and therefore has endeavoured to distinguish himself, not only out of the Oath, but out of the intire Act, by objecting, that this Statute, and the Oath therein directed, only extend to such Nominations as are made in the Nature of Elections, by an Assembly of all these great Officers and Ministers, when they are called *together* for that End; which Word (*together*) is of his own inserting, to serve his Purpose; as in the Case of *Sheriffs*, and not to their single and separate Nomination of Officers, in Right of their respective Offices by themselves.

This is the Earl's own Objection, and not of his Counsel, and will (if allow'd) expound away the whole Act, in all the express Instances mentioned in the Statute, save one;

For there is but one Officer named in the Act, who is nominated thus in an Assembly or public meeting, which is *Sheriff*; and all the rest are ordain'd, and made by the great Officers separately, in their own Right; as *Justices of Peace* by the Chancellor; and *Escheators, Customers, and Comptrollers* by the Lord Treasurer.

And the rest of the Words of the Act, *viz. Or any other Officer or Minister of the King*, will be totally expunged by this nice Interpretation.

But the Words plainly mean, that every one of these Officers, who by virtue of his Office shall be call'd (not call'd *together*) by Command of the Crown, or in Execution of his Office, to name or make any inferior Officer, shall be sworn; for they never are all call'd together, unless on the Nomination of Sheriffs.

The Earl, for more Security, and for the sake of better Company, objects farther; That the Argument from this Act and the Oath will go too far; for then they are sworn not to prefer any *who make Suit or Application for any Office.*

But that is no Part of the Oath; and they are only sworn so far as the Statute extends it, which is to the former Part; and this Clause in the Conclusion of the Act is only directory, and introduces a new Instruction to the great Officers, but does not carry on the Purport of the Oath; for the Words are, *It is Accorded, that the Chancellor, &c. (in the Affirmative) shall be sworn, that they shall not name, &c. and the Sentence which follows is a new Clause, beginning with a Negative, viz. Nor, that none which pursueth, &c. shall be put into any Office, &c. and refers to the Person applying, and not to the Officer appointing.*

So that this latter Part of the Statute ought to be observ'd; but the Officer is not required to be sworn to the Observation of it.

This Statute takes it for granted, that the contrary Practice of naming subordinate Officers for Gift or Brocage was unlawful before, at the Common Law; since it does not create or enact it to be an Offence, but provides an additional Constraint or Obligation upon the superior Officer by an Oath, not to commit the Offence; and it still remains an Offence at the Common Law, and don't depend on that Statute, but is a great Offence, altho' the Oath be not taken.

This Statute contains the most extensive and general Words, and mentions Officers of many Sorts, and different Degrees, as well high as low, relating to the Peace, publick Justice, and the Revenue; and that no Officer, of any Kind whatsoever, in the King's Service, nam'd or ordain'd by the great Officers of State, might escape or be omitted, the Act concludes the Description with these Words; *Or any other Officer or Minister of the King;*

And therein manifestly comprehends both these Offices of *Clerk of the Custodies*, and of *Masters in Chancery*:

For this Statute refers to Officers who are only nam'd or recommended to the King by the Chancellor, &c. and yet are constituted by the King's Letters Patents, as *Justices of the Peace, and Sheriffs*, whereby the usurped Fee for Recommendation is declared illegal; and also to other Officers, who are immediately constituted and appointed by the chief Officers, by Authority deriv'd from the King, and by virtue of the Trust in them reposed for the King's Honour and Service, and for the Benefit of his People, as *Escheators and others*; and thereby the other pretended Fee for Nomination is condemned.

Sheriffs and *Escheators* named in the Act, are Officers relating to the Administration and Execution of Justice; and *Escheators* more especially, to Inquisitions touching Idiots and Lunatics, and the Commissions and Proceedings thereon; which is the chief Part of the Trust and Office granted by the Letters Patents to Mr. *Hamerfley*, as *Clerk of the Custodies*, and which was resigned by Mr. *Thomas Bennet*; and it will appear by the Patent itself, that this Office in the Court of Chancery, has a very near Relation to the Office of *Escheator*; and the Grant very fully describes the Nature and Antiquity of this Office.

And as to the Nature and Antiquity of the Offices of *Masters in Chancery*, they appear fully from the Oath taken by every *Master* upon his Admission, which is of the same Import and Effect, in many things, with the Oath taken by the Lord Chancellor himself, *viz.*

To serve the King and his People, and to counsel the things that toucheth the King; to prevent the Disinheritance of the King, or Fraud to his People; and not to disclose the Counsel which he shall give touching the King; and to redress Damage or Fraud in the keeping the Great Seal, and to advise the Chancellor thereof, &c.

And also from the ancient Commissions produced and read, giving the *Masters* Authority, by the Name and Description of *Masters of the Court*, to hear Causes, and make Decrees (in like manner

manner as the Judges Assistants) in the Absence of the Chancellor; and to punish Contempts, and to do other like Acts of Jurisdiction; and likewise from the actual Exercise of their Offices in making Reports, and Taxation of Costs, and the manner thereof prov'd by some of the masters (and not contradicted) as that a *Subpœna* issues immediately upon the master's Taxation of Costs, without any Order or Confirmation of the Lord Chancellor; that their Reports in other Instances are turn'd into Decrees of Court, if not alter'd upon Exceptions, and from many Authorities in the Law Books.

By all which it is evident, that the Offices of *Masters in Chancery* are judicial Offices, or Offices which partake of a judicial Authority and Nature; and do touch and concern the Administration and Execution of Justice in that Court; and that the *Masters* are associated for that Purpose to the Lord Chancellor, as alledged in the Articles.

But upon this Occasion it will be proper to recite more particularly the Authority of the Statute of

A. 13 Edri. I. call'd Westm. 2. cap. 24. Et quotiescunque de cætero evenerit in Cancellaria, quod in uno casu reperitur breve, & in consimili casu cadente sub eodem jure, & simili indigente Remedio non reperitur; concordent Clerici de Cancellaria in brevi faciundo, vel atterminent querentes in proximum Parliamentum, &c. & de consensu jurisperitorum fiat breve, ne contingat de cætero quod curia Domini Regis deficiat conquerentibus in Justitia perquirenda.

Co. 2. Inst. 405, 407. Those here called *Clerici*, were at this Time, and before, called *Magistri Cancellariæ*, and were associated to the Lord Chancellor; of whom *Fleta* saith,

Cui associantur Clerici honesti & circumspæcti, Domino Regi jurati, qui in legibus & consuetudinibus Anglicanis notitiam habeant pleniorum, quorum Officium sit supplicationes & querelas conquerentium Audire & Examinare, & eis super qualitatibus Injuriarum ostensarum, debitum Remedium exhibere per breviam Regis.

The granting and issuing the Writ, or first Process, upon the Prayer of the Plaintiff, or Party prosecuting, is the first judicial Act of the Court, upon the Commencement of a Suit.

And this proves strongly, that the King by his Royal Office, confirm'd by this Act of Parliament, did at his own Expence, and not at the Charge of the Suitor, provide these *Clerks or Masters*, to the End, that no Subject who had a Right, should be without a Remedy in the King's Courts;

Ne curia Domini Regis deficiat conquerentibus in Justitia perquirenda.

And the Nomination of these *Masters* is only intrusted with the Lord Chancellor, as representing the King, and for the Relief of the Subject.

13 Edri. I. Stat. Westm. 2. cap. 24, 50. Co. 2. Inst. 407, 486. Co. 1. Inst. 54. b. John Webb's Case 8 Co. 48, 49. Co. 3. Inst. 82.

So that it is a Breach of his Trust, in the Lord Chancellor, to confer any of these Offices for Gift or Brocage, or to name and appoint unfit and insufficient Persons; since it is the Duty of his High Office to provide a Supply of proper Officers to carry on the due Execution of Justice in that Court.

But it is said, That it has not been constantly used to put all the *Masters* into Commission,

and that in the Commission 9 *Oæ. 4 Ed. VI.* four of the *Masters* only were in Commission; and when they are in Commission, that they have no Authority to act without the Presence of the *Master of the Rolls*, or one of the *Judges*; and therefore these Commissions did not give them a judicial Authority.

These Commissions, as well as the Office of a *Master*, subsisting so anciently, shew, that *They* were to be taken Notice of, and comprehended within the Statutes made to prevent the Sale of *Offices of Justice*; and of late Times they have all been put into the Commission, as appears by the late Commissions granted to the present *Masters*, since the Earl had the Custody of the Great Seal, and produced at the Table; and (without entering into the Dispute between the *Master of the Rolls*, and the *Masters in Chancery*, touching Jurisdiction, wherein the Earl, in his Defence, has declared, he thought the *Masters* were in the Right) the *Judges* themselves in these Commissions are only authorized to hear Causes, and make Decrees, with the Presence and Concurrence of *two Masters*; so that the Authority under this Commission is not less of a judicial Nature, from the Number of Persons necessary to make a Court; no more than it can be argued from the same Reason, that the *Judges* in that Commission are not *judicial Officers*, because they cannot make a Decree without *two Masters*.

And altho' the Commission is not properly incident to the Office of *Master*, as annexed thereto; yet as it has always attended upon, and accompanied the Office, it proves, that the *Masters* from the first issuing these Commissions, have been always invested with a general judicial Power, if they had not enjoy'd such Authority before.

But it is not necessary to rely intirely upon that Point; for if these Offices were only *Ministerial*, yet they concern the Administration and Execution of Justice in the Court of Chancery, and, as such, are under the Regulation of the like Offices at the Common Law, and are fully within the Description of the Statutes of 12 *Ric. II.* and 5 and 6 *Ed. VI.* And this,

According to the Earl's Opinion, when he endeavour'd to terrify the *Masters* to contribute to Mr. *Dormer's* Deficiency.

And as the Earl impeach'd, in Right of his Office of Lord Chancellor, was only intrusted with the Nomination of the *Masters* for the Service of the King, and for the common Benefit of all the King's Subjects; these Offices are no more saleable, or to be disposed of for money, than if they had remain'd in the immediate Gift of the Crown, by Grant under the Great Seal.

It was objected, that *Masters in Chancery* are not expressly mentioned in the Act of 12 *Ric. II.* and that the Statute is a Penal Law, and ought to be construed strictly, and ought not to be extended by Equity to these *Officers*:

But the constant Rule of Exposition of Statutes of this Nature contradicts that Assertion; for,

Statutes made for the Furtherance and Advancement of Justice, for the Suppression of Extortion and Oppression, which (*says the Book*) are *horrible and odious Crimes*, shall have a benign and favourable Interpretation.

Beawfage's Case, 10 *Co.* 101, 102. *Twine's Case*, 3 *Co.* 82. *Gooch's Case*, 5 *Co.* 60. *Booth's Case*, 5 *Co.* 77. *Powlter's Case*, 11 *Co.* 34.

And upon this Occasion permit me to repeat the Words of that Great Man, the Lord Coke :

Beawfage's Case, 10 Co. 101, 102. *Extortion is no other than Robbery, but is more odious; for Robbery is open, and has al-*

ways the Appearance of Vice; but Extortion puts on the Visage of Truth, and is more difficult to be try'd and discern'd, and is for the most part accompanied with the damnable Vice of Perjury in the breaking

Co. 3. Inst. 149.

that Oath which the Officer took when he was admitted to his Office;

Which proves the Import and Effect of the general and usual Words in an Oath of Office.

And here I can't help taking Notice of the Attempt of the Earl Impeach'd, by his own cross Examination of Mr. Eyres, the Officer of the Exchequer, and the Questions propos'd by himself relating to the manner of his being sworn pursuant to the Statute of 12 Ric. II. viz. The Earl ask'd him,

What was it that you did read? Did I say any thing? Or what did I do? Or to that Effect;

The Officer answers, *I read over the Statute out of the Exchequer Book in Old French; and after I had read it, I carried the Bible to the Lord Chancellor, &c. who, at the Conclusion, kiss'd the Book, but he said or repeated nothing. But this has been the antient Form, which I have observ'd for forty Years, and I believe has been always used.*

In this Instance, your Lordships saw an Endeavour of the late Supreme Officer of Justice to explain away, or turn to Ridicule, the strictest and most solemn Tie and Obligation upon his Conscience and Honour, impos'd by Authority of Parliament for the preventing Corruption; whereby the Earl did then (tho' since upon the Observation made by the World of such his Behaviour, he has a little recollected) shew, that his calling God to Witness to his Promise for the Observation of an Act of Parliament made against that Vice, deserv'd to be as little consider'd by him, and to have as little Influence upon his mind,

As Oaths taken by Traders at a certain Place, for their better Accommodation in carrying on a prohibited or fraudulent Traffick.

This is a full Explanation of his Reserve in an equivocal Answer, where he says, *That when he took the usual Oath of Office, he at the same Time took the Oaths of Allegiance and Supremacy, but no Oath of Office besides that above set forth.*

Altho' he could not but understand the meaning of the Introduction to the Articles, alledging, *That he did take such other Oaths as have been accustomed;* and could not but remember his repeated Observations of the Ceremony, at least, which he had annually practis'd under this Statute.

But the Earl's Counsel have made it necessary to enter farther into this Transaction, by their insisting, that here was no *Formal Oath* prescrib'd or taken, no Entry or Registry kept of it; and that the reading over the Statute is merely an Admonition or Exhortation by the Officer to the whole Assembly.

And the Earl has insisted, That it is not an *Oath of Office*, because an *Oath of Office* (as he express'd it) is taken once for all, but this is repeated Annually; and if it is an *Oath of Office*, yet it is not particularly charged in the Articles, nor refer'd to in any manner, because the Articles sup-

pose it to be taken *at the Time of his coming into the Office*, which was in May 1718. and this Oath, at the soonest, could not be taken by him till the November following.

To this I answer, That the manner of administering this Oath is in the most solemn and significant Form possible; for the repeating an Oath briefly to observe the Statute in all Things, or containing a short Abstract of the Substance of it, would not be near so explicate and directory, as the reading over aloud, by a proper Officer of the Court of Exchequer, the *Act of Parliament* itself, the *Chancellor* at the End *kissing the Bible*; an Exhortation, which ought to make the deepest Impression upon the Conscience of a righteous Magistrate, when confirm'd by the Sanction of a Promissory Oath.

And to say, that it is no *Oath of Office*, because he repeated it Annually, is to contradict the Act itself, which enjoins him to take it *as Chancellor*, and in the actual Execution of his Office; and the Repetition of it Annually, upon this great Occasion of nominating Sheriffs, demonstrates the Opinion of our Ancestors, of the Importance and Consequence of the Observation of it, for the Service of the King, and the Benefit of his Subjects; because there can be no other Time more memorable, or more likely to engage Attention to it, than in so publick an Assembly proceeding to appoint the *Sheriffs* of the several Counties of the Kingdom, upon whose Power, Fidelity, and Justice in the Execution of their Offices, not only the Properties, Liberties, and Lives of the Subjects of this Kingdom so much depend, but even the Security of His Majesty's Person in any Time of Danger; and the very Being of the *House of Commons*, upon the just and fair Returns which ought to be made by *Sheriffs*, upon the Election of *Members* to serve in *Parliament*.

Can this Statute then be treated and called obsolete, which is thus publickly proclaim'd every Year, to enforce the more exact Observation of it?

And to say, That the Articles are confin'd to such *Oaths of Office*, as were taken by him on his first Appointment, is an equivocal Interpretation peculiar to the *Answer*; for the Articles refer generally to *all such Oaths* which have been accustomed to be taken by the Lord Chancellor by reason of his Office. And this Oath ought to have been taken by him upon his first Appointment, if the Usage of administering it at this annual Season had not been an Excuse for his postponing it to that Time; and from that Usage it has follow'd, that this Oath is not taken by any of the Officers at any other Time; but it was the Earl's Duty to observe this good and wholesome Law, as well before his taking this Oath, as afterwards.

And the Earl could not have forgotten this his solemn Engagement without Design; it was for his Interest not to mention it; and he might flatter himself, that the managers would not have taken notice of it.

And as to the Difference in the Form of administering *this Oath* from the common method, it is not material; for the usual Form is not essential to the Oath itself, it being sufficient that there is a calling *Almighty God* to be a Witness of the Truth of the Earl's Promise, by his touching the *Holy Scripture*.

But

But whether the Oath be constantly or usually taken in Practice, or not, it will not alter the Law; and the Crime of selling these Offices for Gift and Brokage still remains, notwithstanding the Neglect of this additional Obligation to refrain from the Commission of it.

The Objections made by the Earl and his Counsel upon this Head, have occasioned this Digression.

The next Part of the Earl's Defence is a direct Justification of the Fact of which he is accused; and, not contented to leave it to his Counsel (for whose Excuse it might have been said, that they were willing to try every thing) the Earl himself has insisted upon it, that his taking these Sums of money is lawful; because, as Lord Chancellor, he had a Right of Recommendation of Mr. Hamersly, as an Officer appointed by Patent under the Great Seal, and also the Right of Nomination and Admission of the Masters, solely in himself; and a man may dispose of and dispense his own Favour upon what Terms he pleases; and Officers may give money for their Places, and yet be good Officers, as it is suggested.

But some Instances of a very extraordinary Nature were cited out of the *History of the Exchequer*, to prove that Chancellors, Judges, and other Officers of Trust, had purchased their Places of King Stephen and King John; viz. That Richard Fitz-Alured gave King Stephen fifteen Marks to bear Pleas; and Walter de Gray gave King John five thousand Pounds to have the King's Chancery for Life; and other Officers there named.

Mr. Madox, the Collector and Publisher of this *History of the Exchequer*, 43, 44, mentioning these Instances, says, *That in the Time of King Stephen, Geoffrey the Chancellor fined in three thousand and six Pounds and a Mark for the King's Seal. This I understand to be a Fine then lately made with the King for the Office of Chancellor, or to have the keeping of the King's Seal.* But at the same time Mr. Madox the Publisher makes this honest Reflection upon his Precedents;

Which Precedent, says he, may justly seem strange to us at this Day; but it seemeth that in those times things of the like kind with this were sometimes done. Which Observation the Counsel, or the Earl himself, were not pleased to repeat.

And some Instances were cited out of the Roman Law, where Part of the Revenue of the Emperors did arise out of Perquisites of this Kind; from whence it was inferr'd, that the taking these Sums for Sale of Offices, was not against Natural Justice.

But these are of no Authority in this Kingdom, when they are repugnant to the Law of the Land, and have never been receiv'd; and the Common Law of England must be the Rule of Justice in this Case.

And Mr. Dupper, the Earl's late Under Secretary of the Bankrupts, was produced, to prove by his Opinion and Observation, that no Office whatsoever passing by Grant under the Great Seal ought to be surrender'd or granted without an Acknowledgment (as he call'd it) to the Chancellor or Keeper; and that he had formerly communicated these his Thoughts to the Earl and his Secretary Mr. Cottingham.

And your Lordships, upon Recollection of the Evidence, will find the Use and Improvement they were pleas'd to make of this Advice, in the Case of Mr. Thomas Bennet's Surrender.

But in Answer thereto, it appeared upon the Evidence in regard to Mr. Hamersly's Office of Clerk of the Custodies, that there being no Salary annexed to the Place, it did belong to the Secretary of State to recommend or to obtain the Sign Manual; so that the Earl's Desire of Gain in this Instance carry'd him beyond the Limits of his own Office, where he had no Right of Recommendation, to raise the poor low Sum of One hundred and five Pounds, at the Time when he was One of the Regents; and thus he join'd his Share of the Royal Authority to his Power of Lord Chancellor, in order to get and secure to his own private Use so considerable a Sum as One hundred and five Pounds from an exhausted Master! A strong Evidence of his corrupt Intent and Views.

This single Exaction overturns the whole Fabrick of Merit, supposed to be raised by the few scatter'd Instances of Charity, which he has been pleas'd to divulge in Evidence.

But if the Authorities cited for the Earl to this Purpose prove any thing, they prove too much; that the Offices of the Judges in the Supreme Courts of Justice were lawfully to be bought and sold at the Common Law, before the Act. 5. Ed. VI. which is an Opinion that the Earl himself, in his Answer, did not think convenient to disclose or insist upon; and it is going a long way back for an Example to prove the Lawfulness of an Action, which he could not find without the Assistance of an Antiquary.

He might have brought more recent Instances from Countries, where unlimited Power does prevail, and where Justice itself, and the Places in which it is to be dispensed, are not to be attained without a Bribe.

But it seems as if the Lord impeached had an early Inclination to look out for a Precedent, to give him a Countenance in such like Practices; yet he found none publish'd to the World, except in the Reigns of two Princes, whose arbitrary Behaviour produced that memorable Law, the Great Charter of our Liberties, first pass'd in the Form of a Charter ann' 17 Johan', and confirm'd ann' 9 Hen' III. wherein it was at that time found necessary to declare by a Law, *Nulli vendemus Justitiam aut Rectum.* Magna Charta, cap. 29. Co. 2. Inst. 55.

From which Declaration of the Crown it necessarily follows, that the Administration and Execution of Distributive Justice to a free People, are not to be esteem'd the Property or Estate of a Great Officer, to be raised or increased by his Sale of the subordinate Offices of Justice; but are the great Prerogatives of an English Prince, to be exercised freely for the Safety and Ease of the Subject, without introducing Expence and Charge upon the People, in their Application for Justice and Right.

And when a Doctrine of this dangerous and destructive Nature to the Rights and Liberties of the whole Nation, as it exposes their only Security to Sale for money, is thus avowedly and openly justified and insisted upon at your Lordships Bar, by a Peer of your House, who has born the high Office of Lord Chancellor of Great Britain in the first Reign under the Act of Settlement of the Crown: Your Lordships will take the best measures to render the Subjects secure in their Expectation of Justice, by a suitable and public mark of your Detestation of so licentious an Opinion; and thereby convince the Nation, that even the meer Suggestion of such a corrupt Principle is an undeserv'd Reproach,

and highly injurious to his Majesty's Administration.

Yet if it should be supposed, by way of Argument (which has not been proved, and therefore cannot be admitted) that the Sale of these Offices has been of late tolerated, for the greater Increase of the Perquisites of the first Officer of the Crown, in the principal Court of Justice; yet the Earl's raising and receiving these exorbitant Sums, above double to any Instance before his own Time, which he has made appear, upon a Pretence that the Business of the Court of Chancery was very much advanced during his Residence there, will be as criminal, as if he had put the Offices to Auction, when no Sum or Fee had ever been taken or heard of.

And in his method of Practice there can be no Distinction between a Present and a Price; for he made the *most* always of his Share or Claim in the Office. When he was only to admit upon a Surrender, he took *fifteen Hundred Guineas* for his Good Will and Approbation merely; and when he admitted upon a Death, he took *five thousand Guineas* at the least, altho' the Office was greatly in Debt; as in *Borret's Case*, where the Suitors will lose upwards of *twelve thousand Pounds* of their Effects, by the lowest Computation.

As for the small antient Fees which have been paid to the Great Seal for Time immemorial, upon the sealing every Patent, these are out of the present Question; and where Usage beyond Time of memory has allow'd the Receipt of these little Sums, it will be presum'd (if there was Occasion for it) that some Act of Parliament had pass'd to make it lawful.

And when it is said, that a good Officer may give money for his Place, and may resist the Temptation of Extortion; it is what the Law of *England* would not trust to human Frailty; and if all the Actions and Behaviour of the best of the *Masters*, with respect to their Fees, their manner of Proceeding upon References, and their disposing and trafficking with the money of the Suitors, were to be enquired into more particularly, there can be no doubt, from what has appeared in Evidence upon this Trial, but that the Temptation and Inclination to Profit, towards reimbursing themselves the money advanced to the *Earl*, and the preceding *Master*, have overcome their most steady Resolutions to Virtue and Self-denial.

As to the citing particular Cases, wherein the Sale of Offices Judicial, or of the like sort with those in Question, have been determin'd to be illegal at Common Law, I apprehend it is not necessary; for that the Reason of the Common Law, and the Purport of the several Statutes mention'd, do fully and sufficiently maintain the Validity of the Articles in that respect.

And the managers might more properly call upon the Earl and his Counsel for Authorities or Judgments to the contrary.

But matters of a corrupt Nature are always privately transacted, and no Witnesses, or at most very rarely, are to be produced besides the Parties concern'd.

And if the Earl will produce any Instance in the Books, where such a Transaction has been mention'd, I may engage to shew him at the same time, that it has been holden illegal.

The Authority already cited by a Learned manager is express:

Stockwith *cont'* North, *Moore*
781. North was fined in the Star-Chamber, for that he being Sheriff of the County of Nottingham did take money for the Goaler'ship and the Bailiwick for his Year; and at first he gave them to his Servants, who sold them, but himself received the money; and this was adjudged to be a letting to Farm of his County, contrary to the Statute of 4 Hen. IV. cap. 5. Yet there note, says the Reporter, that the Statute itself gives a Penalty certain and pecuniary, and it is *malum prohibitum*, non in se. But the Court held, that in as much as great Corruption ensues from the Greediness of the Officers, and they are enforced thereto by the Prices which they give for Things which ought not to be sold, that this setting of offices to Farm and Sale, is *malum in se*, and *finable*.

But the Earl objected, that this Opinion is extrajudicial; and the Court were mistaken in one part, when they say, that the Statute 4 Hen. IV. did inflict a Penalty; whereas it did not, but only prohibited the letting to Farm the Bailiwick, which was lawful before, and therefore properly finable, as a Breach of the Act.

In Answer to which, it is plain upon Perusal of the Book, that that Part relating to the Act 4 H. IV. imposing a Penalty, is only the Note of the Counsel, or Reporter, who took that particular Offence to be only *malum prohibitum*; and whether the Court did impose that Fine by Force of the Statute, or as warranted by the Common Law, it will not weaken the Authority; because the Court expressly declare it to be their Opinion, that the selling of the Office of Goaler was *malum in se*, and *finable*; which shew'd the Judgment of the Court on that part of the Question; so that there is no mistake to be imputed to the Court.

And my Lord Coke, in his 3 *Inst.* fol. 146. cap. 68. of *Bribery and Extortion*, and fol. 224. & 225. cap. 101. of *Judgments and Execution*, describes these Crimes as *Offences at the Common Law*, and puts his Examples accordingly, which may be there consulted.

So in the Case of *Smith and Mall*, 2 *Rolls*, Rep. 263. and *Linley's Case*, *Hutton*. 70. where it is holden, That if any Judge or Officer takes more than the usual Fees, he is punishable by Indictment at the Common Law. Which necessarily implies, that they are punishable at the Common Law, for taking money where no Fee at all is due.

The strict Definition of Extortion is, *When any Person, Colore Officii extorquet Feodum non debitum, plusquam debitum, aut antequam debitum.* *Hutton*. 52, 53. Co. 3. *Inst.* 149, 150. *Beaufage's Case*, 10 Co. 101, 102. *Dive and Maningham*, *Plowden*, 68: a. Co. 1. *Inst.* 368. b. *Sir John Bingley's Case*, *Poph.* 149. *Rex & Gover*, 1 *Sid.* 91.

But largely, *Extortion is taken for any Oppression by extort Power, or by Colour or Pretence of Right.* Co. 1. *Inst.* 368. b.

But it is urged by the Earl and his Counsel, that it appears from the Statute 5 & 6 E. VI. that the buying or selling of these Offices was lawful at the Common Law, and is not prohibited by the Statute 12 *Rich.* II. and that the Statute of E. VI. neither declares nor creates any Crime; but only imposes a special and particular Penalty, by Loss of the Office or Disability, and therefore the Earl having been dismiss'd the Great Seal, there can be no Punishment inflicted upon him.

It is agreed by them, that the Statute 5 and 6 E. VI. includes both the Offices of *Clerk of the Custodies*, as an Office of Clerkship in a Court of Record;

Record; and of the *Masters in Chancery*, as Officers touching the Administration and Execution of Justice, in point of Description.

And upon reading the Act it is evident, that this Statute in the *Preamble*, and throughout the whole Act, treats this way of dealing, as a *Corruption*, and illegal in its Nature, and expressly calls it so.

The *Preamble* says, *For the avoiding of Corruption, which may happen hereafter to be in the Officers and Ministers in those Courts and Places, wherein there is Requisite to be had the true Administration of Justice or Services of Trust.*

And this Statute carries the Punishment farther, but does not take away the Punishment of it as a misdemeanor at the Common Law, by Fine or Imprisonment upon Indictment.

And there is not any *Proviso* in the Act which mentions or exempts the *Court of Chancery*, or any of the Officers of that Court; but in consequence, when it mentions other Courts in a *Proviso*, must more strongly be intended to include them in the Act.

The *first Proviso* extends to Offices of a private Nature, and to Offices of Inheritance, and can't relate to any *judicial Office*, nor to either of these Officers, who hold only for Life; altho', where the Nature of the Office has allow'd it to become inheritable, it makes it alienable; but no such Instance is to be met with in the Case of *judicial Offices*.

The *second Proviso* is to prevent any Person's being surpriz'd into the Penalty unwittingly, before Notice of the Act, or by a Retrospect. And altho' the Statute takes Notice that divers Persons did make such corrupt Bargains, it is only by Way and with an Intent of preventing, and not of legitimating them; and it leaves them all as they stood at Common Law, until that Day appointed by the Act was past.

And the *last Proviso* does nothing more, and leaves the Justices to act upon their own Knowledge and Discretion in the Law, according to the Nature of the Office, without casting any Imputation upon them unnecessarily.

But so exceeding cautious was the Legislature, that there is not any Expression, in any Part of the Act, to declare or enact such Bargains in the Cases excepted, to be good.

But the Statute leaves them entirely to the Regulation and Direction of the Common Law and former Acts of Parliament.

So that altho' the *Earl of Macclesfield*, by his being dismiss'd from the Office of *Lord Chancellor*, is not liable to suffer the additional Punishment, contain'd in this Act, of Loss of his Office: Yet he will still be liable to the Punishment at Common Law, and upon the several other Statutes, and accordingly remains open and subject to your Lordship's just Sentence.

For where a Statute does give or impose a new Penalty, for a matter which was an Offence at the Common Law, the Prosecutor may pursue either of the Remedies; altho' where a Statute makes or creates the Offence, that Remedy must be taken which the Statute gives.

Reign cont. Wigg' Pas' 4. Anne Banco, Regin' Salk. 460. Com' Leicest. & Mandy 2. Sid. 32. Dr. Hussey's Case, 9. Co. 74. Cranbank's Case, 2. Rolls Rep. 49. Burgen's Case, 1. Ven. 13. 1. Sid. 409.

Thus I have gone into this long Debate, to shew that the *Commons* have founded their *Articles* upon the general Rules of the Common Law, supported and enforced by divers Acts of Parliament.

As to the Proofs;

I shall now take notice of the Evidence upon

the particular *Articles* assign'd to me, and shall observe not only upon the Proofs given by the *Commons* in maintenance of those *Articles*, but likewise upon the Examination made on behalf of the *Earl* impeach'd, and in his Defence.

As to the *money Articles*, I shall make this general Observation upon the Evidence, that it has been agreed by all the Witnesses examin'd thereto, as well by Mr. *Cottingham*, the *Earl's Secretary*, and on these Contracts his Lordship's Broker, as by the *Masters* themselves, and their Agents, that the whole Transaction was done and finish'd, and the money actually paid and deliver'd into the *Lord Chancellor's* own Hands (except Mr. *Thurston's Five Thousand Guineas*, which were deliver'd to another for his Lordship's Service) before the Resignation of the former Officer was accepted, and before the Admission and Swearing of the Successor.

So that the principal Point and main Strefs of the *Articles* are thus in fact agreed upon by both Parties.

But as to these *Articles*, and more particularly with respect to the *One Hundred and Five Pounds* receiv'd from Mr. *Thomas Bennet*, and the *Fifteen Hundred Guineas* each receiv'd from Mr. *Kynaston* and Mr. *Bennet*, the *Earl* and his Counsel have suggested a Deficiency in the Proof, arising from a Contrariety in the Evidence given by Mr. *Cottingham* the *Earl's Secretary*, to what has been sworn by Mr. *Bennet*, Mr. *Kynaston*, and Mr. *Charles Baily*; and, upon the Credit of the *Secretary's* Testimony, would suppose that each of these Sums proceeded first from the free and voluntary Offer of the *Masters*, and was not insisted upon by the *Earl* or his *Secretary* before hand, as charged in the *Articles*, and prov'd by the *Masters*, but only accepted and receiv'd by *Cottingham* and the *Lord Chancellor*.

But the Nature of the Transaction, and the Circumstances of the Persons, do very strongly support the Credit of the *Witnesses* produced by the *Commons*, and the Probability of their Testimony, who have prov'd every Part of those *Articles*, in the very Words of them; and Mr. *Cottingham* himself has confess'd enough to maintain the *Articles* in Substance, altho' he should be credited in any Circumstance wherein he varies from the other *Witnesses*.

As to the *ninth Article*, it will be very difficult to believe that Mr. *Bennet*, who had lately paid the *Lord Chancellor* so large a Sum for his Admission to the Office of a *Master*, which he had borrowed of his *Brother*, and who had paid no Admittance money for this Place of *Clerk of the Custodies* to the former *Chancellor*, the *Earl Cowper*; and who had likewise been informed by his *Brother* Mr. *John Bennet*, that nothing was paid by him to *Earl Cowper* upon his being admitted to the same Office, and that *Lord Cowper* himself had declared to Mr. *John Bennet* that there was nothing due upon his Admission; that Mr. *Thomas Bennet*, under these Circumstances, should of his own Accord first propose a *Present* (as it is called) when he could not well imagine that there was any Pretence to it; that is hardly credible.

And *Cottingham* himself has own'd, that he told Mr. *Thomas Bennet* that something was expected, and that he carried the *Proposal* of *One hundred and five Pounds* to the *Earl*, who accepted it, and thereupon he receiv'd the money from Mr. *Bennet*, and paid it over to the *Earl*; after which the *Earl* then took the whole Care upon himself

of expediting the *Sign Manual* and the *Patent*.

Now, *Cottingham* being the Factor employ'd by the *Earl* in all these Bargains, who has been avow'd by the *Earl* to be his Agent, and has been produc'd as his *Witness*, and supported by him; every thing that *Cottingham* declares and acts in compleating these Contracts, will be consider'd as the Act of the *Earl* himself, and his own bartering; especially, when *Cottingham* (as he deposed before your Lordships) did not conclude the Bargain, until he had receiv'd the *Earl's* Approbation thereof; and when the *Earl*, at the End, confirms the whole by his Receipt of the money.

And a *Lord Chancellor's* expecting something, or a Sum of money, be it more or less, and this his Expectation declared and notified by his *Secretary* to the Person applying to be admitted into the Office, is a peremptory Demand, and an insisting, when the *Lord Chancellor* alone, and no other, has the Power of taking the Resignation, or making it effectual by passing the new Patent, and of admitting the new Officer.

But this matter has been explain'd and confirmed by the Evidence of *Dupper* the *Under Secretary*, the *Earl's* own *Witness*, upon whose Authority the *Earl* relied, who acquainted your Lordships, that upon *Cottingham's* telling him of the intended Surrender of Mr. *Thomas Bennet*, *Dupper* said, there ought to be an Acknowledgment to the *Great Seal*, and he had heard that money had been given, which *Cottingham* himself at first doubted of; but *Dupper* soon satisfied both the *Earl* and his *Secretary* that money might be ask'd.

This confirms the Evidence of Mr. *Thomas Bennet*, that nothing was said about money to be given, or an Expectation of something at his first meeting with *Cottingham*, but it was introduced by *Cottingham* at their second meeting; which must be after this Advice and Information of *Dupper*, and that then the Resolution was taken of expecting a Sum of money.

This argues the Diffidence of the *Earl* impeach'd in setting up this Pretence, and his Suspicion of the Illegality of it; yet the Opinion of the Person advising, and the *Earl's* own Inclination to Gain, were too powerful to be resisted.

But to remove the Foundation of this *Objection*:

The Point or *Charge* of these *Articles* lies in the taking these Sums by the *Earl*, *colore officii sui*, as *Lord Chancellor*, and without Right, which is *Extortion* and *Corruption*.

And if he did receive these Payments by Colour of his Authority, and without Right, (and he has made out no Pretence of Right) he will be guilty of the Crimes charg'd upon him, in how artificial a manner soever he transacted these matters.

It will amount to the same, whether they proposed the Sum to him, or he made the Demand upon them; yet if something was expected by him, and he declin'd doing the Duty of his Office, until that something was offered and paid to him, it is an *Exaction* and an *Imposition*, which is *criminal*, and maintains the *Articles*.

And it is remarkable, that the *Earl* would never give Credit for his *Present*, but always had it safe in his own Hand, before he admitted the *Officer*.

It has been attempted, on behalf of the *Earl* of *Macclesfield*, to prove that former *Chancellors* have used to claim and receive money upon the taking Surrenders, and making new Grants of this Office; but herein the *Earl* has fail'd, and has

not been able to give legal Proof of any one Instance of that kind, upon the change of this Office of *Clerk of the Custodies*.

For *Dupper* did not see any money paid on that Occasion, nor knows any thing of it, of his own Knowledge, but only copied an *Account* which he came by very oddly, wherein (as he says) there was an *Item* to that effect; and his Evidence depended meerly upon Hear-say, and ought to have no Regard.

The Evidence of Mr. *Oker* turns against the *Earl*; for altho' there were Surrenders in both the Times, when *Earl Cowper* held the *Great Seal*, yet nothing was paid or taken by him; and upon the Surrender of *Thompson* to *Edwards* in the late *Queen's* Time, it was said that nothing was given; and upon the Surrender of Mr. *John Bennet* to Mr. *Thomas Bennet*, whilst *Earl Cowper* enjoyed the Seal under his *Majesty*, nothing was paid or claimed.

And the supposed Intimation or Opinion of *Lord Cowper*, which *Oker* mentions, was between these two Surrenders, which makes it very unlikely that *Earl Cowper* should make such a Declaration; yet if such Discourse there was, it is plain, that upon better Consideration, the *Lord Cowper* departed from such Pretension, and discover'd no Expectation of any thing, upon the last Surrender and Grant of this Office.

And as nothing was taken by *Lord Cowper*, upon the Surrender of Mr. *John Bennet* to Mr. *Thomas Bennet*, it will be prov'd, that on the Surrender of Mr. *Edwards* to Mr. *John Bennet*, *Lord Cowper* refused to hear of a Present, when it was hinted at, and declared that nothing was due to the *Great Seal*.

But this *Defence*, which is founded upon a supposed Usage to receive a *Fee* for permitting such Surrenders, and from thence would infer a Right, or an Excuse to the *Earl* impeach'd, in doing the like, is a Proof and Confirmation of the *Article*, as charg'd by the *Commons*; That the *Earl* did insist upon the money, as his *Right* and *Due*.

ART. V. As to the Bargain with Mr. *Kynaston*, it appears from his Testimony, and the Evidence of Mr. *Charles Baily*, who paid the money, that Mr. *Kynaston* endeavour'd to obtain the Admission at a lower Rate. At first he offer'd but *one thousand Guineas*; and at the End Mr. *Baily* understood it to have been agreed for at *fifteen hundred Pounds*; and when Mr. *Cottingham* said *fifteen hundred Guineas* were expected, *Baily* did not proceed till he had informed Mr. *Kynaston* therewith, who answer'd, that since Mr. *Cottingham* had mentioned that Sum, he must submit, and do accordingly.

And this Dispute, upon the Difference between *Pounds* and *Guineas* only, explains the manner of these Dealings; That they were formal Contracts and Bargains between the *Secretary* and the *Masters*, at the best Price that could be got; and tho' there was no haggling with the *Earl* himself (as *Cottingham* express'd it at one of these Dealings) yet he had a faithful *Steward*, who could and did haggle very well for him; and when the *Secretary* had done his utmost, the *Earl* accepted the Price which had been agreed upon.

ART. VI. As to the *fifteen hundred Guineas*, paid by Mr. *Thomas Bennet* for his Admission, and the manner of making that Bargain, Mr. *Bennet's* Evidence of his first offering *one thousand Guineas*, and *Cottingham's* Refusal of it, saying, He hoped Mr. *Bennet* would not lower the Price, and the Hazard of his being refus'd, and that there was

no haggling with my Lord, and at last agreeing for *fifteen hundred Guineas*, is supported from the usual Behaviour of *Cottingham*, as well as from the Probability of the thing itself; that a man may reasonably be presumed to endeavour to save what he can, and when he is purchasing, to get it at the cheapest; altho' (as it has appear'd upon the Examination) Mr. *Bennet* had little Reason to expect that a succeeding *Chancellor* would be satisfied with his Circumstances, and admit him.

Upon the *Earl's* Defence against the Charge contained in these two *Articles*, it was prov'd by Mr. *Goldebrough* the *Register*, that the *Earl*, about the 23d of *February* last, had paid those two Sums into the *Court of Chancery*, to be apply'd for the Benefit of the *Suitors*; and this is offer'd either in his Discharge, or as a Merit. But this was done several Days after the *Impeachment*, and after publick Complaint had been made against the *Earl* upon these two *Instances*, and is a very proper example of the *Earl's* own Construction of a *voluntary Present*; for after the *House of Commons* had taken this Affair into their Consideration, and had demanded Justice and Satisfaction from the *Earl* by a *Parliamentary Prosecution*, the *Earl* then did freely and voluntarily, and of his own accord, make a *Present* to the *Suitors* of the *Court* of these two Sums, which he had, in the like free and voluntary manner, receiv'd as a *Present* from Mr. *Kynaston* and Mr. *Bennet*.

But this Action contradicts his whole *Defence*; and shews that he was convinc'd that he had no Right to receive or detain the *Money*, and was afraid to keep it any longer.

ART. VII. and VIII. As to the two five thousand *Guineas* receiv'd by the *Earl* of Mr. *Elde* and Mr. *Thurston*, it is prov'd that the Price was settled between them and Mr. *Cottingham*; and when Mr. *Elde* (of whom the *Earl* express'd so good an Opinion) offered five thousand Pounds, *Cottingham* said *Guineas* were handsomer; and the particular method of Payment shews the inward Rebukes of his Conscience, and his Fear of a Discovery.

And these two *Facts* shew the Prevalency of his Avarice, above any other Passion. For in Mr. *Elde's* Case, he broke thro' the Obligation of Gratitude and Friendship to him, to receive his money in a cover'd manner, in a *Basket*. And in Mr. *Thurston's*, he tried to beguile his Fear of a Discovery, by suffering the money to come to him thro' a private and unsuspected Hand.

And these two *Instances* were of so nice a Nature, that his faithful *Secretary* own'd, that he was not admitted into the Secret. For it appears that the *Earl* either knew or suspected there would be a Loss in *Borret's* Office by his Insolvency, tho' it was not reduc'd to any Certainty; and it now appears, at the least, to amount unto twelve thousand Pounds.

But the *Earl* left the *Suitors* of the *Court* to bear that Loss, and never took Care to procure a just Satisfaction to them. Which the *Commons* urge both as an Evidence and an Aggravation of his Guilt; since he therein prefer'd his own private Gain to that Security, which his high Trust required him to have provided for the *Creditors* of the *Court*.

And the returning great Part of these two Sums, after the Confusion and Disorders of the *Court* became publick; and Part of Mr. *Elde's* money, after the *Masters* had been call'd upon to bring in their *Cash*, and which upon Mr. *Elde's* Evidence

may be reasonably presum'd to have been made use of by him to make a false Shew before the *Commissioners*; are rather Decrees against himself; than any Extenuation of his Guilt.

And as to the *Earl's* great merit, which he so largely dwelt upon, and so often repeated, that he might have had six thousand Pounds from Mr. *Lucas*, which he relinquish'd, to accept of five thousand *Guineas* from Mr. *Elde*. The *Managers* will call Mr. *Lucas*, who (in answer to Mr. *Elde's* Testimony) will prove, that when he offer'd the six thousand Pounds, it was upon this express Condition, that if the *Money* of the *Suitors*, or the *Cash*, was taken out of the *Masters* Hands on a *Parliamentary Enquiry*, he should have a Return of some Part; and that the *Earl* should indemnify him against all Deficiencies.

So that the *Earl* did not refuse Mr. *Lucas's* six thousand Pounds, from a Disinclination to the Sum, if he could have kept the whole securely; but because five thousand *Guineas* paid absolutely, was better than six thousand Pounds subject to a Condition of refunding, and incumber'd with an Engagement of Indemnification.

But the *Earl's* chief *Defence* is rais'd from the Practice of his *Predecessors*, who (as he pretends) led him into these mistakes; and he has prov'd seven hundred Pounds to have been paid by Mr. *Lovibond*, about twelve Years since, and eight hundred Pounds by Mr. *Holford*, and five hundred Pounds by Mr. *John Bennet*, in the Year 1716. upon their respective Admissions into the *Offices* of *Masters*; and from thence insists, that altho' he can't claim the exact Sum of fifteen hundred Pounds receiv'd by himself upon Admissions, as a certain and establish'd *Fee* or *Perquisite*, because he has taken twice as much as his *Predecessor* did; yet this Practice gives him a Right to a *Present*, and it was in his own Discretion to declare the Sum, as he should think reasonable, according to the late Increase of the *Business* of the *Court*.

But, a *Present* altogether uncertain in the *Quantum*, and depending in this manner upon the Pleasure of the Person who is to receive it, seems to differ very little, if at all, from a *Price*.

The *Earl* insists likewise, that the Denial or Refusal of some other of the *Witnesses* to answer his Questions, is a farther Proof that they paid money.

This shews that the *Earl* thinks he wants the Proof very much, when he makes use of such an Argument to raise Evidence.

The *Witness* refuses to answer such Questions, which he is not oblig'd by the Rules of *Law* to resolve, concerning the manner of his Admission; and the *Commons* cannot call *Witnesses* to contradict or explain that which has never been deliver'd in Evidence.

Yet the *Earl* desires your Lordships to believe this as Evidence, tho' you never did hear it, and to act and vote, upon your Honour, as if you had heard and admitted it.

But howsoever the *Earl* may have directed himself, he can never think that such an unjust Insinuation will prevail upon your Judgment; or that he can thereby move your Lordships to give up your Honour in the highest Exercise of your judicial Power.

And these two or three late Instances, which he has produced, cannot change the *Common Law*, or repeal the several Acts of *Parliament*, whereby they are declar'd illegal; and if he makes use of them as *Precedents*, he ought to take them with all their

Circumstances, which upon the whole matter rather turn against him. For Mr. *Holford* and Mr. *Lovibond* were at that time, and still continue men of Substance; and Mr. *John Bennet* was of Ability at the Time of his Admission, altho' in the Year 1720, he sustain'd several Losses, which impair'd his Estate. And they all paid the Sums of Money mentioned out of their own Estates, and no Part of it out of the *Suitors Cash* or *Effects*: And the whole of the *Suitors Effects* was deliver'd over to them by an *Account* with which they stood charg'd.

So that altho' these few Instances were not animadverted upon, either because they were not publickly known, or that no Inconvenience did ensue therefrom; yet they will afford no Excuse to the *Earl* impeach'd, for taking double or treble the Value of those Sums upon his Admission of *Masters*, who were Persons of small or incumber'd Estates, and who were necessitated to employ the *Cash* and *Effects* of the *Suitors* in the Payment for their *Offices*, and for their *Admissions*; and thro' whose Insolvency so great a *Loss* and *Damage* has come upon the *Suitors*.

But an *Officer* of publick *Trust* and *Service* ought to look well to his *Precedents* before he follows them; and if he will pursue an illegal or unjustifiable *Precedent*, he does it at his Peril, and must answer for the Consequences; especially in the Situation of the highest *Officer* in the Kingdom, who was intrusted with the Administration of publick *Justice*, in the *supreme Court of Law and Equity*; and whose *Duty* it was, as well to declare and expound the Law to others, and to regulate and reform the Exactions and Abuses, which at any Time may have crept into the inferior *Courts of Justice* to the Injury and Oppression of the *Suitors* of other *Courts*, as to prevent or suppress Corruption and Extortion in the *Court* where he more immediately presided.

ART. XI. As to this *Article*, the particular Circumstances of Mr. *Kynaston* and Mr. *Thomas Bennet* have been prov'd, and the Deficiencies in their *Offices*, and how unequal they were to the *Trust* of the great Sums and *Effects* deposited in their Hands.

By the *Orders* of the *Court*, which have been read, it appears that Mr. *Kynaston's* Deficiency amounts to 26,908 l. 11 s. 3 d. 1 q. and Mr. *Bennet's* to 16,075 l. Mr. *Kynaston* had about 50,000 l. in money and effects of the *Suitors* in his Custody, and Mr. *Thomas Bennet* near 100,000 l.

This is likewise a high Breach of *Trust* in the *Earl*, and is an Offence against the Statute of 12 Ric. II. cap. 2.

12 Ric. II. cap. 2. — But that they make all such *Officers* and *Ministers* of the best and most lawful Men.

Which Words in the Law import Sufficiency of Substance, as well as Capacity.

And the Statute 2 Hen. VI. cap. 10. takes it for granted, that the superior *Officers* were before that Time under the Obligation of the Common Law, or some former Statute to that Effect; when by the said Act, 2 Hen. VI. cap. 10. Co. 4. Inst. 114. intituled, *What manner of inferior Officers shall be appointed in the King's Courts*, it is enacted, *To the Intent that better and more sure Government be had within the Courts of our Lord the King, for his Profit, and Ease of his People, which have to pursue and to do in the same*; it is ordained and established, *That all the Officers made by the King's Letters Patents Royal within the said Courts, which have*

Power and Authority by virtue of their Offices of old Times accustomed, to appoint Clerks and Ministers within the same Courts, shall be charged and sworn to appoint such Clerks and Ministers for whom they will answer at their Peril, which be sufficient, faithful, and attending to that which pertaineth to them in Performance of the Business, as well of the King as of his People.

This Act would have been extended farther, if it had been esteemed necessary.

The Frame of both these *Statutes* does shew the Bent of the *English Constitution*, to provide for the Ease and Benefit of the *Subject*.

But the old Rule, *respondeat superior*, will hold against the *Earl* in this Case, especially when it appears by the Evidence of Mr. *Goldesbrough* the *Register*, a Witness produc'd by the *Earl*, that this Practice of paying money generally into the Hands of the masters, was not in use at his first coming into the *Register's Office*, about the Time of the Revolution. So that the *Earl* impeach'd took upon himself the Disposition of the *Suitors* money, without a proper Ground and Justification.

And the Offence contained in this *Article* does not depend upon his Knowledge, that the Persons admitted were insufficient and unable; but that the *Earl* did not require and take full Satisfaction and Evidence in a proper manner, to make it manifest that they were able and sufficient, as had been done by his *Predecessors*; particularly when Mr. *Holford* was admitted *Master*, his Father was obliged to settle a real Estate upon him of good Value.

The *Earl* ought either to have advanc'd Persons equal to the great *Trust* and *Charge*, or to have reduced the *Trust* and *Deposit* to the Condition and Circumstances of the Person, as his *Predecessors* had done.

So that it is evident the *Earl* had only in view the Price and Profit of the Sale of the *Office*, which would rise highest upon the Inability and Unfitness of the *Officer*.

And it was therefore very properly said by one of the *Earl's* Counsel, that he weigh'd the *Masters* before he admitted them.

But he weigh'd them only for the Sake of the Price they were to pay to himself; and when he had done with them, he left them of very little Weight for the Security of the *Suitors*.

His false, tho' memorable *Declaration* in open *Court*, upon the 21st of Jan. 1723, explains his whole *Scheme*, when he publish'd from the Bench, *That the present Masters were Men of as great Fortunes as any Set of Masters had ever been.*

The Words were prov'd by Mr. *Waller*, and have not been contradicted by any *Witness*.

At that time Mr. *Dormer's* Deficiency had taken Air; and Mr. *Waller* upon his Examination said, The Suspicion of several of the masters was then so strong, that this Publication rais'd Astonishment in the Hearers. But there was then a *Vacancy*, and an *Office* to be sold. Mr. *Fellowes* died 19 Jan. 1723, and it became necessary to give the *Office* a Reputation.

And altho' the Insufficiency of some of the *Masters* had been decently intimated to the *Earl* by Mr. *Lightboun*, upon his several Proposals, and the *Earl* may be presum'd to know the general Apprehension of the World. Yet in this solemn manner the *Earl* became an *Officer* to himself, to proclaim his own market.

ART. XII. The Practice and Injury to the *Suitors* can hardly be more aggravated than is express'd in the *Article* itself. And

And it has been prov'd in every Particular necessary to support the *Article*; and no Proof has been offer'd on the Part of the *Earl* to contradict or extenuate the *Charge*, by making appear his Vigilance, or any Care or Regard to prevent the fatal Consequences of the *Practice*.

The particular *Methods* of preventing this Fraud specified in the *Article*, are only to shew the Practicability of some sort of measures proper to have been put in Execution, in order at least to render the corrupt *Practice* and Abuse difficult, altho' they had not prov'd compleat in all respects to redress and prevent them.

And by the *Witnesses* call'd on the Part of the *Earl* himself, it was expressly prov'd, that some of these *Methods* had been practis'd with Effect in the time of his *Predecessors*, and that no *Loss* had happen'd to the *Suitors* during that Regulation.

An *Account of the Suitors Cash and Effects* was brought to the then *Lord Chancellor Harcourt* by Mr. *Holford*, as the *Account* of his *Predecessor*, before he was admitted; and he was thereupon ask'd if he would be bound by that *Account*, and stand charged accordingly? to which he agreed, and his Substance was sufficient to answer it.

The *Cash Money* was for some Years lock'd up in the Hands of the *two junior Masters* in *Lord Chancellor Cowper's* Time.

And it has been prov'd, that the *total Accounts of all the Masters* have been taken *three* several Times within a few Years; that is, *twice* by *Lord Cowper*, and *once* by *Lord Harcourt*.

And altho' the *Earl* seems either to doubt of his Authority, or of the Possibility of doing this in his own time; it can be prov'd, that he requested to see the *Accounts*, and to be inform'd of this method, and accordingly had a Sight of the *Books*, and made an Appearance of putting it in Execution.

Besides, the late *Accounts* deliver'd in by the several *Masters* before the *Commissioners* named for that Purpose, shew, that such an Attempt was practicable, and might have been compleated in a reasonable Time.

But the *Earl of Macclesfield*, by his own Confession, is guilty of a total Neglect of all measures; and never prosecuted one honest and real Step towards the suppressing this Abuse.

He might have given Directions and made *Orders* for the securing the *Suitors Effects*, in the same manner before the late *Inquiry*, as he has done since.

His *Secretaries* and *Agents* might have supervised the Observation of these *Orders*; and have attended to inspect the complete *Transfer* of the *Suitors Effects*, as well as to receive his *Lordship's* extorted *Premium*.

And if after the *Earl* had taken these, or any other probable measures, the *Masters* had broken their *Trust*, the Fault would have lain upon the Dishonesty of the *Masters*, and not upon the Conivance or Negligence of the *Lord Chancellor*.

But upon this *Article* the *Answer* of the *Earl impeach'd* is directly falsified. For he declares upon his *Honour*, upon that *Honour* which is communicated to him from the Privilege of the whole *Order of Peers* (but of which he himself has only made a Shew or Appearance) that he was totally ignorant of this *Practice*; although it appears in *Proof* to have been a matter publicly known during his *Administration*. It was one Inducement to Mr. *Kynaston*, and the single Temptation to Mr. *Thomas Bennet*.

This *Notoriety* is a reasonable *Evidence* to charge the *Earl* with the Knowledge of a fraudulent Transaction propagated under himself; especially when the Pretence of his Ignorance must arise from the wilful Neglect of his *Duty*.

But express *Notice* is prov'd out of his *own Mouth* by Mr. *Thomas Bennet*; and farther, that the *Earl* had been us'd to prostitute his *Honour* by a Course of Denial of this Fact upon former Occasions.

For Mr. *Bennet* in his *Account*, which he had deliver'd in to the *Judges*, had insert'd this remarkable *Item*, viz. *Item 9075 l. in the Hands of Persons of Ability*; which included the 7500 l. paid to Mr. *Hiccocks*, and the 1575 l. paid the *Chancellor* for his *Admission*.

Mr. *Kynaston* also in his *Account* had insert'd an *Item* to the same Effect for a like Sum.

Mr. *Thomas Bennet* went soon afterwards to the *Chancellor*, who enter'd into Discourse with him thereupon, and said: *I am sorry you have given in your Account in this manner; it was the worst way in the World: For all the World will now judge, that you paid for your Office out of the Suitors Money; and what hath been so much suspected will now be discover'd, which I have always taken so much Pains to deny, whenever I was ask'd the Question: And wish'd he had been acquainted with Mr. Bennet's Necessities before Mr. Bennet had given in that Item; or to this very Effect.*

The Probability of the Truth of this *Evidence* stands confirm'd from the Nature of the thing, and the State of the *Account* itself, which has not been contradicted by the *Earl*; and seems farther strengthened by an Opinion which the *Earl* had entertain'd, and which he dropt in his *Defence* on *Wednesday*, viz. *That the Suitor was not the worse by this Method; for by this Detention the former Master remain'd still responsible, and (as he observ'd) by Mr. Meller's retaining some Part of the Suitors Effects, the Deficiency in Mr. Borret's Office was not so large.*

This seems a strong Symptom of the *Earl's* Knowledge of the *Practice*, when it had obtained his *Approbation*.

But the *Money* retain'd by Mr. *Meller* was no part of the *Price* of the *Office*, but were other *Sums and Effects* which he retained in his Hands, and never paid over to Mr. *Borret*, upon the repeated Application and Request of the *Suitors*, who doubted Mr. *Borret's* Sufficiency.

But suppose the former *Master* had died, or fail'd with these *Effects* in his Hands; how should the *Suitor* have come to a full and legal *Proof* of this Transaction? and how many Persons was he to prosecute, to discover and receive his own *Money*?

The Importance of this Part of Mr. *Thomas Bennet's* Testimony has given Occasion to the *Earl* and his Counsel to object to his *Credit*; and an Endeavour has been used to make out, that Mr. *Bennet* has contradicted himself, and has deny'd here at your *Lordships Bar* upon his *Oath*, what he had formerly declared to other Persons.

For that Mr. *Bennet* being ask'd (with an Intent to prove his Ability to pay the rest of his Deficiency) *Whether he had not said, that if Mr. Hiccocks would pay him back two thousand Pounds, he would pay the rest himself, Mr. Bennet denied he had so declared*; and yet, as they urge, the contrary is sworn by Mr. *Holford*, Mr. *Thurston*, and Mr. *Elde*.

In Answer to this Mr. *Holford* gave in Evidence, that Mr. *Bennet* said, that *if Mr. Hiccocks would pay him back two thousand Pounds, he would take*

Care that the rest of the Money should be raised. But Mr. Bennet did not say, he had the Money, tho' Mr. Holford believed he had by his manner of speaking.

Mr. Thurston deposed, that Mr. Bennet declared he would make up the rest himself; but afterwards told him, that all he had in the World would not pay it:

And Mr. Elde swears to the same Effect.

And this Testimony does not contradict, but rather confirm Mr. Bennet's Evidence. For he made no direct Declaration of his Ability to pay the rest, but, being liable to the Suitors, he seem'd to be willing to get what he could from Mr. Hiccocks:

Besides, his Discourse at these times cannot stand in Competition with his Oath, according to the common Rules of Evidence; and a Witness's Credit is not to be taken away upon an uncertain Expression, proved by each of the Earl's own Witnesses in different Words, when from the Ambiguity of it there cannot possibly be any voluntary Contradiction.

But the Commons will confirm the Truth and Fairness of this Testimony of Mr. Bennet, by proving that the Earl had express'd the same Concern and Dislike of the manner of these Accounts in respect of these Items to others, before any Parliamentary Enquiry.

There is likewise another matter of Fact, which affixes the Proof of this Article, which is, That the Price of the Office, and of the Admission, are comprehended in the Accounts of the Masters Deficiencies, and make the greatest Part of Mr. Bennet's Deficiency, and near a Moiety of Mr. Kynaston's.

Which manifests the Danger and Injury of this unjust Practice to the Suitor, whose Estate is thereby put upon the Hazard of the Master's good or bad Success, and his Property lost with a deficient Master.

And here the Corruption and Misbehaviour of the Earl appear with the highest Aggravations.

The extorted Profit made by the Earl is raised out of those Effects which are deposited in the Court upon the Faith and Honour of the King's Administration under the Care of the Chancellor, as chief Trustee, by whose Connivance (if not Consent) they are thus imbezzled; and the miserable Suitor must either sit down with the Loss, or be forced to expend his little remaining Substance in a tedious Process to recover back his own Estate thus wasted and converted by the Masters.

Unnecessary Delays and Protractions of Causes are the unavoidable Consequences of this Practice; and in this manner the Business of the Court, and the Profits of the Masters Offices have been increased by the Pursuit of the Parties after their own Effects, which in the Conclusion terminates in so heavy a Loss.

The late Orders made upon the Petitions of Mr. Hiccocks and Mr. Rogers since the Impeachment, and some since the Trial commenced, tho' not proved to have been as yet comply'd with, and at best are but Deposits to attend the Event of the Contest between the former and the present Masters, have been made use of by the Earl in his Defence; which is a new Attempt in him to make a false Shew and Appearance of Restitution and Satisfaction.

Altho' if it was a real and a compleat Return of the Principal Money, it would be a very small Excuse and Extenuation for the vast Prejudice done to all the Suitors of the Court, by the locking up their Money, Effects, and Securities, and stopping the Payments thereon for so many months, besides the

Loss of Interest on the Cash, and their being hinder'd from the Employment of their Money.

The Earl has not adventured to enter into a particular Discharge of the total Deficiency assigned by the Commons, upon the Evidence of Mr. Thompson, and collected from the Accounts stated upon the late Enquiry, amounting to more than one hundred thousand Pounds. Nor has he given any Answer to the great Loss which the innocent Suitors sustain by the Insolvency of the two deceased masters, Dormer and Borret.

This great Confusion and Damage brought upon a Court, where the Estates of the most wealthy Subjects, as well as of lesser People, do sooner or later come, became a National Concern, not merely from the Extensiveness of the Loss to the particular Suitors, but likewise from the apparent Danger thereby arising to the Publick.

This general Ruin awaken'd the Care and Zeal of the Commons in Parliament for Justice to their Fellow Subjects.

This introduced the Charge against the Earl in the Twelfth Article, which has been proved as it is alledged, viz. That by this unjust and fraudulent Practice, the corrupt Profit made by the Earl upon the Sale of the Offices of Masters in Chancery, has in Consequence been raised and received by him out of the Effects of the Suitors of the Court, for whom he was intrusted; in Breach of the Trust reposed in him for the Preservation of the Estates and Effects of the Suitors, to the Dishonour and Discredit of the Court, and to the great Injury and Defrauding of the Suitors, in a Court of Equity establish'd for their Relief and Protection.

My LORDS,

If the Misdemeanors of which the Earl impeach'd stands accused were not Crimes by the ordinary Rules of Law in Inferior Courts, as they have been made out to be; yet they would be Offences of a publick Nature, against the Welfare of the Subject, and the Common Good of the Kingdom, committed by the Highest Officer of Justice, and attended with so great and immediate Loss to a multitude of Sufferers; and as such, they would demand the Exercise of the extraordinary Jurisdiction vested in your Lordships can inflict that Degree and Kind of Punishment which no other Court can impose.

When these Offences have been proved upon the Earl impeach'd, of what Consideration in Judgment can the Earl's mistaken and misplaced Charities be? Can they alter the Facts charged upon him? or turn Extortion and Fraud into Liberality and Piety? Can the merit of a few private Good Works atone for the Plunder of the whole Body of the Suitors of the Court of Chancery, upon whom this Earl, by his Misbehaviour, has brought a Deficiency of one hundred and eight thousand Pounds?

He depends upon the Prayers and Wishes of those few, who have been the Partakers of his Bounty, without being Sufferers by his Crimes. But the Voice of the Commons for Justice against this Great Offender, not only includes the Complaints of the particular Sufferers, but the Accusation of an injured Nation, whom the Earl had endeavour'd to cut off from the Protection, which ought to be deriv'd to them from the Father of his People.

The Commons having now maintain'd the Truth and Justice of their Charge against the Earl impeach'd upon these Articles, leave him to your Lordships just Determination.

Mr.

Mr. LUTWICHE.

My LORDS,

I am commanded to assist in the Reply; and since I was obliged to bear my Share in this Prosecution, I was willing it should be such as would give me an Opportunity of hearing what would be said and proved in the *impeach'd Lord's Defence*, before I spoke freely upon the matters in Judgment before your Lordships.

And I may now venture to say, as he was unfortunate to bring so heavy a Charge upon himself, he has still been more unfortunate in his Defence; I submit it to Your Lordships Observation, whether any Part of the Evidence offered by the managers has not been confirmed, nay enforced upon him, by his own Evidence; and some of the Charges upon him he has endeavoured to evade by such Excuses and Arguments, as have made even his Defence criminal.

My Lords, Upon the Examination of the first Witnesses produced on the Part of the Commons, his Lordship was pleased to make it a Question whether he took the Oath directed by the Statute of 12 *Richard II.* The Objection seemed to be, that tho' the Statute was read, and his Lordship kissed the Bible, yet he was sworn to nothing. This was so surprizing to all that heard it, and the Report of it raised such Indignation, that it might have been expected his Lordship would have drawn a Veil over this Part of the Case, and have taken Care that it should not be mentioned again; but instead of that, his Counsel, nay he himself, have thought fit to bring this Point into Dispute in his Defence, and his Lordship does not even yet fully own that he took the Oath.

The Statute has been represented as obsolete, read in Old *French*, and not regarded, and the Oath not duly administered; that the Officer said nothing to his Lordship, nor he to the Officer.

The Witnesses told Your Lordships, that at a meeting of the Great Officers every Year in the Exchequer, this Statute was read, and they immediately kissed the Book; and that this was the usual method of taking the Oath prescribed by that Statute.

My Lords, I would observe, that if there had been any thing in the taking of the Oath that his Lordship thought not regular, it was his Duty, who was the Chief of that Assembly, to put them in a right method agreeable to the Statute: And therefore this Objection is very extraordinary to come from him.

It is a dangerous Practice for any one to make a Shew of taking an Oath, and yet, by some nice Distinctions, endeavour to persuade himself or others that he is not sworn.

I do not know but most of the Old Oaths that are taken, may by the like Arguments be evaded, as well as this; the very Oath of Office set forth in this Lord's Answer is, *You shall swear*, &c. and in that Case a nice Distinguisher may as well say, that he repeated nothing, and that there are not Words *de presenti*, whereby he is sworn. But where is the Defect in administering this Oath? The Officer reads out of the Statute, That the Chancellor, Treasurer, &c. shall be sworn, and then they kiss the Book.

I do not see there is much Difference between saying, The Chancellor, Treasurer, &c. shall be

sworn (they being at the same Time present) and saying, *You* the Chancellor, Treasurer, &c. shall swear.

I shall therefore have the Charity for the Noble Lord to think and take it for granted, that he was sworn as the Statute required, and that he understood the Statute, tho' it was read in Old *French*, and that he did not prevaricate, when he did this solemn Act.

Supposing therefore that the Statute 12 *R. II.* is in Force, and that the Oath was really taken; the next Consideration is, what the Law is upon the several Facts and Circumstances proved against the impeached Lord in Relation to his selling the Offices of masters in Chancery.

The Answer put in to the Charge of the Commons says, The masters freely and voluntarily sent a Present without admitting any particular Sum; we say that particular Sums (and those very exorbitant) were insisted on, and a Bargain driven for the Offices, as much as could be in any Case by way of Brokage; nay the very Benefit of having the Suitors money comes into the Consideration of the Price.

The Words of the Statute of *R. II.* are general, and in Point of Reason it should extend to this Case above others; because the Offices of masters in Chancery do not only concern the Administration of Justice, but are in some measure judicial; they transact a great Part of the Business of the Court, and have usually been in Commission together with the master of the Rolls, and the Judges, for hearing of Causes.

Lord Chief Justice *Coke* in his *Third Institutes*, p. 145. places this Offence of selling Offices under his Chapter of Bribery, where he states the Definition of Bribery to be, *When any Man in a judicial Place takes any Fee or Pension, Robe or Livery, Gift, Reward, or Brokage of any Person that hath to do before him any way, for doing his Office, &c.* He comments upon the Words of this Definition and more particularly upon those Words, *of any Person that hath to do before him any way*, and he takes Notice that it is not confined to taking money, where a Suit is depending; but also where any in a judicial Place doth any thing for Gift or Reward by Virtue or Colour of his Office, tho' there be no Suit at all depending.

For Example, (says he) *If the Lord Treasurer, for any Gift or Brokage shall make any Customer, Comptroller, or any Officer or Minister of the King; this is Bribery: For he ought to take nothing in that Case by the Statute of 12 R. II.* This Example also proves, that the Statute is not confined to the Construction that has been endeavoured to be put upon it, that it relates only to Cases, where the Chancellor, Treasurer, &c. meet together, as they do, when they nominate Persons for Sheriffs; for the Example is of the Lord Treasurer alone.

But, My Lords, we insist upon it that this, as well as other Statutes (that have been mentioned) are but Declarations, and further Remedies for what was the Common Law. The Case that was cited out of *Moor's Reports*, 781. takes it to be so, of a Sheriff selling the Office of Gaoler, and his Bailiwick; but there was an Objection made to the Report of that Case, that it says the Statute, 4 *H. IV. c. 5.* gives a Penalty certain and pecuniary; whereas that Statute gives no certain Penalty, and therefore it might be a right Resolution upon that Statute. But the Declaration of the Court, upon which the Party was fined, was because the Offence was *malum in se*; and

and tho' that Statute of 4 H. IV. gives no Penalty, yet I think the Statue 23 H. VI. c. 10. does give a Penalty of 40 *l.* in the same Case of a Sheriff, and yet the Party was fined at the Discretion of the Court. The same Case is also reported in *Noy*, 102. where he takes no Notice of any Penalty, and the Report is in these Words: "N. was Sheriff of *Nottingham*, 43 *Eliz.* and took money for the Offices of Gaoler and Bailiwick, and he first gave them to his Servants, who sold them, but he himself had the money." And he was fined for that, for it is contrary to 4 H. IV. cap. 5. And also by the Court, That that is a Corruption, and a great Cause of Oppression in the Officers, and such Sale of Offices is *malum in se*, and fineable.

My Lords, I think the impeached Lord has advanced a very dangerous Position upon this Point. He is pleased to say, the Publick has nothing to do to enquire about any thing, but whether the Officer be a good Officer; that if he be so, the Publick is not hurt, though he gives the Chancellor money for his Place. Here I presume he was sensible that it might be objected, that the same Argument would hold for taking money in a Cause before him, provided it was a good Judgment: And therefore was pleased to say, that the Difference between this Case and taking a Bribe for Judgment in a Cause is, That in the one Case the Party has a Right to have Judgment, but in the other Case no man has a Right to his Favour or Recommendation, unless upon Terms. This is very extraordinary, and the same Argument would prove, that it is lawful for him to take money from every Judge that comes into *Westminster-Hall*. It is well known, that the Chancellor generally recommends in that Case, and yet it might there be said, What is the Publick the worse, provided he is a good Judge? Surely this is such a Doctrine, as is not fit to be proclaimed to the World, and would tend to universal Corruption.

My Lords, There was a very extraordinary Precedent cited out of *Madox's* History of the *Exchequer*, p. 43. where he says, in the Reign of King *Stephen*, *Geoffery* the Chancellor, fined in 300 *l.* 13 s. 4 d. for the King's Seal. This the Author understands to be a Fine then lately made with the King for the Office of Chancellor, or to have the keeping of the King's Seal. The Author himself observes, that this Precedent may justly seem strange to us at this Day. And truly so it may, for in the Instance before Your Lordships, instead of paying money to the Crown for the Office, here are very great Sums of money paid by the Crown for an Acceptance of it.

But what does this Precedent tend to? Is it to prove the Office of Chancellor likewise saleable? This is so entirely new, that it wants a better Authority than this Precedent. It is a great while ago, if it were as the Author takes it to be. But the same Author, p. 42. says, That the Ancient Historians say little concerning the Duty of Chancellor, or the Nature of his Office; and it does not appear what the Business of his Office was at that Time, and nothing pertinent to the matter before Your Lordships is to be collected from it. It is very strange to suppose the Common Law, that is founded upon Reason, should admit the highest Place of Judicature to be filled by those that come in by such corrupt methods. And therefore we must beg leave to

insist, that it was an Offence at Common Law, as well as by the Statutes.

But suppose this matter rested only upon the Statute of *Edward VI.* I do not see but it is an Offence and misdemeanour in his Office of Chancellor to sell these Places of masters in Chancery, and that he is answerable for it before Your Lordships as a Crime.

This Statute is made against buying and selling of Offices (for that is the Title of the Statute) And shall it not be an Offence cognizable before Your Lordships, for a Chancellor to put in Officers in a manner that is condemned by Act of Parliament? When he by Virtue of the Office is to appoint, it is a Breach of his Oath of Office to appoint contrary to the Laws and Statutes of the Kingdom; but more especially when he does it for corrupt Gain.

As to this Point, there is a great deal of Difference between one Officer selling to another, and a Judge that presides in the Court, whose Duty it is to see that proper Persons be appointed according to Law; instead of that, by this method he shews them a bad Example on their very Admission into the Office, and introduces them by Corruption in the first Instance, even by the very Act of Administring the Oath to them.

If this Great Officer should be liable to no other Punishment, than an Incapacity of Nominating again to the same Office, the Act would have little Effect, and that Penalty would signify very little; since his own Office is during Pleasure.

My Lords, I shall now proceed to reply to the Defence that has been made on the Thirteenth and all the subsequent Articles, which is the Province more particularly assigned to me.

The Charge in the Thirteenth Article is, That upon the Failure of *Dormer*, instead of taking proper Steps for obtaining a Satisfaction by regular and justifiable methods, the Earl of *Macclesfield* neglected and declined those methods, and by many indirect Practices endeavoured to conceal the true State and Condition of the Office; lest a publick Discovery of the Deficiency should lessen the unjust Gains he proposed to make by the Sale of the Offices of masters in Chancery.

Upon this Article the impeached Lord has said, he thinks it hard that these miscarriages should be charged upon him, that this Affair about *Dormer* was a misfortune that might have happened in any other Chancellor's Time, and not his Fault.

My Lords, If this unfortunate Lord had done what became him in his high Station upon the Failure of this master, God forbid that the misfortune upon the Office should any ways have been laid to his Charge; if he had been desirous to have proceeded in a regular method, he might very easily have done it; the Paths of Virtue and Justice would have been easy, he need not have found himself at the End of Four Years surrounded with such insuperable Difficulties.

If a fair, plain, and open method had been taken for enquiring into, and stating the Debt due to the Suitors, and the Account of *Dormer's* Effects to satisfy it, there could have been no Danger to the Chancellor, whatever the Deficiency had been; but the Truth was, he could not part with those vast and exorbitant Prices, to which he had at that Time raised the Places of masters; he

he found the sweet of that Gain, and was willing to run some Hazard for it.

Tho' it was known that *Dormer* was gone, yet the *quantum* of the Deficiency was not known; and if it had been publick, the money might probably have been taken out of the master's Hands; a Parliamentary Enquiry might have ensued, and he might have lost those exorbitant Profits, which he afterwards actually made of those Places; and these were the true Reasons of the Concealment, and of the clandestine Proceeding that followed; nothing else hindered him from proceeding with Safety to himself by regular Orders of the Court. When Orders of Court are regularly made, there is a quick Way of putting them in Execution: It has been observed by the Counsel in this Case, that it is more expeditious against an Officer of the Court, than another; and it is certainly so. There might have been a Sequestration against *Dormer* in a very little Time, and that would have intitled the Court to the Possession of his Effects for the Benefit of the Suitors; which in a great measure answers what was objected of the Necessity of *Dormer's* coming over, and having his Liberty in Order to transfer his Stock. It was likewise said, that it was necessary for the Discovery of his Effects; and yet when he did come over, he was never examined on Interrogatories. Surely if a Chancellor will take upon him to grant a man his Liberty, when he is to make Satisfaction to the Suitors, he ought to take care that the Consideration for the granting him his Liberty should be performed.

But it is said, What Harm has happened by not taking those Methods?

My Lords, Here are two remarkable Instances of the Consequences of this Neglect, by which it appears neither the Debt to the Suitors was known, nor the *quantum* of the Effects that there were to pay it.

Mr. *Edwards* told your Lordships, That the Deficiency of *Dormer* was at first about 25,000 *l.* but that about a month ago he discovered a farther Debt of about 1500 *l.* here there is a very great Deficiency concealed: On the other side the Effects of Mr. *Dormer*, that should have gone towards paying this Debt, have been concealed and lessened by the want of such an Examination. Your Lordships heard the Evidence about the Parcels of Hops belonging to *Dormer*, that were worth Seven or Eight Hundred Pounds, that lay concealed Four Years, and were not discovered till lately. The Counsel, indeed, said, They were only a Parcel of musty Hops that have been found. But if he had been examined on Interrogatories, in all Probability, he would have discovered them at first, and they had been worth 5 or 600 *l.* more than now, and the Suitors would have had the Benefit of them; 5, or 600 *l.* is a considerable Sum in Mr. *Dormer's* Effects; and no one can tell but there might be other Instances of the like Kind.

What is the Answer his Lordship gives to this gross and wilful Neglect? He tells Your Lordships, That he gave Directions to the two Senior masters to make Enquiry into *Dormer's* Affairs and Accounts; *He left it to them*, and that they did not think it requisite to examine him upon Interrogatories, or to use him with Hardship.

It is very extraordinary, that in a matter of that great Concern, he should content himself

with a parol Direction; Orders from a Lord Chancellor, that are in Earnest, are always in Writing; nor can they be enforced unless they are so; and therefore there must be some private Reasons for these extraordinary Proceedings.

Another Thing that was insisted on, was, That the Earl (as he expresses it in his Answer) was made to believe that the masters would make good the Deficiency. What Reason had he to believe it? They never told him so; in a matter of that moment he had no reason to depend on an hear-say Evidence. He knew this was to be an Undertaking for the Debt of another; which could not by Law be Obligatory, unless reduced into Writing.

My Lords, I cannot account for these Things, either in the Chancellor, or those masters that had the management of this Affair, unless it be (as the Article charges) to conceal the Deficiency of the Office, I mean, the *quantum* of that Deficiency; and that both the Chancellor and the two Senior masters thought it their Interest to do so, that all of them might share in the Sale of the Places: The two Senior masters were desirous (as was mentioned by the Evidence) to sell out, and the Chancellor was ready to receive his Share of the money.

The Fourteenth Article is the Article about the Composition with *Wilson*; and I must beg Leave to say, notwithstanding what has been insisted upon, That it is a clandestine, unusual, and unwarrantable Proceeding. We did take the Liberty on our Evidence to this Article to observe to Your Lordships, That the Petition of Mr. *Edwards* (on which this Composition is founded) takes notice that *Dormer* was indebted to the Suitors of the Court in several considerable Sums of money; which should have been a Caution to the Chancellor to have taken a more than ordinary Care in this matter; but instead of that, there is not any one Order, Affidavit, Report, or any one Proceeding, that appears upon Record throughout this whole Affair.

The Report produced appeared to be the Original under Mr. *Hiccocks's* Hand, which was a Demonstration that it was not filed at the Time when the Order was made for establishing this Composition, nor has been since.

My Lords, If there be but an Affidavit annexed to a Petition, care is usually taken to order that it shall be filed; but it was not thought convenient in this Case to have any thing publick.

My Lords, The Earl of *Macclesfield* in his Defence to this Article begun with a Copy of a Judgment obtained by *Wilson* against *Poulter*, that was signed 22 December 1721, and is for 18,774 *l.* whereas the Debt pretended to be assigned by *Wilson*, is 22,060 *l.* So that tho' the Judgment was for all that *Wilson* could pretend to (for ought appears) yet the Debt pretended to be assigned, is mentioned to be above 3000 *l.* more than what the Judgment is for; which is a farther Objection to this Composition, that did not appear before.

The next Point the Earl examined to, was the Sufficiency of *Poulter*, in order to prove the Assignment of *Poulter's* Debt to be valuable; and there were two or three Brokers produced on this Account.

They were very unlucky Witnesses to prove the Man's Ability, for they happened to be the very Persons to whom he had declared his Insolvency;

vency; one of them (*Scott*) was employed to go to Mr. *Wilson* to Compound with him.

But then a very notable Distinction was taken by the Earl himself, That tho' *Poulter* disclosed to these Witnesses that he was Insolvent, and that they were let into the Secret; yet all other People took him to be a good Man. The Evidence produced to prove this, were only those that knew he was Insolvent, and not One of all those others that it is said took him to be Solvent.

But we hope we have made it plain (and if it were necessary, we could make it clear beyond Dispute) that *Poulter* was a broken man at that time.

Another Objection was, How does it appear that a better Composition could have been made?

My Lords, Those that presume to take upon them, without a lawful Authority, to make a Composition to bind the Parties concerned, ought to make it appear to be a very good one; but on the contrary it appeared in this Case on the Examination of Mr. *Edwards*, that *Wilson* (when he was afterwards charged with it) owned he had paid several others their full Debts; and 'tis notorious that he kept his Shop open till lately.

My Lords, The Answer to our Objection, That no notice was given to the Suitors, of this Reference about the Composition, carried in it (I thought) something extraordinary. It was said both by the Earl of *Macclesfield* and his Counsel, That whatever the Lord Chancellor did, could not bind the Suitors, they not having notice, and therefore the Suitors might recover the whole from *Wilson*, and no body was hurt.

My Lords, There is something very shocking in this Excuse, it strikes some Horror to think, that this poor ignorant man (*Wilson*) should be made to believe upon the Faith of a Court of Justice, that his Composition was in full Discharge of his Debt, if there was at the same time a Reserve, that it might be set aside for want of notice to the Suitors; the Excuse seems to carry in it a greater Guilt than the Crime charged. This unfortunate man (*Wilson*) was living at the Beginning of this Trial, but has since laid violent Hands on himself, and he is dead: I make no Reflection what might be the Occasion of it.

My Lords, I did mention that upon the Absolute Order made for Mr. *Edwards* accepting this Composition, it was ordered to be accepted with this Addition to the Order, *viz. Of which give Notice forthwith.* I mentioned it, that the Earl might have explained what he meant by directing Notice after the Composition was ordered to be accepted, or to whom Notice was intended to be given; I have heard no Answer to that, but what the Earl was pleased to say about the Articles, that on reading them he thought he had been charged with compelling Mr. *Edwards* to accept of a Composition without Notice to him; whereas it was done on the Petition of *Edwards*. My Lords, the Notice should have been given to the Suitors, and that before the Composition was ordered to be accepted; that is what the Article charges, and what the managers insist on, and no Answer is given to that Objection.

It was said, That if it had been set down to be heard in the ordinary Course (it being the Third of *August*) in Vacation-Time, it could not have come on till the next Term.

I believe that Lord knows it has very often

happened, that particular Petitions have been heard in Vacation-Time, if Necessity required it; and I don't understand why there needed to be such a Fondness for having this done so much in haste, unless it were for the Purposes charged in the Articles. There was likewise something said by the Earl, of the striking out of the Prayer of Indemnification, that if it were justifiable, it needed no Order to indemnify, and if it were not justifiable, it ought not to be in; but what we say is, that it looks like a Diffidence whether it was justifiable or not, and since it was put into the Prayer of the Petition, that Mr. *Edwards* might be indemnified, if the Chancellor thought it not justifiable, he ought to have let Mr. *Edwards* know it, as much as he ought to have let Mr. *Wilson* have known that the Composition would not be good without the Suitors being Parties. As there is no tolerable Account given for such an extraordinary Proceeding, we submit to Your Lordships, whether it is not rightly charged to be for the unlawful Purposes mentioned in the Articles. If a Commission of Bankruptcy had been taken out against *Wilson*, the *quantum* of the Debt to *Dormer*, and consequently of the Loss of the Suitors, must have been known, and other Suitors might have been alarmed, and a thorough Reformation might have happened; which might have ended in the taking away the money from the masters, and the Price of the Places would have been lowered, which was always most carefully avoided.

My Lords, I now proceed to reply, to the Defence made on the Fifteenth, Sixteenth, and Seventeenth Articles.

The Fifteenth Article is, That after the Failure of *Dormer*, the Earl of *Macclesfield*, in order to carry on his corrupt and unjust Purposes, and to conceal the Deficiency, did call for the Accounts of the masters, not with any Intent of Examining them, or to secure their Effects, but to terrify the masters and oblige them to contribute 500 *l.* apiece; and after that Purpose was served, did not oblige them to bring in their Accounts.

The Sixteenth is, That he persuaded the masters to pay the 1000 *l.* ordered to Mrs. *Chitty* for the like Purposes.

And the Seventeenth is, For letting all the money belonging to *Dormer* be paid away to some of the Suitors, without observing a Proportion, to which all were equally intitled.

To the Fifteenth the Earl of *Macclesfield* says in his Answer, That he did really call for the Accompts with an Intent to examine them, and that he might regulate matters, and that after the 500 *l.* was paid, still he called for the Accompts; for that there was a Letter sent in *November 1721*, to the masters, insisting upon having them; but as to this second Letter, as Mr. *Cottingham* did not speak at all positively to it, but that *he believed, but could not be positive, that it was sent, and that he had taken no memorandum of it, &c.* we must beg leave to acquaint Your Lordships, that this second Letter was never sent; and every One of the masters will give Your Lordships that Account: But supposing it had been sent, can any one imagine that the Chancellor would not have pursued that Direction, and have had those Accompts, if he had really intended it? What is the Excuse at last? He had required so many Particulars in the Accompts, that it was almost impracticable to do it. My

Lords,

Lords, if the Charge in the Articles be true, it answered the Design the better, that it should be difficult; we say it was done to get from the masters 500*l.* apiece to quiet matters for the present, and when that was done, there was no more Use made of that Order. But what is most wonderful of all is, that, tho' in Four Years Time it was so difficult a Work that it could not be done, yet, when the Committee of Council had called for the Accompts, the Earl of *Macclesfield* used such Diligence, that he procured them to be ready in a Week's Time; and tho' all the Directions and Particulars which he had required, were not observed, yet it seems they were all that were necessary and sufficient, and it was hoped such as would prevent a Parliamentary Enquiry.

The Earl in his Answer values himself much upon this Expedition, not considering how inconsistent it was with the Difficulties which were made an Excuse for not having it done Four Years before.

It was insisted on, upon this Head, that Mr. *Lightboun* did not pay, and yet he brought in no Account; but however, Nine of the masters did pay, and the Chancellor well knew it would have looked very partial to have proceeded against one single master, and not the rest; that would have been too barefaced, and so Mr. *Lightboun* escaped too; besides there was not a Total Despair even of him, for he was several Times afterwards spoke to, about making good his 500*l.*

It was said likewise, the Business of the Court must have been at a Stand, if these Accompts had been pursued.

My Lords, If it had been so, it had been more for the Reputation of the Court, and for the Benefit of the Suitors in general, to have had some Time employed about this necessary Work; and if there had been a willing mind, one long Vacation would have been sufficient without any Interruption to the Business of the Court.

After all these Excuses the Earl is pleased to say, if he had taken the Accompts, it would have signified nothing unless he went farther.

My Lords, If he never begun, he could never bring any thing to Perfection; and in his Answer he confesses, it was necessary to have the Accompts in order to make Regulations. But after all he is forced to come to this Conclusion (as he says in his Answer) *to go on in the same Road his Predecessors had done*; tho', by the way, it has appeared to Your Lordships, that it is not the same Road; for his two immediate Predecessors did call for the Accompts, and had them.

The Sixteenth Article is grounded on the Persuasions to pay 1000*l.* (ordered to Mrs. *Chitty*) to prevent a Parliamentary or publick Enquiry, and that the Earl afterwards paid the same himself to Mr. *Lockman*, &c.

My Lords, We called Six or Seven Witnesses to this Article, and did observe at that Time the Earl in his Answer said, He believed he did not persuade the masters to pay this 1000*l.* And his Lordship was pleased to say, when he spoke in his Defence, That he still believed, that he did not persuade them to pay it.

My Lords, It is very strange that there should be any Doubt made of it; the Occasion of the meeting, and the Nature of the thing plainly shews it. First Mr. *Cottingham* went to Mr. *Lightboun*, and told him, that there was a present Oc-

casion for this 1000*l.* that it was proposed he should pay the 500*l.* (which he should have paid before) and the other Masters 50*l.* apiece, which would make up the 1000*l.* When the masters were going to the Lord Chancellor's, they discoursed among themselves, that their going was upon Occasion of another Call for money.

When the Chancellor came to them, he mentioned the pressing Necessity there was for paying this 1000*l.*

Mr. *Edwards* particularly says, that he represented to them this matter of 1000*l.* as *a thing of Consequence, a very pressing Occasion of a Sum of money immediately to be paid*; he said, *I do not know what the Consequence may be; Clamour's begin to grow strong. I do not know but it may come to a Parliamentary Enquiry.* Mr. *Lovibond* says, that my Lord told them, *This was a matter that required great Expedition, for one that belonged to the Prince's Court*, and all of them understood there was a Proposal to pay the 1000*l.* and that was the Occasion of the meeting. All the masters that have been examined on this Head confirm it.

What is it that is to evade all this Evidence? It is only this poor Shift, I did not (says the Noble Lord) persuade them to pay the 1000*l.* but I persuaded them to pay all *Dormer's* Deficiency.

My Lords, There is no Evidence to support this Distinction, but on the contrary, there were Arguments used for the advancing of this money. And if he was not able to persuade them to pay this 1000*l.* there was no Likelihood of prevailing on them to pay the whole.

My Lords, Another matter insisted on in Relation to this Article was, that the money, which was paid to *Lockman*, was paid out of Compassion; *Lockman* says he took it as his due, and I think he was in the right; he gave an Assignment of the Order, when it was paid; and certainly this can in no Sort be added to the List of this Noble Lord's Charities, that he has been pleased to publish; but the Discourse with the matters before shews plainly what were his Inducements for paying it; he feared the Consequence if it were not paid, and chose rather to do it, than venture those Enquiries that the not paying it might occasion.

I think the Earl seems to agree, in Substance, to the Declaration at the End of the Articles, that was made the Fifth of *December* last, *viz.* that he *had heard of Dormer's Deficiency, but knew nothing of it but as publick News, &c.* A strange Declaration to come from the Bench at the End of Four Years, during which Time were all these Transactions about *Dormer's* Deficiency! Then it was that he was pleased to refer it to Mr. *Edwards*, to enquire whether there was likely to be a Loss of any money, when at that Time he knew very well that all *Dormer's* money was gone, and Mr. *Edwards* had none in his Hands.

The Seventeenth Article is for ordering and permitting *Dormer's* money to be paid out without Regard to Proportion; this was a manifest Injustice, and so discoursed of between this Lord himself and Mr. *Edwards*; and the Answer that is given to it is, That we have produced but Four Orders made by the impeached Lord for such Payments.

My Lords, I think it not material whether the Orders were made by himself, or the Court; he was warned several Times of the Consequence; he took the management of these matters to himself, and let Things run on, hoping

the money would last his Time; and now all is gone, and paid away, and many distressed People are left without any thing. In the Cause of *Jett* and *Jones*, the Orders that were read, appeared to be made by this Lord himself; and the Parties have been so lucky as to have got their whole money, whilst others are in the utmost Necessity without any Subsistence.

The Consequence is, that the rest of the Suitors, who were intitled to an equal Proportion, have no Remedy for it. What may be done for them in Charity and Compassion is of another Consideration; but their legal Right is taken away by him that should have protected them.

An Objection was made by the Counsel, That there was no fixed Fund of *Dormer's* Effects, from which to have settled a Rule of Proportion. This is excusing one Fault by another: First, Care is taken not to have an Accompt settled; and then that is made an Excuse for not settling a Proportion.

The Eighteenth Article relates to the masters trafficking with the money; which was as notorious, as that there was such a Place as *Exchange-Alley*.

The Year 1720 has been mentioned both by the Earl and his Counsel, and it was so fatal a Year, that surely, if a Reformation were ever to be made, it should have been upon that Occasion. I think there is but little Difference, whether they traded with the money themselves, or put it into another's Hands at high Interest, and permitted them to trade with it. Could any one imagine that *Dormer* let 24,000 *l.* lie in *Wilson's* Hands for nothing? Mr. *Cottingham*, upon the Examination of my Lord's own Counsel, gave Evidence, that *Wilson* insisted he allowed high Interest for it. And it was well known it was in the Power of all the masters to traffick with the money, and this after express Warning by one of the masters to the Chancellor not only by Word of mouth, but by Letter written (as I take it) in 1722. But every Thing of a Regulation of that Kind was liable to Objection; one Thing that was proposed was so easy to be done, that there is no Excuse it was not complied with, which is in Relation to the Securities, by placing them in two or three Names, which would have prevented the masters from disposing of the Securities.

This might very easily have been done. The only Answer that was given, was, that it would not answer all the Securities.

This was made a Reason for doing of nothing, and there was such a Backwardness to do any Thing of this Kind, that the meanest and most trifling Excuse was sufficient to satisfy his Lordship, not to take any Step towards it.

My Lords, Upon this Article the impeached Lord was pleased to mention some of his Predecessors, and also his Successors: As to his two immediate Predecessors, he doubts the taking the Accompts by him in the manner they did, would have been thought of no Use.

My Lords, I am apt to believe a good Use might have been made of it; it would have put a Check and Restraint upon the masters, they would have acted with more Caution, when they knew the Ballance was a Charge

upon them, and that it might be called for at any Time; and if his Lordship had those Accompts, I dare say he would have seen that there was ten Times as much Cash in the masters Disposal, as there was in one of those Predecessors Time. And it might have been of Use to him to have seen what prodigious Sums of money were in their Hands, and how great the Danger was.

As to the present Commissioners, the Noble Lord was pleased to say, the Difficulties of making the masters accompt have appeared by their Proceedings.

My Lords, They have been sufficiently taken up with endeavouring to compel the masters to give Security for the Deficiencies incurred in this Lord's Time. The Difficulty was not so much in taking an Accompt, as in making good the Deficiency.

They have been forced to take what Security they could get from the masters from Time to Time, and I wish the Deficiency do not still come out worse than is expected; no one can yet say what it will be.

My Lords, The Nineteenth Article was founded on the Endeavours of the Lord impeached, to deceive His Majesty in Council, by persuading the masters to make false Representations of their Circumstances to His Majesty, by a Subscription to their Accompts, and by assisting one another to make an Appearance of Ability.

This, my Lords, was the sad Conclusion of this long Scene of Iniquity; when it was become necessary, and it was no longer to be avoided, that there should be Accompts delivered in. There is an Attendance on the Chancellor; and one of the masters having concluded his Accompt with a Representation of his Ability and Readiness to pay the money, the rest are persuaded to do it in the like manner, without so much as asking them concerning the Truth of it; and there is one Instance that was very remarkable, which was in the Case of Mr. *Lovibond*, that where he, of his own Accord, could go no farther than to say he was able to pay or give Security to pay; that was not thought sufficient by this Lord, because it would imply a Diffidence that the money was not then forth coming; and therefore those Words about Security were not to be mentioned. Others of them that were no ways capable of producing the money, were induced to make the like Subscription.

When it was expected the money should be produced, then Mr. *Dixon* and Mr. *Cottingham* have a meeting with the masters to consult what was to be done; then it was that Proposals were made for the masters to assist each other, and to get Goldsmiths Notes and other Effects to shew to the Judges.

It has been objected, that the managers did not think fit to call Mr. *Cottingham* and Mr. *Dixon*.

My Lords, We called the masters that were present at that meeting, who gave Your Lordships an Account of that Transaction, and it turns the Objection upon the impeached Lord, that he did not think fit to call Mr. *Cottingham* and Mr. *Dixon* (that were his Servants and Agents) to contradict that Evidence; if this Lord had no Concern in that matter, he would certainly have called them to that Purpose, and his not

not examining them to it, greatly confirms our Evidence.

Your Lordships may remember the many Inconsistencies, Evasions, Equivocations, and Insufficiencies in his Lordship's Answer to the Articles of Impeachment, which have been observed and plainly made out by the managers for the Commons.

My Lords, He was pleased to make a Distinction between an Answer to Articles of Impeachment, and an Answer to a Bill in Chancery; that the Plaintiff in a Cause had a Right to a full and plain Discovery, but that the Case before Your Lordships differs. My Lords, I would beg leave to mention, that there was an Instance of an Impeachment before Your Lordships, in which the Lord now impeached had a great Share in the Reply, wherein he laid very great Strefs upon the Insufficiency and Evasions in the Answer. The Person then impeached had very hard Names given to him on that Account, and *even his Silence was insisted on as a Confession of his Crimes.*

As to the Noble Lord's Charities, I beg leave to say, that, as it is a great Addition to the merit of Charity, to have it kept private, it was the more extraordinary these Charities should be now published; because I do not see they are any ways material to the matters before Your Lordships. Here are plain Facts charged and proved, and if in a Case of this Kind these Charities are to wipe off the Charge, it is a Kind of Commutation that has not been before heard of. My Lords, he that would be the most meritoriously charitable, should first be just. The Lord should have first considered those Suitors that he had injured, he should first have made Satisfaction to them, and then have offered his Gifts.

Thus we have endeavoured to lay before your Lordships the whole Circumstances of this Case: There needs no Eloquence to aggravate the Crimes; I pretend to none; but the Cries of Widows and Orphans will have the most persuasive Eloquence, and when they have Justice on their Side, they will have Weight with Your Lordships.

My Lords, The Case before Your Lordships is founded on Corruption, and a Series of Fraud to support that Corruption. The People had long murmured at it, but the Grievance increased at last to such an intolerable Degree, that it became a National Concern, and there was an unavoidable Necessity of a Parliamentary Prosecution.

My Lords, The Commons hope they have done their Duty in bringing it here, and we hope your Lordships will give such Judgment, as will be consistent with Your Lordships Honour and Justice.

Mr. Serj. Pengelly. My Lords, We shall beg leave to call a Witness or two; the first to the Imputation endeavoured to be thrown upon Mr. *Thomas Bennet's* Character, in Relation to the Discourse that passed between him and the Earl. We shall shew that he declared it at that very Time, or soon after the Lord had spoke it to him. We desire also to examine Mr. *Lucas*, who applied for the master's Place. It was insisted, That the Earl was offered 6000 *l.* and actually refused to take it; but took 5000 *l.*

from Mr. *Elde* and Mr. *Thurston* for the master's Office: We shall shew how that happen'd.

Mr. *Richard Lucas* Sworn.

Mr. Serj. Pengelly. We desire that you would inform my Lords, whether you made any Application to the Earl of *Macclesfield*, or to Mr. *Cottingham*, about coming into the masters Office at the Time when Mr. *Elde* or Mr. *Thurston* were admitted, and what passed.

Mr. *Richard Lucas*. My Lords, Upon the Death of Mr. *Fellowes*, being persuaded by some Friends to make an Application for the Office vacant by his Death, I did go immediately to Mr. *Cottingham*; my Lord *Macclesfield* being then out of Town, I thought it proper to go to his Secretary.

Lord *Ch. Justice King*. Please to speak up.

Mr. *Richard Lucas*. I say, upon the Death of Mr. *Fellowes*, I was persuaded by some Friends to make Application for the Master's Place; and upon that, I went to Mr. *Cottingham*, and told him the Affair I came about. He told me, Mr. *Lucas*, you know you have formerly had some Talk with me about an Affair of this Nature; it is to no Purpose for me to recommend you to my Lord, unless you bid more than formerly you have done. Upon that I immediately told him, I was ready to give 6000 *l.* There was some Talk passed between us besides, but it being so long ago, and not expecting to be called to give an Account of it, I cannot now recollect it. One Thing I can recollect that he intimated to me, That my Lord *Macclesfield* had some Intentions of making some Orders, or doing somewhat that should be for the Ease or Advantage of the masters; but his Lordship would not do it at that Time, because it would look as if he had an Intention of making Advantage of that Vacancy. A Day or two afterwards I met Mr. *Cottingham* in the Hall, and asked him, If he had spoke to my Lord about me? He told me, he had; but that my Lord was pleased to enquire into my Circumstances, and did think it proper that some Security should be given by the masters; and I being immediately to be put in by his Lordship, it was the more incumbent upon him to see what Security I was able to give. Upon that I waited upon him to know what Security was expected: He mentioned to me 10,000 *l.* Security. I told him, That after such Time as I had parted with 6000 *l.* I could not take upon me to say, I could myself make up a Security to the Value of 10,000 *l.* but what with the Assistance of Friends, and mine own Estate, I might possibly do it. Upon talking of the matter with my mother, she was very willing to join in the Security. Upon that I wrote a Letter, I cannot remember whether it was directed to my Lord *Macclesfield*, or to his Secretary; but to one or the other it was. I sent it by my Servant, and I was informed by Mr. *Cottingham*, That his Lordship had a Sight of it. But afterwards being uneasy at giving so large a Sum of money, and considering from the Talk that then was, that these matters might come into Parliament, I was advised, and I thought it proper, to have some better Hold upon his Lordship, to make some Return, in Case any thing should happen to lessen the Value of the Place: Upon that, I

did

did write a Letter, I cannot remember the whole Contents; but I pretty well remember the Substance, which was, That I would undertake to give the Security required to the amount of 10,000 *l.* I believe, I did also mention my real Estate, which was near 300 *l.* a Year, to be a Part of the Security, and I did add, That notwithstanding the present Disputes between the master of the *Rolls* and the other masters, and the Talk there was of bringing it into Parliament, I was not at all uneasy; because I could securely depend upon his Lordship's Generosity, that he would take it into his Consideration, in Case any thing happened amiss in the next Session of Parliament; I can't remember exactly the Words, but my Lord *Macclesfield* has the Letter; if I am mistaken, his Lordship will set me right.

Mr. *Serj. Pengelly*. Upon this Letter of your Expectation of being repaired, if any thing happened, had you any Answer?

Mr. *R. Lucas*. The next thing I heard, was That Mr. *Elde* was in the Place, and Mr. *Cottingham* was pleased to say, he was a particular Acquaintance of my Lord's, and therefore had it.

Mr. *Serj. Pengelly*. When Mr. *Cottingham* told you this, what Answer did he return as to my Lord's Approbation of the Proposal?

Mr. *R. Lucas*. He said, to the best of my Remembrance, That my Lord was pleased that I offered 6000 *l.* at once, provided I would give Security, if that should be thought proper.

Mr. *Serj. Pengelly*. Since you was disappointed when Mr. *Elde* came in, What passed when Mr. *Thurston* came in? whether did you renew your Application then?

Mr. *R. Lucas*. I was, with Abundance of Regret and Fear, prevailed upon to renew my Application.

Mr. *Serj. Pengelly*. What were your Fears?

Mr. *R. Lucas*. My Fear was about the bringing this matter into Parliament, and that I did not know what Effect that might have upon the Profits of the Place. Upon that, my Brother told me, he was acquainted with Mr. *Ellis*, his Lordship's Chaplain, and, if I pleased, he would go to him, and get him to speak to my Lord about it.

Mr. *Serj. Pengelly*. What Directions did you give to your Brother as to offering any thing, and upon what Terms?

Mr. *R. Lucas*. I cannot say whether my Brother had a direct Commission from me to mention that I was then ready to give 6000 *l.* but it was my Apprehension, and the Apprehension of all those that knew this Affair, that I should not come in under so much; I am not very positive that such a Direction was given. I did mention another thing to my Brother, to acquaint Mr. *Ellis*, that I had heard more of the Deficiencies in the several Offices of the masters, and that I was not without Apprehension, that if I should give 6000 *l.* to come into this Place, I might from time to time be called upon for several Sums of money in order to make good past Deficiencies; and I thought that it would be unreasonable for me to be brought into any Contribution for making good those Deficiencies, when I had no Concern in them. I then desired it might be mentioned. As for the Answer, I never saw Mr. *Ellis*.

Mr. *Serj. Pengelly*. What Orders did you give to your Brother? Did you give him any Order to pay the money without Consideration of being liable to the Deficiencies?

Mr. *R. Lucas*. I gave him no Order at all, I thought it was not come to bear yet.

Mr. *Serj. Pengelly*. Was there any thing passed after that?

Mr. *R. Lucas*. I conceive, my Lords, you won't think it proper for me to give an Account of what passed between Mr. *Ellis* and my Brother.

Mr. *Serj. Pengelly*. I desire to know, whether your Brother had any Orders or Directions from you to go on?

Mr. *R. Lucas*. I have told you every thing I can recollect; I only told him, I desired him to speak to Mr. *Ellis* to recommend me to his Lordship, upon the Foot I have mentioned, *viz.* on the Foot of the former Proposals.

Mr. *Serj. Pengelly*. Had your Brother any Authority from you to give 6000 *l.* without being secured from the Deficiencies?

Mr. *R. Lucas*. Six thousand Pounds was the Sum to be given, and I desired my Brother to mention the Deficiencies, and that I should not be understood to be subject to any of them.

Mr. *Serj. Pengelly*. Was it to be given absolutely without Reserve, or with Regard to be secured from the Deficiencies?

Mr. *R. Lucas*. I did desire that the Business of the Deficiency might be explained, and that it might be understood that I would not be answerable for any of them.

Mr. *Edward Lucas* sworn.

Mr. *Serj. Pengelly*. I desire you would inform my Lords, whether you received any, and what Directions from your Brother, upon the last Vacancy, when Mr. *Thurston* came in, of the making Proposals for your Brother's coming into that Office?

Mr. *E. Lucas*. Soon after Mr. *Borret's* Death, my Brother expressed an Inclination to me of succeeding in that Office: I told him, I had an Acquaintance with Mr. *Ellis*, my Lord *Macclesfield's* Chaplain; and if he would give me any Commission, I would communicate it to Mr. *Ellis*, I believing that a proper Way of communicating it to my Lord. My Brother did desire me to go to Mr. *Ellis*, and to inform him myself, that he had so just a Sense of my Lord's Honour and Generosity, that he believed he might leave the Terms to be fixed by my Lord himself. I went to Mr. *Ellis*, and did tell him as my Brother had desired me. Mr. *Ellis* said, He did not much care to concern himself in the Affair; if it had been to recommend to a Living, it might be proper for him; but this was out of his Province. I acquainted him with what Steps my Brother had formerly taken, in order to obtain one of these Offices, and explained to him the Nature of the thing, and persuaded him to lay this matter before his Lordship. Upon which he was then pleased to say, He would go to my Lord (who was at *Kensington*) the next Day, and bring me an Answer.

Mr. *Serj. Pengelly*. Had he any Directions either as to the Price, or the Terms?

Mr. *E. Lucas*. I don't know of any Directions he had, either as to the Price, or the Terms.

Mr.

Mr. *Serj. Pengelly*. What did you say about the Security, and the Deficiencies in the several Offices?

Mr. *E. Lucas*. This was another Conversation, about a Week, or Ten Days after; after Mr. *Ellis* had brought me an Answer, then I remember my Brother gave me Directions to consult with Mr. *Ellis*, whether it was not proper to make my Lord a direct Offer of 6000 *l.* but then it would be reasonable, that he should be indemnified or secured from any Damage, or Deficiency by any of the precedent Masters; and that he should not be called upon to make good any such Deficiency. I told Mr. *Ellis* this, and he said, there was no Room for this, there might be Deficiencies in some other of the Offices, but he had heard, there was no Deficiency in Mr. *Borret's* Office. I had likewise heard so, but whether there was a Deficiency or not, I could not tell; my Brother was willing to enter into a Treaty with my Lord upon these Terms.

Mr. *Serj. Pengelly*. Did you hear any Thing more about it?

Mr. *E. Lucas*. About a Week after Mr. *Ellis* writ to me, That my Lord *Macclesfield* had approved of Mr. *Thurston*.

Mr. *Serj. Pengelly*. Please to recollect whether your Direction was about *Borret's* Deficiency only, or about all the Deficiencies in general?

Mr. *E. Lucas*. My Directions from my Brother were about all the Deficiencies; *Dormer's* Deficiency ran in his Head, and he thought it unreasonable, that he should be obliged to contribute to any Deficiency precedent to his coming in master.

Mr. *Serj. Pengelly*. Did you communicate this to Mr. *Ellis*?

Mr. *E. Lucas*. I did communicate it to Mr. *Ellis*; if not in such express Terms, yet to that Effect, that it was unreasonable, that my Brother should be obliged to contribute to make up those Deficiencies that were preceding to his being master; I am sure, I added those Words, That he should not be obliged to contribute to make up those Deficiencies that were precedent to his being master.

Earl of *Macclesfield*. My Lords, I submit, whether it be not proper, that Mr. *Ellis* be called before this Mr. *Lucas* goes away.

Mr. *Ellis* called, but not examined again immediately.

Earl of *Macclesfield*. Mr. *Lucas*, I desire that you would declare to my Lords over again, what you have given in Evidence.

Mr. *E. Lucas*. The first Time I saw Mr. *Ellis* was at my mother's House, immediately after Mr. *Borret's* Death. I then told him of my Brother's Intention to purchase a master's Place, and that my Brother had so thorough a Sense of my Lord's Honour and Generosity, that he would leave the Terms to my Lord himself. Mr. *Ellis* was not at first inclinable to concern himself in it, but upon telling him what Steps my Brother had taken in Regard to it; he said out of Friendship to me he would engage in it, and go to my Lord, and bring me an Answer. This was the first Conversation. Mr. *Ellis* did the next Day bring me an Answer from my Lord.

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Mr. *Serj. Pengelly*. What was the Answer my Lord sent?

Mr. *E. Lucas*. The Answer that Mr. *Ellis* brought was, That my Lord had no Objection to my Brother, he did remember that he had been formerly recommended to him, but that there was some other Person proposed by some of the masters, of whom he expected a farther Recommendation, and could not now give any other Answer to it: He also told me, That he apprehended, if that Person did not succeed, my Brother might have the Refusal. I said it was indifferent whether my Brother then succeeded, or not; because my Lord told him, That one or two masters were inclinable to sell, and if they did, he might have an Opportunity of buying of those masters. This passed on the Second Conversation.

Mr. *Serj. Pengelly*. Go on.

Mr. *E. Lucas*. The Third Conversation was sometime afterwards at my Lord *Macclesfield's* own House in *Lincoln's-Inn-Fields*. I went by my Brother's Directions meaning to consult with Mr. *Ellis* in a friendly manner, whether he did think it adviseable to make his Lordship a direct Offer of 6000 *l.* I said if he gave it, it was reasonable, that he should be indemnified from any Damage that should happen by Reason of the Deficiency in any of the Offices, and not be obliged to contribute towards making them up; he said my Lord had not spoken to him about that, that he could not have every Opportunity he desired to speak with him; that as to the Deficiencies, he had heard there was none. I said, I had likewise heard so; but whether there was or no, my Brother was willing to enter into a Treaty with my Lord upon those Terms. This to the best of my Remembrance is the whole I know of the matter.

Mr. *Serj. Probyn*. I only would beg leave to ask this Question, When the first Proposal was made to Mr. *Ellis*, whether he did propose a certain Sum?

Mr. *E. Lucas*. I don't remember I did; but I think I told Mr. *Ellis* my Brother had formerly offered 6000 *l.* and I told Mr. *Ellis* this, and did lay before him all the Circumstances of that Affair, to make him the more inclinable to engage in it.

Mr. *Com. Serjeant*. I desire he may be asked, whether any Terms besides were mentioned than what Mr. *Lucas* has mentioned before?

Mr. *E. Lucas*. I don't remember there were any other Directions then given, I can't be positive, but that he was willing to leave it to my Lord's Honour and Generosity. And my Lords I can swear positively, that till the first Day of these Proceedings, when I met Mr. *Ellis* in the Court of Requests, I never knew that he had offered my Lord *Macclesfield* 6000 *l.*

Earl of *Macclesfield*. My Lords, we beg leave that Mr. *Ellis* may give an Account of what Proposal he made to me from Mr. *Lucas*.

Mr. *Ellis*. My Lords, the Account Mr. *Lucas* has given Your Lordships is true in all the Particulars, as far as I can remember at this Distance of Time, though there are a good many that I could not have recollected of myself, only as to this one, his not impover-

ing

ing me to offer this 6000*l.* I should not have gone to my Lord, unless I had had some particular Offer to mention. I particularly remember I made him that Offer, and I am as certain, that Mr. *Lucas* did speak to me to make the Offer of 6000*l.* for this Reason, that I never knew that Mr. *Lucas* had offered 6000*l.* before by Mr. *Cottingham*, till this Impeachment begun, when Mr. *Lucas*, being here, acquainted me that he had made that Offer to my Lord.

Mr. *E. Lucas*. I desire Mr. *Ellis* may be asked, whether ever he told me, that he offered Lord *Macclesfield* 6000*l.*?

Mr. *Ellis*. I believe I only did tell him in general, that I had made his Lordship the Offer which he had desired me to make, and in general likewise, that my Lord was well satisfied with it.

Mr. *Com. Serjeant*. I desire he may inform Your Lordships, whether, when he told Mr. *Lucas*, that he had made that Offer which he had desired him, he did enquire what that Offer was?

Mr. *Ellis*. No, my Lords, he did not.

Mr. *Serj. Pengelly*. My Lords, they have called Mr. *Ellis* to confront Mr. *Lucas*; but they agree together in all the material Circumstances. Mr. *Ellis* says, what Mr. *Lucas* swears is true in every Particular, unless in Relation to the Offer of 6000*l.* In all the rest Mr. *Ellis* confirms Mr. *Lucas*'s Evidence.

Mr. *E. Lucas*. I don't positively swear that I did not give him that Commission, but to the best of my Remembrance, I did not give him that Commission.

Earl of *Macclesfield*. I desire Mr. *Ellis* may be asked, when he made the Proposal to me, whether he mentioned any Condition whatsoever?

Mr. *Ellis*. No, my Lords, I did not mention any Condition.

Mr. *E. Lucas*. Till after the first Conversation with Mr. *Ellis*, I had no Direction from my Brother to mention any Price or Condition; I gave an Account to Your Lordships of two different Conversations.

Earl of *Macclesfield*. When the Answer was brought, that I was satisfied with the Proposal, what did he do farther upon it?

Mr. *E. Lucas*. My Lords, Mr. *Ellis* did not tell me, that my Lord *Macclesfield* was satisfied with the Proposal, but that my Lord *Macclesfield* had no Objection to my Brother, and he had formerly received a Recommendation of him; but at present another Person was recommended by some of the masters, whom he expected to be farther recommended.

Mr. *Plummer*. My Lords, I desire Mr. *Ellis* may be asked, how long, before Mr. *Thurston* was admitted, was the Conversation about giving Security, that Mr. *Lucas* might be indemnified from the Deficiencies?

Mr. *Ellis*. My Lords, in one of the last Conversations, which was after I had spoken to my Lord *Macclesfield*, Mr. *Lucas* might say something about having Security. But I don't recollect it with any Certainty; if he did, it was some Days before Mr. *Thurston* was admitted.

Mr. *Serj. Probyn*. I desire he may inform Your Lordships, Whether he ever told my Lord

Macclesfield any thing of this Discourse about Security?

Mr. *Ellis*. No.

Sir *Geo. Oxenden*. He says, He never told my Lord *Macclesfield* of that Conversation: I desire to know, if he told my Lord *Parker*?

Mr. *Ellis*. No, my Lords, I told no body at all.

Mr. *Strange*. My Lords, I beg leave to make one Observation; a learned manager was pleased to observe upon the Appearance of these Two Witnesses together, That now the Evidence of Mr. *Lucas* is confirmed by Mr. *Ellis*: Your Lordships are pleased to remember, that Mr. *Ellis* was our Witness, and was first examined; and therefore I should apprehend the Observation may be turned much properer the other way: That the Evidence of Mr. *Ellis*, who was our Witness, and was first examined, is now confirmed by Mr. *Lucas*.

Earl of *Macclesfield*. My Lords, I desire he may inform Your Lordships with relation to the Discourse that passed betwixt them about the Deficiencies; Whether the Objection did not relate singly to them?

Mr. *Ellis*. I don't well remember what passed upon the Subject of the Deficiencies; what I have said to Your Lordships before, I remember full well, because a particular Circumstance made me recollect, that Mr. *Lucas* did say, he had heard there was no Deficiency in Mr. *Borret*'s Office; which I had heard too; but at what time that Discourse was, I can't recollect; it might be as he represented it.

Earl of *Macclesfield*. Mr. *Lucas* said to you, That he was willing to treat upon those Terms?

Mr. *Edw. Lucas*. Upon those Terms, or to that Effect, I did say.

Mr. *Plummer*. I only would make this Observation; Both these Evidences confirm this, that Mr. *Lucas* was an inquisitive man, and would not part with his 6000*l.* so easily as to ask no Questions.

Mr. *Serj. Pengelly*. We beg leave now to call a Witness as to the second letter or Order, supposed to be sent in *November 1721*, to all the masters. Mr. *Cottingham* could not take upon himself to say, that it was delivered; he had kept a *Memorandum* of the first, but none of that, and he believed he might say, it was delivered; we deny any such letter was delivered, and beg leave to ask as to that particular Point.

Mr. *John Bennet* called.

Mr. *Serj. Pengelly*. I desire he may be asked, whether in *November 1721*, any second letter, or Order, of the Purport of the first Order, was sent, or delivered, in relation to the masters bringing in their Accompts?

Mr. *J. Bennet*. My Lords, I never saw any such letter.

Mr. *Serj. Pengelly*. Did you ever hear of it?

Mr. *J. Bennet*. I never heard of it before, till I heard Mr. *Cottingham* read it at the Bar.

Mr. *Serj. Pengelly*. Did you receive any Account from the other masters, that they had received any such letter?

Mr. *J. Bennet*. No, my Lords, never.

Mr. *Serj. Pengelly*. Do you recollect any Discourse between my Lord *Macclesfield* and your Brother, relating to your Brother's Account?

Mr.

Mr. *J. Bennet*. I don't recollect the whole.

Mr. *Serj. Pengelly*. What do you recollect?

Mr. *J. Bennet*. My Lord hath declared to me, That he wondered Mr. *Kynaston* and my Brother should put such an *Item* in their Accounts, which would make a Discovery, that the masters had bought their Places with the money of the Court, which might be of mischievous Consequence; that whenever it was objected to him, he had always taken great Pains to deny it.

Mr. *Serj. Pengelly*. When was this? About what Time?

Mr. *J. Bennet*. About *Christmas* last.

Mr. *Serj. Probyn*. We beg leave to take Notice of the Nature of this Evidence, that it is very improper now, being new Evidence; not to the same Purpose to support what was given before, but new matter, and therefore not proper.

Mr. *Lutwyche*. We apprehend it is very proper, because Mr. *Thomas Bennet's* was objected to, and this confirms his Evidence.

Mr. *Holford* called.

Mr. *Serj. Pengelly*. My Lords, we desire he may be asked, whether this letter, or Order, of *November 1721*, was ever communicated to him by Mr. *Cottingham*?

Mr. *Holford*. No, my Lords, I never heard of it till now lately.

Mr. *Com. Serjeant*. I desire Mr. *Holford* would inform Your Lordships, whether there were not then several masters senior to him? and whether it is not usual to leave those letters, or Orders, with the Senior masters?

Mr. *Holford*. I don't know that such Order, or letter, was left at that Time. Mr. *Hiccocks* and Mr. *Fellowes* were Seniors to me.

Mr. *Com. Serjeant*. I desire he may be asked the other Part of the Question, Whether it is not usual to leave Orders, wherein the masters are generally concerned, with the Senior masters?

Mr. *Holford*. It is not; but the Usage generally is to be left at the Publick Office. It might be left with the Senior master, for ought I know.

Mr. *Lovibond* called.

Mr. *Serj. Pengelly*. Did you ever hear or know of this Letter or Order of *Nov. 1721*?

Mr. *Lovibond*. I never heard of any such letter or Order, till I heard it read at this Bar.

Mr. *Kynaston* called.

Mr. *Serj. Pengelly*. Mr. *Kynaston*, will you give my Lords an Account, whether you heard of this letter or Order of *Nov. 1721*?

Mr. *Kynaston*. I suppose you mean the letter which Mr. *Cottingham* read.

Mr. *Serj. Pengelly*. The same.

Mr. *Kynaston*. I never heard of it, till I heard it read at this Bar.

Mr. *Serj. Pengelly*. I hope this will explain Mr. *Cottingham's* Want of memory, when he said that he could not remember it.

Mr. *Lightboun* called.

Mr. *Serj. Pengelly*. I desire to ask you, whether you know any thing of this letter of *Nov. 1721*?

Mr. *Lightboun*. I never heard of it, till I heard it at Your Lordships Bar from Mr. *Cottingham*.

Mr. *Edwards* called.

Mr. *Serj. Pengelly*. I desire he may be asked, whether he ever heard of this Letter of *Nov. 1721*?

Mr. *Edwards*. I never heard of such a Letter, till I heard it mentioned at this Bar.

Mr. *Serj. Pengelly*. So that, my Lords, we apprehend this letter, when written by Mr. *Cottingham*, was a Pocket-letter to be made use of on any proper Occasion. The managers have done with their Evidence and the Witnesses; they shall call no more. We humbly apprehend, that we have cleared up the Reason, why the Lord took 5000 *l.* rather than 6000 *l.* It was from Hopes of greater Gain in having 5000 *l.* absolutely, without being liable to refund, than 6000 *l.* liable to such a Contingency. Upon the Evidence we submit the whole matter to Your Lordships Determination.

Mr. *Serj. Probyn*. My Lords, we will be short in our Reflections upon this new Evidence. We apprehend their Evidence proves, what was insisted upon by us, that there was Care taken in disposing of these Offices, and that my Lord *Macclesfield* having personal Knowledge of one Gentleman did prefer him before another, whom he did not know; though he had less money from him, than he could have had of the other. It is agreed by Mr. *Lucas* and his Brother, that there was a proposal of 6000 *l.* made upon this Occasion: Mr. *Ellis* tells you, Mr. *Lucas* gave him Orders to propose it to my Lord *Macclesfield* without any Terms whatsoever: He never mentioned any Terms, or intimated any Condition or Restriction to my Lord *Macclesfield*. Upon that his Lordship was pleased to direct a proper Enquiry to be made, what Security he was able to give for the Discharge of his Office; here there was 6000 *l.* proposed without any Terms by one whom he did not know; but he preferred another whom he did know to be well qualified, for 5000 *l.* This doth not shew any Neglect in the noble Earl; but all the Care and Caution that ever could be taken; and this shews that the Earl could not do this out of an immoderate Desire of Gain, when 6000 *l.* was proposed to be given; but he preferred another whom he knew to be well qualified for less money; so that we apprehend this is an Evidence which is much in favour of the Earl. As to the other matter, the masters not knowing of this letter, your Lordships observe what Evidence was given by Mr. *Cottingham*. This is a Transaction some time ago, he says that he writ this letter by the noble Lord's Order, that he cannot now say to which of the masters he delivered it, or whether it was personally delivered by him, or by one of his Clerks. Your Lordships will observe, that there were two masters Senior to Mr. *Holford*, viz. Mr. *Hiccocks* and Mr. *Fellowes*; and it might probably be delivered to one of them; one of them is since dead, the other is yet living; but we were not aware of the Objection, and so have not him here. This doth not impeach Mr. *Cottingham's* Credit or his Evidence, so far as it concerns the Earl.

Mr. *Com. Serj.* My Lords, I will not enter into a strict Comparing of the Evidence, we apprehend that what Mr. *Ellis* swore stands confirmed in every thing by Mr. *Lucas*, and we have Reason

Reason to thank the Gentlemen of the House of Commons for this Evidence. There was one material Part of our Evidence, that the Earl had a thorough Intention of entering into the Regulation of those matters; but by Disputes arising in relation to the Jurisdiction of the master of the Rolls, he was hindered.

Now the Evidence of Mr. *Lucas* corroborates our Proof on this Head, he saith that Mr. *Cottingham* told him, tho' Security had not been taken, yet at present the noble Lord had a Reformation in View, and Security would be expected; and therefore he enquired what Security he could give; there was not only an Enquiry into his present Circumstances, but likewise an Intimation that Security would be expected. This shews the Earl's Intention; and if the Thirst of Gain had swayed him, Mr. *Lucas* would never have had those Bugbears to affright him from giving so much money. Upon the whole it appears that no part of our Evidence is any way impeached by the new Evidence they have given.

Earl of *Macclesfield*. My Lords, I beg leave to say a very few Words upon what hath been newly offered, as to the Evidence to take off my having preferred 5000 Guineas with a Person I thought a better man, to 6000 *l.* with another, whom I thought a good man. I apprehend it is not taken of at all by any Thing that has yet been offered. Mr. *Lucas* owns that at the first Time there was an Expectation of Security, and he has given your Lordships an Account that he asked what Security was expected; and was answered I think to the Value of 10,000*l.* and that what he spoke of the Deficiency, was only that he should not be liable to farther Orders to be made upon him for Contribution to the former Deficiencies of other masters; and in the latter Time, when the Clamour was greater, Mr. *Ellis* offered me 6000 *l.* absolutely without any Condition, and I said I approved of the Person and of the Offer, but I had another Gentleman then under Consideration. Their Evidence indeed varies as to the Particulars of the Conversations they had upon this Subject: But whatever Discourse passed between them, unless it came to my Knowledge, it ought not to affect me. I never heard, nor is it so much as pretended, that I ever did hear, there were any manner of Terms or Conditions whatsoever annexed to the Proposal made by Mr. *Lucas*.

Mr. *Ellis* has been asked this Question, and has sworn positively he mentioned none at all to me; so that there is not the least Pretence that the Restriction, supposing Mr. *Lucas* annexed any to the Proposal (which I must observe is flatly contradicted by Mr. *Ellis*'s Evidence) ever came to my Knowledge.

As to what Evidence is given in relation to the letter of *November* 1721; your Lordships will remember, that when I spoke of that, I entered upon it as a Thing not at all necessary for me; because they had not proved the Article, that the letter writ in *February* was with an Intention to terrify the masters into a Contribution; but all the Proof they produced was, that the masters had paid a voluntary Contribution, and upon that they made some Observation; but not one of the masters ever gave your Lordships an Account that they did it by Reason of, or under the Terror of this letter;

they have called every one of them, and not one hath said so, but agreed that they had paid it as a voluntary Contribution; so that there is no manner of Occasion for what hath been said about this letter. Mr. *Cottingham* did say before your Lordships, that he thought the letter was sent, and he had no Reason to believe the contrary; but indeed he had no memorandum of its being sent. It is very extraordinary to suggest, that this should be a pocket letter. Can any Person imagine that that letter was calculated for an Occasion like this? Was there any Apprehension of this Prosecution in 1721? My Lords, it is not worth while to trouble your Lordships with any more Remarks about so groundless a Pretence. In the Reply there hath been something new offered to your Lordships to make out my receiving money from the masters to be an Offence at common law; and there have likewise been mentioned several Acts of Parliament, to neither of which I have had any Opportunity of giving an Answer before; I therefore apprehend I have a Right to take Notice of them now. And first I beg leave to observe to your Lordships, that every one of these Acts of Parliament relates plainly to Judges who take Bribes, or take money for doing their Duty, or for doing those Things they were bound to do; they lie upon your Lordships table, and if your Lordships will but look upon them you will find all to be so.

That of *Magna Charta* is plainly so, that Justice shall be administered to the Party without paying for it.

So the Statute of 12. R. II. that they shall. —

Mr. *Serj. Pengelly*. My Lord cannot be regular to reply to us on that Statute.

Earl of *Macclesfield*. The Statute is, that they shall not make any Officer for Brokage.

Sir G. *Oxenden*. We must submit it to your Lordships whether this can be regular; the noble Earl hath had his Defence, we have replied; it is not regular for him to enter into a Debate now.

The Statute is upon your Lordships Table; and your Lordships will consider it.

Earl of *Macclesfield*. I will not take up your Lordships Time any farther in insisting upon it; but I hope at least those Gentlemen will not oppose my taking Notice of one Thing that is new; though not any part of the Articles, which is what the Gentlemen have said with relation to *Wilson*'s Composition not being binding upon the Suitors of the Court; that it is matter of Horror that *Wilson* should trust to the Faith of a Court of Justice, and upon that enter into a Composition, which at last should not be effectual and binding. To that give me leave to answer, that if *Wilson* had acted honestly, and given a fair Account of his Estate and Effects in this Case, and it had appeared upon the whole, that he could not pay more than according to this Composition; and at the same Time that it must be a real advantage to the Suitors to have received their Proportion of what he was able to pay, without the Expences of a Statute of Bankruptcy; in that Case he would have the Benefit of it: But in Case he could have paid more, and this appeared only to be a fraudulent or unfair Composition, it would be no way conclusive upon the Suitors; and as he ought not to reap any

Benefit

Benefit, so neither would they suffer any Prejudice by it upon that Supposition.

Mr. *Serj. Pengelly*. The managers are entitled to the Reply and Conclusion.

As to our Evidence newly given, it proves in the strongest manner, that if there was a Reason for distinguishing between 5000*l.* and 6000*l.* it was because the 6000*l.* was attended with an Incumbrance; and if it be said that the Earl had no Notice of it, it is prov'd that his Agent, or the Person whom he employ'd, had this Account deliver'd to him, and knew it; and we appeal to the Letter which is in their Hands. And therefore this is so far a Confirmation of the other Part of the Charge of Neglect when Security was offered. Why was not the Person accepted? Why Mr. *Elde* prefer'd?

Mr. *Lucas's* Directions to his Brother, and his Transactions are confirm'd by Mr. *Ellis*, my Lord's own Chaplain; and the only Reason why the Bargain was not concluded, was, because of the Privilege insisted upon by the Person to be indemnified from all Contributions and Charges.

Earl of *Macclesfield*. I beg your Pardon, if I trouble your Lordships once more, in relation to a Piece of new Evidence, which I did not before reflect upon; I am under a very great Disadvantage from these Gentlemen, who are for tying me down to very great Hardships, so that if any thing slips my memory, at what they call the proper Time, it must at this rate be lost for ever. I would take Notice of one Thing, with relation to what Mr. *Thomas Bennet* said of what I spoke, of denying that the masters paid for their Offices out of the Suitors money; they are attempting to prove that I knew of their doing so, and they prove it by shewing, that I said I had always denied it. But, my Lords, is there any of the masters that came in in my Time, that says I knew any such thing? No, my Lords, not one of all those masters that came in in my Time, and appear to have transacted in this manner; there are only two, Mr. *Kynaston* and Mr. *Thomas Bennet*; but is there any of them, or any other, that pretend that I knew they did so? Here are two Persons that paid for their Offices out of the Suitors money; and because I told one of them afterwards, admitting what he said to be true, that I had heard it said it was so, and deny'd it; Is it from thence to be concluded that I knew it was really so? My Lords, I beg leave to observe as to the matter of the difference of the Prices; I gave Evidence of the difference of Prices in other Offices, and their Rise from 50*l.* to 500*l.* in one Instance, and from 200*l.* to 800*l.* in another.

Mr. *Serj. Pengelly*. We are unwilling to interrupt the Lord; but now for him to go back again into the whole, is a greater Right than his Lordship is entitled to; therefore from the Duty we owe to your Lordships, we hope every Thing that is regular shall be observ'd.

Earl of *Macclesfield*. I submit if your Lordships think I am irregular; in the Confusion my Papers were in when I made my Defence from them, the Notes relating to this and some other matters were overlook'd: But as to the Reply, I must beg leave to make one general Observation, That the Gentlemen have thought the Arguments used by me in that Defence, either such as they could not answer, or such as needed no Answer, since they have not attempted to answer any of them; and which of the two, I must leave to your Lordships Determination.

Mr. *Onslow*. My Lords, in the Course of our Reply, we made use of the Statute of *Henry IV.* We have it not printed, but we have an attested Copy in Writing, and the Original Roll; if your Lordships please, this attested Copy may be brought up to your Lordships Table.

Mr. *Nicholas Paxton* sworn.

Mr. *Paxton*. My Lords, I examined this Copy with the Deputy-keeper of the Rolls in the *Tower*, and it is a true Copy.

Earl of *Macclesfield*. Whether that Parliament Roll be in the Nature of a Journal or a Statute Roll, wherein the Act of Parliament is enter'd?

Mr. *Paxton*. My Lords, the Officer is here; he will give your Lordships an Account.

Mr. *Lutwyche*. It is quoted by my Lord *Coke* to be of the same Nature as a Parliament Roll.

Mr. *Holmes* called.

Mr. *Serj. Pengelly*. Mr. *Holmes*, Where is this Roll kept?

Mr. *Holmes*. My Lords, I am Deputy-keeper of the Records.

Mr. *Serj. Pengelly*. Where?

Mr. *Holmes*. In the *Tower*.

Mr. *Serj. Pengelly*. What Roll is that?

Mr. *Holmes*. It is the Parliament Roll of the 11th of *Henry IV.*

Earl of *Macclesfield*. I desire he may inform your Lordships whether there be any Difference or Distinction between the Parliament Roll and the Statute Roll?

Mr. *Holmes*. There are a great many private Acts enter'd upon the Parliament Rolls; that are not in the Statute Rolls; what is in the Statute Roll was sent down by Writ into the several Counties to be proclaim'd in the several County Courts.

Mr. *Serj. Pengelly*. Whether that is not the Original Roll?

Mr. *Holmes*. This is the original Roll.

E. of *Macclesfield*. I apprehend the Parliament Roll contains the Petitions, and the King's Answer.

Mr. *Holmes*. It doth.

E. of *Macclesfield*. Before it comes to be published as a Law, is it not drawn up in Form, and enter'd upon the Statute Roll?

Mr. *Holmes*. The Petition is a piece of Parchment; after it hath passed King, Lords, and Commons, then it is entred on this Roll.

Mr. *Onslow*. Whether the King's Assent is not entred upon this Roll?

Mr. *Holmes*. There is *le Roy le Veut*.

Lord *Lechmere*. I desire, for your Lordships Satisfaction, that he may read what is upon the Parchment Roll.

Mr. *Holmes* reads it, &c.

Parl. Rot. N^o 28. 11 H. IV.

Respectuatur } Item, QUE nul' Chaunceller, Tre-
per Dominum } forer, Gardein de Privie
Principem & } Seal, Counseller du Roy, Serementz
Concilium. } a Counseill du Roy ne nul' autre Offi-
cer Juge ne Ministre du Roy parnant
fees ou gages de Roy pur leur ditz
Offices ou Services, preigne en nulle
manere en temps avenir ascun ma-
nere de doun ou brocage de nully
pour leur ditz Offices et Services,
affaire sur peyn de respondre a Roy
de la treble de ceo que issi preignent,
et de satisfaire la Partie et punys al
volonte de Roy, et soit dischargez de
son Office, Service, & Counseill pur
toutz

toutz jours, & que chescun qui vorra pur fuer en la dite Matier eit la fuit sibien pur le Roy come pur luy mesmes & eit la tierce partie de some de qui le parties soit duement conviēt.

Le Roy le Voet.

E. of *Macclesfield*. What is there in the margin?

Mr. *Holmes*. *Respectuatur per Dominum Principem & Concilium*.

E. of *Macclesfield*. That I may not be misunderstood in this matter, and accused of going to quibble away an Act of Parliament; your Lordships will give me leave to observe in the first Place, That supposing this to be an Act of Parliament, it relates to Cases where Judgments are given, or where the Parties have a Right, and not any way to me or to my Case; and having premis'd this, your Lordships will see how this matter stands. Here are two Rolls, the one is in the Nature of a Journal, wherein an Entry is made of the several Proceedings, and there are in it great Numbers of Petitions to the King by the Commons; whereby they pray, That Acts may be made, and the King's Answers upon them: The Answer it may be is agreeing to some Part of what they pray, or sometimes to no Part, but a Provision made quite different from what they pray. At that Time the Judges drew up the Acts afterwards in Form, and thence then those Acts were entered upon the Statute Roll; and they were promulgated at that Time by Proclamation on Writs issued to the Sheriffs of the several Counties. Now this hath in the margin of the Parliament Roll, *Respectuatur per Dominum Principem & Concilium*. When the Judges came afterwards to draw up the Statutes of this Parliament, in order to publish them, there being a *Respectuatur* set upon this in the Parliament Roll; they forbore to draw it up amongst the rest, and it is not entred upon the Statute Roll at all, nor ever printed in any Statute Book since, nor was it ever publish'd by the Sheriffs, nor consequently sent to the several Courts of Justice, nor ever taken Notice of by them as a Law; for the Reason of that maxim, That the Courts of Justice are bound to take notice, *ex officio*, of public Laws, and not of private Laws, was because the publick Laws were transmitted to them under the Great Seal. The Fact then in this Case doth appear to be, that when the Acts of this Parliament of 11 Hen. IV. came to be drawn up and promulgated, this having a *Respectuatur* enter'd upon it, was not entred upon the Statute Roll, and so not published; this is the Fact. However it doth not concern me, nor doth it relate to the present Case at all, as I observed to your Lordships before: If I had made a Decree for money; if I had refused a Writ or *Subpena*, unless the Party had paid me money, then I had been within the Statute, but not in this Case.

Mr. *Lutwyche*. We say this Statute doth concern him: But as to what he saith, that there is an Entry in the Margin, *Respectuatur per Dominum Principem, &c.* this is taken Notice of in the 3d Institute, where my Lord *Coke* particularly affirms, that this is an Act of Parliament in Force, and is upon the Parliament Roll, and takes notice of *Respectuatur*, &c. that it was in Fact done by the Prince, the Son of King *Henry IV.* but without Authority; and that notwithstanding such Respite, this Act of Parliament is in full Force.

Mr. *West*. Supposing it to be an Act of Parliament it extends to the Earl's Case; but whether

it be an Act of Parliament or no, is a Question that the Noble Earl now makes. I thought it had been the common Learning, that all the old Laws were Petitions from the Commons, and the King's Answer to them; and that they were entred upon the Parliament Roll; and that the Parliament Roll was only a Voucher to the Statute Roll. I could give many Instances where that Voucher was not pursued, and the Statute Roll drawn up different from the Parliament Roll; and that was the very Reason of altering the manner of passing Laws into the method that is now used. This is my Lord Chief Justice *Hale's* Account in one of the modern Reports.

Mr. *Plummer*. The Earl impeach'd hath principally insisted on two things; the one is the taking a less Sum of money for a master's Place when vacant, when he had a greater Sum offer'd him; and that therefore it follows that he hath not made corrupt Advantages in order to raise his own Fortune, and that he is Innocent. He hath called the Negotiator in this Affair to prove, That when he was offer'd 6000*l.* he took 5000*l.* The Commons have by their Witnesses explain'd it; and this matter is now fully clear'd, and your Lordships have the whole before you; and I will make no farther Observation upon it.

The second Thing that he lays great Weight upon is, that he called for the Accounts of the masters, notwithstanding the 500*l.* apiece was paid in. Upon examining the Witnesses, it doth not appear that any of the now masters knew any thing of it. I leave it to your Lordships Consideration, whether, if the Earl of *Macclesfield* had been in earnest, he would not have had a Return of that Order. It doth not appear there was ever any Account given in; therefore when these two Points are made plainer against him now than they were on our first making good the Charge, tho' he seems to say the Sting of the Impeachment is taken out, yet it is plain the Sting is not taken out of it, but it still remains; and your Lordships will give such Judgment as is just and legal.

Then the Managers for the House of Commons, and the Counsel withdrew, and then the House adjourned.

Tuesday, 25 May, 1725. *The 11th Day, the Lords being seated in their House, and the Managers being come, and seated as before, the usual Proclamation was made for Silence.*

L. Ch. Just. King. **M**Y Lords, Your Lordships having heard the Evidence in this Case, have agreed upon a Question, which is severally to be put to Your Lordships in the usual Order. The Question is this, Is *Thomas Earl of Macclesfield* guilty of High Crimes and Misdemeanors charged upon him by the Impeachment of the House of Commons, or not Guilty, upon your Honour?

L. Ch. Just. King. *Robert Lord Walpole*, What says your Lordship? Is *Thomas Earl of Macclesfield*, guilty of High Crimes and Misdemeanors charg'd upon him by the Impeachment of the House of Commons, or not Guilty?

Lord Walpole, Guilty upon my Honour.

The same Question was severally put to the rest, whose Names and Votes are as follow.

Nicholas Lord Lechmere, Guilty upon my Honour.

Matthew Lord Ducie, Guilty, &c.

Thomas

<i>Thomas Lord Onslow,</i>	Guilty upon my Honour	<i>Nicholas Earl of Scarfsdale,</i>	Guilty, &c.
<i>Allen Lord Bathurst,</i>	Guilty, &c.	<i>Robert Earl of Sunderland,</i>	Guilty, &c.
<i>Thomas Lord Foley,</i>	Guilty, &c.	<i>William Earl of Denbigh,</i>	Guilty, &c.
<i>Samuel Lord Masham,</i>	Guilty, &c.	<i>Edward Earl of Warwick,</i>	Guilty, &c.
<i>Thomas Lord Trevor,</i>	Guilty, &c.	<i>George Earl of Northampton,</i>	Guilty, &c.
<i>Thomas Lord Montjoy,</i>	Guilty, &c.	<i>John Earl of Leicester,</i>	Guilty, &c.
<i>George Lord Hay,</i>	Guilty, &c.	<i>Henry Earl of Lincoln,</i>	Guilty, &c.
<i>John Lord Gower,</i>	Guilty, &c.	<i>Thomas Earl of Pembroke,</i>	Guilty, &c.
<i>Henry Lord Herbert,</i>	Guilty, &c.		
<i>John Lord Ashburnham,</i>	Guilty, &c.	<i>John Marquifs of Tweedale,</i>	Guilty, &c.
<i>James Lord Waldegrave,</i>	Guilty, &c.		
<i>Charles Lord Lynn,</i>	Guilty, &c.	<i>James Duke of Chandos,</i>	Guilty, &c.
<i>Charles Lord Cornwallis,</i>	Guilty, &c.	<i>William Duke of Manchester,</i>	Guilty, &c.
<i>Charles Lord Bruce,</i>	Guilty, &c.	<i>Philip Duke of Wharton,</i>	Guilty, &c.
<i>William Lord Brooke,</i>	Guilty, &c.	<i>Thomas Duke of Newcastle,</i>	Guilty, &c.
<i>James Lord Compton,</i>	Guilty, &c.	<i>Peregrine Duke of Ancafter, Lord</i>	} Guilty, &c.
<i>William Lord Hunsdon,</i>	Guilty, &c.	<i>Great Chamberlain,</i>	
<i>Hugh Lord Clinton,</i>	Guilty, &c.	<i>John Duke of Roxburghe,</i>	Guilty, &c.
<i>John Lord Delawar,</i>	Guilty, &c.	<i>James Duke of Montrofs,</i>	Guilty, &c.
<i>Algernon Lord Percy,</i>	Guilty, &c.	<i>John Duke of Montague,</i>	Guilty, &c.
<i>William Lord Abergavenny,</i>	Guilty, &c.	<i>Charles Duke of Grafton, Lord</i>	} Guilty, &c.
		<i>Chamberlain,</i>	
<i>Stephen Lord Bishop of Exeter,</i>	Guilty, &c.	<i>John D. of Greenwich, Lord Steward,</i>	Guilty, &c.
<i>William Lord Bishop of Bristol,</i>	Guilty, &c.	<i>William Duke of Devonshire, Lord</i>	} Guilty, &c.
<i>Edward Lord Bishop of Chichefter,</i>	Guilty, &c.	<i>President,</i>	
<i>Richard Lord Bishop of St. Davids,</i>	Guilty, &c.		
<i>John Lord Bishop of Norwich,</i>	Guilty, &c.	<i>William Lord Archbishop of Can-</i>	} Guilty, &c.
<i>John Lord Bishop of Carlisle,</i>	Guilty, &c.	<i>terbury,</i>	
<i>William Lord Bishop of Bangor,</i>	Guilty, &c.		
<i>Joseph Lord Bishop of Glocefter,</i>	Guilty, &c.		
<i>Thomas Lord Bishop of Ely,</i>	Guilty, &c.		
<i>White Lord Bishop of Peterborough,</i>	Guilty, &c.		
<i>Samuel Lord Bishop of Rochefter,</i>	Guilty, &c.		
<i>John Lord Bishop of Oxford,</i>	Guilty, &c.		
<i>John Lord Bishop of St. Afaph,</i>	Guilty, &c.		
<i>Richard Lord Bishop of Winchefter,</i>	Guilty, &c.		
<i>William Lord Bishop of Durham,</i>	Guilty, &c.		
<i>Edmund Lord Bishop of London,</i>	Guilty, &c.		
<i>George Lord Viscount Torrington,</i>	Guilty, &c.		
<i>Simon Lord Viscount Harcourt,</i>	Guilty, &c.		
<i>Richard Lord Viscount Cobham,</i>	Guilty, &c.		
<i>Henry Lord Viscount Tadcafter,</i>	Guilty, &c.		
<i>Henry Lord Viscount Lonsdale,</i>	Guilty, &c.		
<i>William Lord Viscount Hatton,</i>	Guilty, &c.		
<i>Charles Lord Viscount Townshend,</i>	Guilty, &c.		
<i>Lawrence Lord Viscount Say and Seal,</i>	Guilty, &c.		
<i>Thomas Earl of Pomfret,</i>	Guilty, &c.		
<i>Bennet Earl of Harborough,</i>	Guilty, &c.		
<i>William Earl of Cadogan,</i>	Guilty, &c.		
<i>Talbot Earl of Suffex,</i>	Guilty, &c.		
<i>George Earl of Halifax,</i>	Guilty, &c.		
<i>John Earl of Bristol,</i>	Guilty, &c.		
<i>Thomas Earl of Strafford,</i>	Guilty, &c.		
<i>Washington Earl of Ferrers,</i>	Guilty, &c.		
<i>Archibald Earl of Ilay,</i>	Guilty, &c.		
<i>Henry Earl of Deloraine,</i>	Guilty, &c.		
<i>John Earl of Stair,</i>	Guilty, &c.		
<i>George Earl of Orkney,</i>	Guilty, &c.		
<i>Charles Earl of Selkirk,</i>	Guilty, &c.		
<i>James Earl of Findlater,</i>	Guilty, &c.		
<i>David Earl of Buchan,</i>	Guilty, &c.		
<i>John Earl of Rothcs,</i>	Guilty, &c.		
<i>George Earl of Cholmondeley,</i>	Guilty, &c.		
<i>William Earl of Albemarle,</i>	Guilty, &c.		
<i>Frederick Earl of Rochford,</i>	Guilty, &c.		
<i>Richard Earl of Scarborough,</i>	Guilty, &c.		
<i>Montague Earl of Abingdon,</i>	Guilty, &c.		
<i>William Earl of Yarmouth,</i>	Guilty, &c.		
<i>Richard Earl of Burlington,</i>	Guilty, &c.		
<i>Charles Earl of Carlisle,</i>	Guilty, &c.		

L. Ch. Just. King. My Lords, Your Lordships have unanimously found *Thomas Earl of Macclesfield* guilty of High Crimes and Misdemeanors charged upon him by the Impeachment of the House of Commons.

Then the Managers for the House of Commons and the Council withdrew; and then the House adjourned.

Wednesday, 26 May, 1725. The 12th Day.
The Lords being sat, and the Managers being come, the usual Proclamation was made for Silence.

THEN the Gentleman Usher was commanded to call in the Earl of *Macclesfield*, who being come to the Bar, the Speaker acquainted him, that the Lords had fully considered of his Case, and had unanimously found him guilty of High Crimes and Misdemeanors charged upon him by the Impeachment of the House of Commons.

E. of *Macclesfield*. I attend your Lordships, in Obedience to your Lordships Command; but I am persuaded, that if your Lordships knew what I suffer, your Lordships would not have required this of me, the rather as I did not intend to make any Exceptions in relation to the Proceedings, or give your Lordships any farther Trouble. I am now to expect your Lordships Judgment; and I hope that you will be pleas'd to consider, that I have suffered no small matter already in the Trial, in the Expence I have been at, the Fatigue, and what I have suffered other ways; besides the cruel Distemper which this hath brought upon me. I have paid back 10,800 *l.* of the money already, I have lost my Office, I have undergone the Censure of both Houses of Parliament, which is in itself a very severe Punishment. My Lords, the Deficiency of Mr. *Dormer* doth sound large, 25,000 *l.* but my Lords, it was not through my Fault that the Deficiency happened, nor was that master put in by me; on the contrary, with great Difficulty, it is reduced by my means to 10,000 *l.* less than other-
wife

wife it would have been. My Lords, all the Loss that can be sustain'd by any thing charged against me, is only what some of the Suitors might have had more for their Proportion, than they can do now out of Mr. *Dormer's* Effects. His Debt came to about 47,000 *l.* his Effects to about 13,000 *l.* which is about a fourth Part: I don't find there is one Suitor hath made his Complaint, that he hath not received his five Shillings in the Pound, Mrs. *Chitty* hath received her Share.

Mr. *Onslow*. My Lords, We must submit it to your Lordships. This was proper when the Noble Lord was making his Defence; but it is not so in Arrest of Judgment. Your Lordships have found him guilty of the Fact, and he is now arguing in Defence of it: If he hath any thing in Arrest of Judgment, he may say it, and the Commons are here ready to answer it.

I was very unwilling, my Lords, to interrupt the Earl, and do it now with great Reluctancy; but it is for the sake of Regularity in your Lordships Proceedings; and we must appeal to your Lordships whether the Noble Lord is not now going into the Repetition of what he said in his Defence?

E. of *Macclesfield*. My Lords, I submit whether this be not proper in mitigation of your Lordships Sentence; but whether it be or be not, I leave myself to your Lordships Justice and Mercy; I am sure neither of them will be wanting, and I entirely submit. I don't know whether your Lordships will be pleased to discontinue my Attendance at this Time, or whether your Lordships will require me to come again under this very great Uneasiness; I submit it to your Lordships.

Then the said Earl, as also the Managers, were directed to withdraw; and the House ordered *Thomas Earl of Macclesfield* to be committed to the Custody of the Gentleman Usher of the *Black Rod*; and then proceeded to the Consideration of what Judgment to give upon the Impeachment against the said Earl, and afterwards adjourned to *Thursday* Eleven of the Clock, the 27th of *May*.

Thursday, 27 May 1725. *The 13th Day.*

A Message was sent to the House of Commons by Mr. Baron *Page* and Mr. Justice *Denton*, to acquaint them, That the Lords are ready to give Judgment against *Thomas Earl of Macclesfield*, if they with their Speaker will come and demand the same.

Hereupon a Motion was made, and the Question proposed, That this House will demand Judgment of the Lords against *Thomas Earl of Macclesfield*; which occasioned a warm Debate, that lasted till Five in the Afternoon, when the previous Question being put, that the Question be now put, it was carried in the Affirmative by a majority of 136 Voices against 65; and then the main Question being put, it was resolv'd, That this House will demand Judgment against *Thomas Earl of Macclesfield*. This done, the Commons resolv'd, *Nem. Con.* That the Thanks of this House be given to the Members, who were appointed the Managers of the Impeachment against *Thomas Earl of Macclesfield*, for their faithful Management in their Discharge of the Trust reposed in them. Hereupon Mr. Speaker gave them, they standing up severally in their Places, the Thanks of the House, as follows:

GENTLEMEN,

“ IT is with the greatest Cheerfulness that I obey the Commands of the House on this Occasion; and yet I was never, on any Occasion, more sensible of the Difficulties of performing them as I ought; but I have this Satisfaction in this Motion's being made when I least expected it, that my not being prepared may be some Excuse for those Defects, which I should not have been able to have supply'd, had I had never so long a Time for Consideration.

GENTLEMEN,

“ You have maintained the Charge of the Commons, with that Force of Argument, Beauty of Expression, and Strength of Reason, as would have gained you the highest Applause in the most flourishing of the *Grecian* Commonwealths; and I may add,

*Nec dignius unquam
Majestas meminuit sese Romana locutam.*

“ But I shall not enlarge farther on this Part of your Praise, being sensible that I am not able to express myself in a manner suitable to the Dignity of the Subject; your own Tongues are only equal to such an Undertaking; and were I able to do it, your Modesty would not permit it: I shall therefore proceed in obeying the Commands of the House, in such a manner, as you yourselves may hear it, not only without Offence, but I hope with Satisfaction; by endeavouring to set in their proper lights the great and lasting Benefits your Country will receive by your faithful Discharge of your Duty.

“ You have stopp'd the Cries of Orphans, and dried up the Tears of the Widow; even those who must ever be insensible of the Benefits they receive, Ideots and Lunatics (and such only can be insensible of them) will be Partakers of the Fruits of your Labours.

“ But you are more particularly intitled to the Thanks of this House, by having made the Prosecutions of the Commons against great Offenders, practicable; The Power of Impeachment, that Sword of Vengeance, which the Constitution has put into the Hand of the Commons, and which, when drawn by Party-Rage, when directed by the Malice of Faction, or wielded by unskilful Hands, has too often wounded that Constitution it was intended to preserve, has now, by your able Management, turn'd its Edge to its proper Object, a Great Offender; and if the Wound it has given should not be so deep, as many expect; yet you may be very sure, it never can be imputed to the Want of Strength in your Arm; And I hope and trust, from your prudent Conduct through the whole Progress of the Trial, that this great Privilege of the Commons will ever remain a Terror to evil Doers; and that it may be a Praise to them that do well, the House has unanimously come to this Resolution:

“ *Resolved*, *Nemine Contradicente*, That the Thanks of this House be given to the Members, who were appointed the Managers of the Impeachment against *Thomas Earl of Macclesfield*, for their faithful Management in their Discharge of the Trust reposed in them.”

A Message

A Message was brought from the House of Commons by Sir *William Gage* and others, to acquaint the House of Lords, That the Commons, with their Speaker, do intend immediately to come to demand Judgment against *Thomas Earl of Macclesfield*; and do desire that the Painted Chamber, and other Passages to the Lords House, may be cleared forthwith.

The Messengers were called in, and told, That the Lords had given Order as desired,

Which was done accordingly.

Then the Commons, with their Speaker, being present at the Bar of the House, the Lord Chief Justice *King*, Speaker of the House of Lords, directed the Gentleman-Usher of the *Black-Rod*, to bring *Thomas Earl of Macclesfield* to the Bar; who, after low Obeifances made, kneeled until the said Lord Chief Justice acquainted him he might rise.

Then the Speaker of the House of Commons said as follows:

“ MY LORDS,

“ THE Knights, Citizens, and Burgessees in Parliament assembled, in the Name of themselves, and of all the Commons of Great-Britain, did at this Bar impeach *Thomas Earl of Macclesfield* of High Crimes and Misdemeanors; and did exhibit Articles of Impeachment against him; and have made good their Charge:

“ I do therefore, in the Name of the Knights, Citizens, and Burgessees in Parliament assembled, and of all the Commons of Great-Britain, demand Judgment of your Lordships against *Thomas Earl of Macclesfield*, for the said High Crimes and Misdemeanors.”

Then the Lord Chief Justice *King*, Speaker of the House of Lords, said,

“ Mr. Speaker, The Lords are now ready to proceed to Judgment in the Case by you mention’d.

“ *Thomas Earl of Macclesfield*, The Lords have unanimously found you Guilty of High Crimes and Misdemeanors, charged on you by the Impeachment of the House of Commons, and do now according to Law proceed to Judgment against you, which I am ordered to pronounce. Their Lordships Judgment is, and this High Court doth adjudge,

That you *Thomas Earl of Macclesfield*, be fined in the Sum of Thirty Thousand Pounds unto our Sovereign Lord the King; and that you shall be Imprisoned in the Tower of London, and there kept in safe Custody, until you shall pay the said Fine.

Then the Speaker with the Commons withdrew, and the Earl of *Macclesfield* was taken from the Bar.

Ordered, That the Speaker of this House do give Order for the Printing and Publishing the Trial of *Thomas Earl of Macclesfield*; and that no other Person but such as he shall appoint, do presume to Print the same.

Ordered, That the said Earl of *Macclesfield* be committed to the Tower of London, there to be kept in safe Custody until he shall pay the abovementioned Fine of Thirty Thousand Pounds to the King; and that the Gentleman-Usher of the *Black-Rod*, in whose Custody the said Earl at present is; do him safely convey to the said Tower, and deliver him to the Constable thereof, or in his Absence to the Lieutenant, or Deputy-Lieutenant of the same; and that the said Constable, Lieutenant, or Deputy-Lieutenant do receive the Body of the said Earl, and him keep in safe Custody there, until he shall have paid the said Fine.

Then the House adjourn’d to Monday, 31 May, 1725.

And the Earl of *Macclesfield* was conveyed to the Tower, where he continued Prisoner for some Time till he paid his Fine.



CXCVI. Proceedings in the Trial of Captain John Porteous for Murder. Published by Order of the House of Lords.

Curia Justitiariorum, S. D. N. Regis, tenta in Novo Sessionis Domo Burgi de Edinburgo, Quinto Die Mensis Julii, Millesimo septingentesimo trigesimo sexto, per Honorabiles Viros, Andream Fletcher de Milton, Justiciarium Clericum, Dominum Jacobum Mackenzie de Roystoun, Magistrum Davidem Erskine de Dun, Dominos Gualterum Pringle de Newall, et Gilbertum Eliot de Minto, Commissionarios Justitiariorum, dictos S. D. N. Regis.

Curia legitime affirmata.

Intran.

JOHAN PORTEOUS, lately one of the Captain-Lieutenants of the City Guard of *Edinburgh*, present Prisoner in the *Tolbooth* of *Edinburgh*, Pannel. INDICTED and ACCUSED at the Instance of *Duncan Forbes* Esquire, His Majesty’s Advocate for His Highness Interest, for the Crimes of Murder and Slaughter, and others, as is more fully mentioned in the Indictment raised against him there annext. Setting forth, THAT WHERE, by the Law of God, the Common Law, the Municipal Law and Practice of this Kingdom,

and the Laws of all other well-governed Realms, Murder and Slaughter, maiming and wounding with mortal Weapons, any of the Subjects of such Realms, and the ordering, commanding, and causing any Band, or Number of Men, armed with Firelocks, and other mortal Weapons, to fall upon, wound, murder, and destroy Numbers of His Majesty’s Subjects, innocently and lawfully assembled, by firing sharp Shot amongst them, whereby Multitudes are, or may be endangered, and many Men, Women, and innocent Children are, or may be killed or wounded, without any just Cause or Occasion, and without lawful Warrant, more especially when committed in the publick Streets of a City, by a Person lawfully commissioned by the Magistrates thereof, to command such Band of armed Men, for the Preservation of Peace and Order, and for the Defence of the Inhabitants, and others resorting thereto, are Crimes of a high Nature, and severely punishable: YET TRUE IT IS, and of Verity, That he the said *John Porteous* had presumed to committ, and was guilty and accessory, or art and part of all and every, or one or other of the forsaide Crimes aggravated as aforesaid; IN SO FAR AS, upon the Fourteenth Day of *Aprile* last, or one or other of the Days of the said Month, when the deceas’t *Andrew Wilson*,

Wilson, sentenced to be hang'd to Death by the High Court of Justiciary, was to be executed at the *Grass-market* of the City of *Edinburgh*, he being at that time one of the Captain-Lieutenants of the Town Guard of the said City, lawfully commissioned by the Magistrates and Town Council thereof; and in the ordinary Course of Rotation with the other Officers of the said Guard, being order'd to attend at the said Execution, to preserve the Peace, and support the Executioner in the Discharge of his Duty, having under his Command a Detachment of about Seventy Men, he did then attend in the said *Grass-market* accordingly, and after the said *Andrew Wilson* had hung upon the Gallows, erected for his Execution, until he was dead, at least for a considerable time, and so long as there was ground to conclude he was dead; he the said *John Porteous*, shaking off all Fear of God, and Respect to his Majesty's Laws, and conceiving a most wicked and malicious Purpose of destroying, wounding and maiming Numbers of his Majesty's Subjects, the Inhabitants of the said City of *Edinburgh*, and others there assembled at the said Execution, without any just Cause or necessary Occasion, ordered the said Detachment of the Guard under his Command to fire upon the People so assembled at the said Execution; and the Men, at least severals of them having fired, as it seems he apprehended, over the Heads of the Multitude, so as to avoid doing them harm, he with Threats and Imprecations repeated his Commands to fire, calling out to them, to level their Pieces and be damn'd, or Words to that Purpose; and at or about the same time, he levelled the Firelock that was in his own Hand, taking Aim at *Charles Husband* Servant to *Paul Husband*, Confectioner in the *Abbey of Holy rood-House*, and most wickedly and murderously fired at him, whereupon he immediatly droped to the Ground, having received a Wound by a Bullet or large Drop of Lead on the left Side of his Head, which pierced into his Brain, and another large Wound likewise by a Bullet or large Drop of Lead on the left Side of his Neck, and a third Wound in his Body, and a fourth Wound in his left Hand, at least a mortal Wound or Wounds, whereof he died in some short Space thereafter; AT LEAST, he did so level his Piece, and appeared to take his Aim at some one of the innocent Multitude, who happened to stand directly over against him, and he did fire, and upon his so firing, the said *Charles Husband*, at least one or other of the Persons particularly after mentioned, or more of them, did immediatly drop to the Ground, having received a mortal Wound or Wounds, whereof they soon after died; and by his said Example and Command, severals of the said Guard, to the Number of Twenty, less or more, did at the same time with him, or soon after him, fire upon the innocent Multitude, whereby all, or one or more of the following Persons received mortal Wounds, whereof they soon after died, viz. *Archibald Ballantyne*, Son to *John Ballantyne*, younger Dyster in *Dalkeith*, received several Wounds, with Bullets or large Drops of Lead, which peirced into his Body, at least a mortal Wound or Wounds in his Head or Body, whereof he died a few Days thereafter, and *John Anderson* Son to *George Anderson* in *Craighead*, Drover, received a Wound in the Head with a Bullet or large Drop of Lead, at least a mortal Wound or Wounds in his Head or Body, so that he died in few Hours thereafter; and the following Persons were grievously maimed, hurt,

and wounded, to the great Danger of their Lives, viz. *Margaret Artbur* alias *Airth*, Residenter in the *Cannon-gate*, near the *Water-gate* thereof, *Jean Peal*, Servant to *James M' Dowal* Merchant in *Edinburgh*, *David Wallace* Journeyman Wright in *Edinburgh*, *James Philp* late Servant to *Lauder Esquire*, Residenter in the *Cannon gate*, *David Kidd Taylor* in *Edinburgh*, *Patrick Spalding* Apprentice to *David Mitchel* Jeweler in *Edinburgh*, *James Lyle*, and *Alexander Wallace* both Servants to *James Wright* Staymaker in *Edinburgh*, *John Miller Taylor* in *Edinburgh*, *David Ogilvie* Writer in *Edinburgh*, and *James Nivan* late Servant to *William Sellars* Writer in *Edinburgh*, Residenter in the *Potter-Row*: AT LEAST, the said Persons were so killed, wounded, and maimed, by the firing in manner, and by the Direction, as aforesaid, and by the second firing after mentioned; for not contented with the Barbarities thus committed, after he had with the said Company or Detachment of the City Guard marched towards, or into the Place or Street called the *West-bow*, he, without just Cause or Occasion, again ordered the Men under his Command, to face about and fire upon the People, and at or about the same time, he fired a Musket or Firelock that was in his own Hand, having either reloaded, or caused to be reloaded his own Piece, or taken another out of the Hand of one of the Guard; and severals of the said Guard did, upon that second Example and Command of his, fire upon the Multitude, whereby *Alexander M' Neil* Son to *Edward M' Neil* Indweller in *Morton-hall*, received a Shot in the Head with a Bullet or Lead-Drop, which pierced into his Brain, at least a mortal Wound or Wounds in his Head or Body, so that he died thereof in a few Days thereafter; and *Margaret Gordon* Servant to *William Ogilvie Taylor*, in *Saint Mary Wynd* in *Edinburgh*, received a Wound in the Head above the left Eye, with a Bullet or large Drop of Lead, which pierced into her Brain, at least a mortal Wound or Wounds in her Head or Body, so that she died thereof in a short Space thereafter; and *Henry Grabame Taylor* in *Cannon-gate* received a Wound in the Head, with a Bullet or large Drop of Lead, which pierced into his Brain, at least a mortal Wound or Wounds in his Head or Body, of which he died in a few Hours thereafter: AT LEAST, by this, and the other Firings by him, and by his Order and Example above mentioned, all, or one or more of the Persons particularly above recited, as having been killed, received mortal Wounds, of which they soon after died, and all or one or more of the Persons above recited, to have been wounded, were grievously maimed, hurt, and wounded, to the great Danger of their Lives; AT LEAST, at the Time and Place aforesaid, the said Persons above named and mentioned to have been respectively killed and wounded, were all, or one or more of them, wickedly, and maliciously slaughtered, murdered, and wounded, by Wounds severally given them by mortal Weapons: AND HE WAS GUILTY, art and part of the Slaughter, Murder, and wounding of all, or one or more of them: ALL WHICH, or any Part thereof being found proven by the Verdict of an Assize, in presence of the Lords, Justice General, Justice Clerk, and Commissioners of Justiciary, he ought to be most exemplarily punished with the Pains of Law, to the Terror of others to committ the like in time coming. *Sic Subscribitur,*

Ch. Areskine, A. D.
Pur-

Purfuers.
Duncan Forbes, Esq; his
 Majesty's Advocat.
 Mr. *Charles Erskine* his
 Majesty's Solicitor.
 Mr. *Hugh Forbes*, his
 Majesty's Advocat-
 Depute.
 Mr. *Patrick Haldan*.
 Mr. *Hugh Murray Kin-
 nymont*.
 Sir *James Elphinstoun*.

Prolocutors in Defence.
 Mr. *James Grabame*,
 junior.
 Mr. *Henry Home*.
 Mr. *Alexander Lockhart*.
 Mr. *James Lesly*.
 Mr. *James Holburn*.

Advocats.

The Libel being openly read, and debate *vi-
 va voce*, in presence of the Judges, Pannel, and
 Jury, the Lords ordained both Parties to give in
 their Informations to the Clerk of Court in or-
 der to be recorded, and the Purfuers to give in
 theirs against *Friday* next, at Six o' Clock at
 Night, and the Prolocutors for the Pannel to
 give in theirs against *Tuesday* thereafter, and con-
 tinued the Cause till *Friday* the Sixteenth Instant,
 and ordained Affizers and Witneffes then to at-
 tend, and the Pannel to be carried back to Prison.

July 12th, 1736.

Information for his Majesty's Advocat for his
 Highness's Interest, against John Porteous
 late Captain Lieutenant of the City Guard
 of Edinburgh, Pannel.

THE Pannel is charged by the Indictment,
 with murdering, slaughtering, maiming,
 and wounding divers of his Majesty's Subjects,
 by firing with his own Hand, and causing and
 ordering a Band of armed Men under his Com-
 mand, to fire upon a Multitude of innocent
 People, assembled to see an Execution in the
Grass-market of the City of *Edinburgh*, without
 any just Cause or Provocation; contrary not on-
 ly to the Laws of God and Nature, and to the
 good and laudable Laws of this and all other
 well governed Realms, but also contrary to the
 exprefs Duty of his Office, who was one of the
 Commanders of the City Guard, intended to
 preserve the Peace of the City, and to protect
 the Inhabitants thereof from all violence; and who
 was on that Occasion entrusted with the Command
 of a large Detachment of the said Guard to pre-
 serve Peace and Order, to secure the Execution
 of a Sentence of the High Court of Justiciary,
 and to prevent all Riots and Tumults, whereby
 the Execution of the said Sentence might be dis-
 appointed, the Laws might be violated, and the
 People assembled might be hurt or destroyed.

The Indictment sets forth, particularly, That
 at the time and Place libelled, where a great
 Multitude of Innocent Persons, of all Ages, and
 of different Sexes, were lawfully assembled, to
 see the Execution of *Andrew Wilson*, sentenced
 to be hanged by the High Court aforesaid; the
 Pannel having under his Command a Detachment
 of seventy armed Men of the City Guard, and
 having conceived a most wicked and malicious
 Purpose of destroying, maiming, and wounding
 Numbers of his Majesty's Subjects, the Inha-
 bitants of the said City, and others assembled at
 said Execution, without any just Cause or neces-
 sary Occasion, ordered the said Detachment un-
 der his Command to fire upon the People so as-
 sembled; that the Men under his Command,
 having probably, in his Apprehension, fired o-
 ver the Heads of the People, he, with Threats

and Imprecations, repeated his Commands to
 fire, calling out to them to level their Pieces,
 and be damn'd; that at or about the same time
 he levelled the Firelock that was in his own Hand,
 taking aim at one *Charles Husband*, and fired at
 him, whereupon he immediately dropt to the
 Ground, having received Wounds, whereof he
 instantly died; at least, that he levelled his Piece,
 seeming to take aim at some One in the Croud,
 and fired it; and that upon his firing, the said
Charles Husband, or one or other of the Persons
 in the Indictment mentioned dropt; having re-
 ceived Wounds by Bullets, of which they in-
 stantly died; and that by his Commands and
 Example, several of the City Guard under his
 Command, fired upon the innocent Multitude,
 whereby the Persons particularly mentioned in
 the Indictment, were killed, maimed, and
 wounded.

The Indictment further charges, That not
 contented with this Barbarity, the Pannel, after
 he had marched off his Detachment towards, or
 unto the Place or Street called the *West Bow*, a-
 gain ordered the Men under his Command, to
 face about and fire upon the People, and at or
 about the same time, fired a Musket or Firelock
 that was in his own Hand, having either re-
 loaded, or caused to be re-loaded the Piece for-
 merly fired by him, or having taken another out
 of the Hand of one of the Guard; and that se-
 veral of the said Guard, did upon that second
 Example and Command, fire upon the Multi-
 tude, whereby the Persons described in the In-
 dictment, were killed or mortally wounded:
 And the Indictment concludes in common Form,
 that the Pannel is guilty, or Actor art and part of
 the Crimes aforesaid, or one or other of them.

The Charge in this Indictment is so heinous,
 that one should have imagined, it would have
 been decent in the Pannel, to have made no Ob-
 jection to the Relevancy, and to have founded
 upon no Defence for avoiding the Effect of the
 Lybel, if true, but to have contented himself
 with a flat Denial thereof, reposing himself upon
 his Innocence, if he is truly not guilty of the
 Facts alledged, without any other Desire, but
 that of having a fair Examination of unbyassed
 Witneffes, to be produced by him as well as the
 Profecutor, in order to discover the real Circum-
 stances of the Transaction:

But his Procurators, it seems, thought it their
 Duty to move every Objection against the Re-
 levancy of the Lybel, and to offer every Defence
 that their Invention could suggest from a particu-
 lar Relation of the Circumstances of the whole
 Transaction, which they laid before the Court
 upon the Pannels Information, and which they
 offered to prove, to make good their Defence.

They informed the Court therefore, on behalf
 of the Pannel, That the Magistrats apprehend-
 ing, that some violent Attempt might be made
 for rescuing *Wilson*, the Offender sentenced to
 be hanged, had ordered the Pannel to attend the
 Execution, with the greatest Part of the City
 Guard, to support and protect the Executioner
 in the Discharge of his Office, with Directions
 to repel Force by Force; that to make those Di-
 rections effectual, Powder and Ball were by the
 Town Treasurer delivered out of the Town's
 Magazine to the City Guard, the Morning of
 the Execution, with Directions to load their
 Pieces: That besides this Precaution, the Dan-
 ger of the Rescue appeared to the Magistrats

fo great, that they desired of General *Moyle*, and obtained a Detachment of the regular Troops, who were posted near to the Place of Execution, in order to support the City Guard, if there had been occasion; and whose Commanders were told, that the Lord Provost would give them Authority to fire, if it should prove necessary; that the Pannel with the Town Guard attended accordingly the Execution; That when the Offender was hung up on the Gibbet, the Magistrates retired from the Scaffold, and repaired to a House over-against it in the *Grass-market*; that after the Offender had been hung up for some time, the Multitude became unruly, and begun to sling Stones of great Size, and with great Violence, that some of the Guard were thereby hurt; one had his Shoulder-blade broke, others were bruised, and the Timber of the Drum was beat to Pieces; that the Insolence of the Mob growing still greater, and they pressing from all Sides upon the Guard, the Pannel, who apprehended they might have intended to carry off the Criminal, who by this time was cut down, in order to attempt the recovering him to Life, found it necessary for him to keep off the Multitude by Threats and Menaces; that to this end he presented his Piece, first to one Quarter, and then to another, calling to the People to stand off, and threatning that if they did not, he would fire, that nevertheless, he neither fired himself, nor gave any Orders to fire, but on the contrary, when some of the Guard, provoked by the Hurts they received, had, without his Orders or Authority, presumed to fire, whose Example was followed by several others, he did all he could to prevent that Mischief, by commanding them to desist, and actually did beat down the Muzzle of one of the Mens Pieces, who was presenting it in order to fire; that finding he could not be obeyed, he endeavoured to march off his Men, and prevailed with several of them to follow him some small Way up the *West Bow*, when again some of those Men who followed him, provoked, by what, he did not know, faced about, and fired towards the *Grass-market*; that the first Notice he had of this Firing was by hearing it, which made him turn about in order to stop it; that at this last Place, he neither fired, nor gave Orders to fire; that he marched as many of his Men as he could gather together back to the City Guard Room; that there he prevented the Mens cleaning their Pieces, that the guilty who fired might be distinguished from the Innocent who did not fire; that his own Piece had not at that time been at all fired; that conscious of his Innocence, and that he had on this, as well as on every former Occasion, done his Duty with Patience and Temper, he presented himself before the Magistrates, whereas nothing was easier for him than to have made his Escape, and that in their Presence the Firelock which he had in his Hand was presented, and appeared not to have been at all fired; and that therefore it was impossible the Lybel, as lybelled, could be true.

From this, which was said to be the State of the Case, the Procurators for the Pannel, contended, first, That the Lybel was insufficient, as not describing with proper Accuracy the particular Part of the Street, where the Person supposed to be shot by the Pannel stood, and his Situation with respect to the Pannel at the Time, because thereby the Pannel was deprived of the

Opportunity of making his Defence, by founding it particularly on Circumstances, which he might avail himself of, if the Position and Situation had been distinctly described.

To this it was, and is answered, That the Lybel is as particular as the Law requires, describing the Street where the Execution was had, which is all that the utmost Scrupulosity could expect in such a Case. Minute Circumstances cannot be known to the Prosecutor, or certainly discovered, but by Proof upon the Trial: Every Circumstance of the Pannel's own acting must be known to him; and therefore, if from the Position or Situation in which he was at the Time of the Firing, he can show that it was impossible he could have killed the Person, whom he is charged to have shot, describing and proving those Circumstances, he may have Advantage from them, but cannot object to the Prosecutor, that he did not minutely describe a Situation that was not known to him, and which describing perhaps erroneously, might minister an unjust Occasion to a Criminal to escape Justice: Wherefore this Objection to the Form of the Indictment, ought to be repelled.

But in the Second Place, The Procurators for the Pannel, very unnecessarily, one should think, if he is Innocent of Firing, or ordering to fire, and in some degree inconsistently with that Plea, alledged, That the delivering out Powder and Ball to the City Guard; the ordering so great a Detachment to attend; the calling for the Regular Troops to support the Town Guard; the Intimation to the Commander of those Troops, that they should have Orders to fire, in case of Necessity; and the Direction to the Pannel to support the Execution of the Sentence against *Wilson*, and in case of a violent Rescue or Deforcement, to repel force by force, amounted to a flat Order from the Magistrates to fire, when it became necessary: And that the violent Assault made by the Mob, as aforesaid, with Stones, which were to be considered as Lethal Weapons, in order as the Pannel believed to carry off the Offender, in hopes of recovering him to Life, made it necessary to repel force by force: Wherefore these Circumstances to infer the Order, and the violent Assault of the Mob as mentioned, ought to be sustained and admitted to Prooff, as a total Defence against the Indictment, at least as Circumstances fit to mitigate the Punishment, and restrain it from the *pœna ordinaria*; since the Pannel being *versans in licito*, and engaged in the Discharge of a lawful Piece of Duty, if any Excess was committed by him, it ought not to be attended with Capital Punishment, but ought to be corrected *extra ordinem*, according to the Degree of the Excess.

To this it was answered, That tho' it were true, which is not at all upon the Part of the Prosecutor denied, that the Magistrates upon just Apprehension of Disorders, and an Attempt for a violent Rescue of the Criminal, who was sentenced to die, had ordered Powder and Ball to be distributed to the Guard, had increased their Numbers, had obtain'd Assistance from the Commander of the regular Troops, with Assurance, that in case of necessity they should be authorized to fire, had directed the Pannel at all Hazards to support the Execution, and prevent a violent Rescue, and had even told him, that in case of necessity he was to repel force by force, it will not in the least follow, that those Orders could

in any Degree justify him, except in case of Necessity, except there had been an Attempt towards a violent Rescue, which could not otherwise have been prevented, and except all the proper Precautions for dissipating otherwise the Mob, and for legitimating the Act of Firing upon them, had been previously made use of.

For in the first Place, No Order from any Civil Magistrate whatever, can justify a Barbarity so horrid, as that which is charged on the Pannel. Had the Provost, and all the Magistrates of *Edinburgh* been present on the Spot, and had they ordered him to fire upon the Innocent People, when there was no just Cause for so doing, those Orders indeed might subject the Magistrates, as well to the Penal Consequences that attend Murder, but could not on the least acquit him, who was not at all bound to obey such illegal Orders, and who therefore acted at his Peril.

In the Second Place, It is not at all pretended; that the Pannel had any Orders expressed or implied to fire, except the Violence of an Attempt to rescue, not otherwise avoidable, made it necessary. Had that been truly the Case, Firing possibly might have been the Pannel's Duty, the reading the Proclamation undoubtedly would have made it justifiable; and this the Magistrates knew, when they ordered Ammunition to be distributed, and invited the regular Troops to their Assistance: But till it became necessary, when there was no Hazard of a Rescue, before any Disorder was sought to be quell'd by the legal Precaution of reading the Proclamation, which is intended to intimidate Rioters, and to separate the Innocent from the Guilty, by giving due Notice to all thoughtless People; who without any Malevolence are mixt with the Multitude, to separate from the ill Meaning, it was the most Cruel, as well as unjustifiable Act, that has at any Time been heard of, to make use of the Weapons that were put in the Hands of the Guard, for the Security of the Peace and of the People, to destroy so many Innocents, who had not in any Degree offended.

For, Thirdly, Tho' the Pannel mentioned the flinging of Stones, and the Size of some of them, with some Hurts received therefrom, yet the Libel charges, and he admits that the Criminal was cut down before this trifling Provocation prevailed with any one to fire: His Duty then, so far as concerned the Execution of the Sentence, was over: He alledges no Danger, nor can he in those Circumstances of a Rescue, no Invasion with Fire Arms, or other mortal Weapons, fit to deforce or destroy a Detachment of Seventy disciplined Men, with loaded Pieces and screwed Bayonets: How then can the Exigence, or the Orders defend him? If his Act had been absolutely necessary, some Defence might have been founded on that Necessity joined with his Orders: But when his Allegations, tho' they were true, do not point out the least Necessity, and are in reality founded on nothing else than the customary Impertinence on such Occasions, of flinging Dirt and Stones at the Executioner, tho' the Provocation thereby given might perhaps justify a Cholerick Man, for drubbing any of the Actors for their Wantonness, yet to be sure, it could not justify the Slaughtering of the Offender, far less can such Impertinence in a few Boys, or other idle People, excuse the firing sharp Shot upon an Innocent Multitude,

whereby Numbers of his Majesty's Subjects were destroyed: And therefore it seems to be beyond all doubt, the Pannel can find no Shelter from those Orders, or the Duty he imagines lay upon him to fire; and must therefore stand or fall, upon his being, or not being Guilty of the Facts charged upon him.

The Procurators for the Pannel endeavoured to find an Argument for him, in a late Resolution of the Court, which suspended a Sentence of the Court of Admiralty, proceeding upon an *Interloquitor* that found it necessary for Soldiers, who happened to kill in the Execution of their Duty, when by Order attending Custom-house Officers, to prove, that the killing was necessary for the Defence of their Lives, inferring from this Resolution, that the Court did not think it necessary for the Pannel to prove, that he was in Danger of his Life: And though all that their Observation necessarily implies were granted, they could have no Benefite by it, because in this Case the Pannel neither does, nor can aver, that the Firing which he was personally guilty of, and ordered, was necessary for securing the Execution of that Trust that was committed to him, or for preserving the Rights of the Crown, or any Subject.

Where a Man has by Law Weapons put in his Hand, to be employed, not only in Defence of his Life when attack'd, but in Support of the Execution of the Laws, and in Defence of the Property of the Crown, or Liberty of any Subject, he doubtless may use those Weapons, not only when his own Life is put so far in Danger, that he cannot probably escape without making use of them, but also when there is imminent Danger, that he may by Violence be disabled to execute his Trust, without resorting to the Use of those Weapons: But when the Life of the Officer is exposed to no Danger, when his Duty does not necessarily call upon him for the Execution of his Trust, or for the Preservation of the Property of the Crown, or the Preservation of the Property or Liberty of the Subject, to make use of mortal Weapons, which may destroy His Majesty's Subjects, especially Numbers of them, who may be innocent, it is impossible, from the Resolution of the Court of Justiciary hinted at, to expect any Countenance to, or Shelter for the inhumane Act.

And upon a Principle very near allied to this, the Pannels Pretence, that being *versans in licito*, and intrusted with the Execution of legal Orders; any Excess, that for lack of Discretion he may have been guilty of, cannot be punished *pœna ordinaria*, ought to be repelled; for it's obvious, the Trust reposed in him, and the Duty expected from him, was no more than to see the Execution perfected, and to resist any violent Attempt to rescue, which should disappoint the Execution of the Law. Now when the Sentence of the Court of Justiciary was executed, when the Criminal was hanged and cut down, before any Person fired, the Trust reposed in the Pannel, and the Duty expected from him ceased; he was no longer an Officer employed, to that end for which the Fire Arms were loaded, and his Actions came to be estimated of by the same Rules, that would have made them lawful or unlawful upon every ordinary Occasion, where no particular Danger threatned, and where no necessary Service was in view.

And therefore, as in such Cases, the Pannel must be convinced, that nothing short of being constituted in immediate Danger of Death without firing, could justify him or his Guard for making use of loaded Fire Arms, he must in consequence acknowledge, that in the case in Question, no Danger of Life, which he could not have avoided, having threatned him and his Guard, he was absolutely inexcusable for firing, and that therefore his mischievous and temerarious Act must be attended with the highest Penalty.

An armed Man who assaults, and without just Cause destroys another Man tho' armed, and in no particular Trust or Confidence with him, the Law considers and demeans as a Murderer; but when the Captain of a City Guard, who has an armed Force committed to his Care, for the Good and Safety of the Community, thinks fit, upon any slight Offence or Provocation, to turn those Arms, and that Force upon a Crowd of Citizens lawfully as well as innocently assembled, he is, in Addition to the Slaughter and Destruction that ensues, guilty of the most notorious Breach of Trust, and for an Example to others, whom it may be necessary for the Good of the Community to trust, ought to be punished in the most severe manner. Men so trusted are under double Tyes, for besides the general Obligations of Duty and Humanity, a particular Confidence is reposed in them, which at the Peril of their Lives they ought to answer.

The Procurators for the Pannel complained, That in the Indictment he was charged with a wicked and malicious Purpose of destroying, wounding, and maiming Numbers of his Majesty's Subjects; and by the Pannel's sober and modest Deportment on former Occasions, and the whole Circumstances precedent to the melancholy Accident now in Question, endeavoured to shew that he had no premeditated malicious Design. But this again was to no purpose: The Prosecutor never heard, nor, so far as he knows, did ever any Man before this time, complain of the Wickedness or Inhumanity of the Pannel, and he has received no Information, by which he can be induced to think, that for any considerable time before the Fact complained of, the Pannel had premeditated the destructive Action of which he is accused. But then his Procurators very well know, that firing and ordering to fire, imply, and are Proof of a wicked and malicious Purpose of destroying those that are fired at: *Malitia* and *Propositum procedunt ictum*, in the Construction of Reason as well as Law, and whoever wilfully murders and destroys his Majesty's Subjects, must be demean'd as a Murderer, if his malicious Purpose preceded the drawing of the Tricker, or giving the Orders, one Moment, as much as if it had been preconceived a whole Year.

These Shews of Defence, rather than Defences being removed; the next thing that comes to be considered, is the History of the Pannel's Behaviour, during the melancholy Transaction, which his Procurators offered to prove, and insisted, would, if proved, be a sufficient Defence against the Facts charged in the Lybel.

But in this the Prosecutor can by no means agree, for he takes it to be extremely plain, that every single Circumstance alledged by the Pannel may be true, and yet it may also be true, that

he with his own Hand fired, and killed one or more of the innocent People, and that he ordered the Men under his Command to fire.

It may, for Example, possibly be true, that he, at some Period or another of the Action, called out to the Multitude to stand off, or that he would fire; that he at some one Point or another of Time prohibited the Men to fire, and struck down the Pieces of such as were presenting them; and yet it may also be true, that he at some other point of Time gave the precise Word of Command to fire, and actually fired the Piece that was in his Hand: Before he lost his Temper he might have threatned only, before he took the Resolution of annoying, as well as after he saw Mischief done, he might have endeavoured to prevent a particular Act of Inhumanity; but his doing so at certain Periods, is no conclusive Evidence, that at other Points of Time his Conduct might not have been very different.

Were his giving Orders, or actual firing dubious, the Circumstances mentioned for the Pannel might create a strong Presumption for him: But if it shall be proved, as it is charged in the Lybel, that he actually fired the Piece in his Hand oftner than once, and gave positive Orders to fire; what can it avail him, that at some other Periods of the Fray, he behaved himself in a different manner? since both the one Allegation and the other may be true.

But the Procurators for the Pannel insisted, That though the Proposition they undertook to prove was in some degree a Negative, yet it was so circumstantiated as to be capable of a positive Proof; for they said that credible Witnesses could be produced, who would inform the Court and Jury, that during the whole Fray, they kept their Eyes upon the Pannel, and were attentive to his Actions; and that they could take upon them to say, that thorow out the Scuffle he did not fire his Piece, nor order the Guard to fire, but that he threatned to fire, which might by Persons at a distance who heard the Word Fire only pronounced, be mistaken for a Command, and that he presented his Piece only in a menacing Posture, but without firing, which might have misled the Spectators into an Opinion that he did fire, though he really did not; if any one who was near him happened to discharge his Shot about the same time.

This reasoning however is manifestly defective, because the Evidence of the Witnesses, who shall say, they did not see or hear, bears no Proportion in point of Weight, to the Testimony of those, who shall upon Oath positively say, that they did hear or see.

And besides the obvious Reason for maintaining this Distinction in the common Case, there is a particular Consideration that supports it, in the case of a Fray or Tumult, where Shots are fired, Murder ensues, and there is a general Confusion and Surprize. No one could possibly be so interested in keeping his Eyes upon the Pannel, when it could not be foreseen there would be occasion to give Evidence touching his Behaviour, as not to be lyable to be carried off from that Object, upon any fresh Surprize that happened in the Tumult: The firing of a Shot, the flinging of a Stone, the extraordinary Behaviour of any one of the Multitude, or of the Guard, might imperceptibly have drawn the Eyes and

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Attention of any Spectator from the Pannel, to that new Object, and prevented his seeing or hearing what he said or did in the mean time: And therefore no Witness, or Number of Witnesses, who should take upon him or them to say absolutely, That the Pannel did not at any Period of the Frey fire, or order to fire, would at all be credible, at least most certainly they could not be credited against such Witnesses as should positively say, that they saw or heard him fire, or order to fire.

If Witnesses shall say against the Pannel, that they saw him present his Piece and fire, and for their *Causa Scientiæ* shall aver, that they observed Fire and Smoke issuing out of the Muzzle of his Piece, and a Man drop down dead in the Place towards which he pointed it, will that Evidence be sufficiently contradicted by Persons who may say they observed no such Thing, or that others of the Guard fired about the same Time, and at the same Place? 'tis humbly thought it cannot, because this is setting up Negative Evidence, only against positive, which neither Law or Reason permits.

And if credible Witnesses shall aver, That the Captain distinctly ordered the Guard to fire, can it avail him that other Witnesses heard him threaten the Croud, that if they did not retire he would fire, without hearing the positive Orders for firing given? in a Tumult every individual cannot possibly hear every Thing that passes; but then it is no Evidence that particular Words were not uttered in a Fray, that some Persons present at the Fray did not hear or attend to them.

And the Pannel in framing his Defence on this Article, does not seem to have attended to what is expressly lybelled against him, That in great Anger he said to the Men under his Command, upon their firing over the Heads of the Multitude, Level your Pieces, and be damn'd. Will this Circumstance, should it be proven, be at all consistent with that Part of the Defence, which tends to render the Expression Fire dubious? If the Pannel's Passion moved him to utter the Expression, Level your Pieces and be damn'd! Is it at all doubtful in what Sense the Word Fire was pronounced? These things are, 'tis thought, too plain to be further insisted on.

The only remaining Circumstance, on which the Procurators for the Pannel seemed to lay stress, was the Condition of his Firelock, when the Action was over, and his voluntary presenting himself before the Magistrates, when he could have made his Escape, from which they would have inferred, an Impossibility that he was guilty of actual firing, his Firelock appearing not to have been discharged, and a strong Improbability that he was conscious of having given any criminal Orders, since without necessity he freely presented himself to Justice.

Now as to these Matters, it must be observed, First, That the Condition in which the Pannel's Firelock appeared, can yield no Evidence for him: A Piece that has been fired may be re-loaded, and so cleaned and brushed up, as to leave no Vestige or Mark of the former firing; and the Piece which the Pannel made use of in firing, might have been changed, and another produced to the Magistrates in the Room thereof.

But 2dly, The Indictment no where avers, that the Pannel made use of his own Piece when

he fired. Where he is first charged with firing, no more is said, than that he levelled the Firelock that was in his Hand, and fired it at *Charles Husband*. Now the Firelock that was in his Hand, might have been that belonging to another Man, as well as his own: And in the other part of the Indictment, where he is charged with firing, it is said that he made use of a Musket or Firelock that was in his Hand, having either re-loaded, or caused to be re-loaded his own Piece, or having taken another out of the Hand of one of the Guard: So that the Lybel in every Article of it may be true, and proved; and yet it may be also true, that the Pannel did not fire his own Piece.

And as to the Article, That the Pannel, conscious of no Guilt, appeared voluntarily before the Magistrates, when he could easily have made his Escape: It can possibly infer no Presumption for his Innocence, if the Facts charged in the Indictment are made good. Whoever shall be satisfied by the Proof, that the Pannel acted in manner lybelled, must be convinced, that he was governed in his Actions by no Principle of Discretion, and must therefore lay no weight upon an Act of his, which can yield no Inference, unless he is supposed to have been governed by Discretion and Prudence.

Having thus run over the several Circumstances of the Pannel's Narrative. The Prosecutor apprehends, he may safely conclude, that they cannot jointly or separately, be sustained as a Defence, against the Charge laid in the Indictment: Because, tho' every Circumstance alledged, were undeniably proved, the unhappy Pannel might nevertheless be guilty, and a positive Proof of the Facts charged must necessarily prevail with every unbiassed Jury-man, to join in a Verdict against him.

The Prosecutor is nevertheless far from wishing, that the unfortunate Pannel, should be deprived of an Opportunity of laying every Circumstance, that may make for his Defence before the Jury by Proof, tho' he humbly insists they cannot be sustained as a Defence Relevant to absolve from the Indictment. It is possible the Fact may come out otherwise in the Trial, when Witnesses are upon Oath, than it did when the Examination was taken in the Precognition; and should the Proof of the Indictment be in material Circumstances defective, the Evidence offered for the Pannel may have its weight; wherefore, so far as the Forms of the Court will allow, the Prosecutor makes no Opposition to the indulging the Pannel to bring what legal Evidence he can, for the Information of the Jury.

It is far from being the Interest of the Crown, or of the Publick that an innocent Man should suffer; but it is greatly the Interest of both, that a fair and strict Enquiry be made, where the Guilt lyes, when a Massacre so cruel and so dangerous happens, to the end, that if the Officer, who has Power put in his Hand, for the Preservation of the Peace, and for the Protection of the People, should, from any unjust Motive whatever, make use of that Power in breach of the Laws, to the Destruction of the People, he may be made an Example to restrain others in the same Circumstances, from the like monstrous and dangerous Abuses in time coming.

In respect whereof, &c. *Sic subscribitur.*

Dun. Forbes.

In.

July 13th, 1736.

Information for John Porteous late Captain Lieutenant of the City Guard of Edinburgh, against His Majesty's Advocat.

THE Pannel stands indicted at the Instance of His Majesty's Advocat for his Highness Interest, for the Crimes of Murder, and Slaughter, Maiming, and Wounding; and the Facts charged against him, from whence these Crimes are pretended to be inferred, are these following; That the Pannel being one of the Captain Lieutenants of the said City Guard, was by the Magistrates of the City, ordered to attend with a Detachment of about Seventy Men of the said Guard, at the Execution of *Andrew Wilson*, sentenced to be hanged by the High Court of Justiciary; and that the said *Andrew Wilson*, having hung upon the Gallows, erected for his Execution, in the Street called *The Grass Market*, until he was dead, at least for a considerable Time, and so long, that there was ground to conclude he was dead, he the said Pannel, conceiving a wicked and malicious Purpose of destroying, wounding, and maiming the Persons, Inhabitants of the said City, and others, assembled at the said Execution, did, without any just Cause or necessary Occasion, order the said Detachment, under his Command, to fire upon the People so assembled; and that some of the Men having fired, as it would seem the Pannel apprehended, over the Heads of the Multitude, with Intention to avoid doing them harm, he the said Pannel, did with Threats repeat his Commands to fire, calling out to the Men, to level their Pieces and be damn'd, or Words to that Purpose; and that at the same Time, he levelled the Firelock that was in his own Hand, taking Aim at one *Charles Husband*, and having fired the said Firelock, the said *Charles Husband* immediately dropt to the Ground, having receiv'd a Wound or Wounds by Bullets or large Drops of Lead, whereof he died in a short Space; and that by the Pannel his said Example and Command, severals of the said Guard, to the Number of about Twenty, did, at the same Time, or soon thereafter, fire upon the Innocent Multitude, by which Fire, two other Persons were killed, and several others wounded, maimed, or hurt; and that the said Pannel having thereafter marched off the said Detachment of the Guard into that part of the Street aforesaid, called *The West Bow*, he did again, without any just Cause or Occasion, order the Men under his Command, to face about and fire upon the People; and that at this Time, the said Pannel did fire a Musket, that was in his own Hand, having either reloaded, or caused to be reloaded, his own Piece or Firelock, or taken another out of the Hands of one of the Guard; and that severals of the said Guards, did upon that second Example and Command of the Pannel's, fire upon the Multitude, by which Fire, Three other Persons were killed; at least that, by the said Firings of the Pannel, or of the Firings of the other Men in the said Detachment of the Guard, proceeding from the Pannel's Order and Example, the several Persons, mentioned in the Indictment to have been killed, maimed, or wounded, were all respectively killed, wounded, or maimed: Whereby the Pannel is guilty of the Killing, Wound-

ing, or Maiming the said Persons; at least is Art and Part thereof, or accessory thereto; from whence the Indictment concludes, That the Pannel out to be punished with the Pains of Law, *i. e.* Capitally.

To this Indictment the Pannel pleaded not Guilty; for that he had, at no time, during the Execution of *Andrew Wilson* aforesaid, given any Order, or shewed any Example to the said Detachment of the Guard then under, or that ought to have been under his Command, to fire upon the Multitude so assembled; and that he did, at no time, fire any Piece or Firelock himself upon the said Crowd; that tho' it might be true, that at, or about the Time of the said Execution, several Persons were killed and wounded by the Firings of that Detachment of the Guard, which indeed ought to have been under the Pannel's Command, and which he does, with great Grief and Sorrow, regrette; yet that, as such Firing proceeded wholly from the Men in the said Detachment, without any Order or Example from the Pannel, so he could not be charged therewith, however fatal or tragical the Consequences of such Firing may have proved.

That tho' the Pannel, as conscious of his own Innocence, could safely rest his Trial upon the Denial of the Facts aforesaid, and upon such Proof, as he could bring, by the Evidence of Multitudes of Persons of undoubted Credite, who happened to be present, close by him, during this unhappy Scene, that he was nowayes instrumental in the Killing or Wounding the said Persons, but that upon the contrary, he did all that was in his Power, to prevent and restrain the said Firing upon the Multitude; yet, that he was advised by his Council, that they could not, during the conducting of his Trial, consistent with their Duty, suffer him the Pannel, to omit or abandon any Defence that was compitent to him in Law; and that therefore, as by the Law of *Scotland*, the Pleading to an Indictment, upon supposed Facts, is no legal Admission of such Facts, the Pannel was at Liberty to plead any other Exception, that lay against the Form of his Indictment, or even to plead, that tho' such Firing had proceeded from his Order or Example, yet even in that Case, such Firing, and the Consequences wherewith it was attended, was not sufficient to support the Charge against the Pannel, of the Crimes of either Murder, Slaughter, Maiming, or Wounding, or to render him obnoxious to the Pains libelled,

And in the Entry of the Debate, The Procurators for the Pannel ask Liberty to offer to the Court, a full Recital of the Behaviour of the Pannel, during the Execution of the said *Andrew Wilson*, and for some short Space previous and subsequent thereto; and also, to offer a short Relation of what they apprehend was the Cause, that the Execution of the said *Andrew Wilson* was attended with such an unusual Confluence of People, and was ordered to be guarded and over-seen by such a numerous and unaccustomed armed Force.

The said *Andrew Wilson*, along with one *Robertson*, and others, had been sentenced to Death by your Lordships, for robbing one of the Collectors of His Majesty's Revenue of considerable Sums of Money of the Publick; and while they lay under this Sentence, they were allowed, as usual, to go to the Church adjoining to the Prison, for the Benifite of Divine Service, under the

Custody of a small Detachment of the City Guard; and while the Convicts were thus at Church, *Robertson*, one of them, found means to escape from his Keepers of the Guard, by suddenly jumping over a Pew, and getting out at the Door of the Church; his Retreat apparently being favoured by the Mob, or lowest Sort of the People, he easily made his Escape, without having been ever since overtaken.

From this Escape of *Robertson's*, so favoured by the Mob, and from strong Surmises and Suggestions, that, at the Execution of *Wilson*, a Rescue was intended by the Mob, which indeed there was a reasonable Ground to apprehend; because the Commons have imbibed a pernicious and absurd Conceit, as if the Robbing of the Publick Money, was a Crime more pardonable, than private Robbery: Therefore it was, as the Pannel apprehends, that the Magistrates of the City, from a Sense of their Duty to prevent the Execution of the Laws being any further defeated by the Rescue of *Wilson*, took the strongest Precautions that the Execution of him should be made effectual.

In Consequence whereof, as would seem, the Provost of the City, sent for the Pannel, in whom, he must take the Liberty to say, Confidence was generally put upon those difficult Occasions, and told him, that there being great Apprehensions of a Mob at *Andrew Wilson's* Execution, that therefore there was a Necessity to be well prepared to prevent their Designs; and for that end, that he would have the whole City Guard, to attend at the Execution, he having given Orders to the Town Treasurer to furnish the Men with Powder and Shot, and such other Military Ammunition as might be necessary for the Use of the Men in maintaining the Peace of the Town, and supporting the Execution of the Laws. And this Conference with the Provost happened upon the *Monday* preceeding the Execution of *Wilson*, which followed on the *Wednesday* thereafter. But it seems the Magistrates of the City, not thinking even this Precaution sufficient, upon the *Tuesday* thereafter, the Provost sent the Pannel with a Letter to General *Moyle's* Residing near the City, and Chief Commander of the Forces in *Scotland*, telling the Pannel, that the Import of this Letter was, desiring from the General an Order for a Party of the Regiment lying in the *Cannon-gate* to enter the City (a Thing very uncommon, except in the Case of urgent Necessity) in order to over-awe the Mob, and thereby maintain the Peace during the said Execution.

It seems this Letter to the General induced him to send a verbal Message in return thereto, by a Person of known Honour and Veracity, Major *Pool*, of that Regiment now lying in the *Cannon-gate*, who told the Provost, that the General wanted to know of him, what part the King's Troops were to act, and what Precautions had been taken for preventing any Insult or Invasion that might be made upon the Troops, or what Length these Troops might go in the case of Tumult or Disturbance. To which the Provost made answer, That there was no reason to apprehend any Inconveniency would happen to the King's Troops, because he would have them only to parade, for a Terror to the Mob, in a Street called the *Lawn-market*, removed from the Sight of the Execution, but at a small Distance

only, where nevertheless they would be ready at a Call in case of Necessity; but that he had ordered the whole Band of the City Guard to attend at the Execution it self, with proper Arms and Ammunition, namely, Slug Shot, with Orders to repel Force by Force, and even to discharge their Arms among the Mob in case of Resistance.

On *Wednesday* the Day of the Execution, in the Forenoon, the Pannel attended the Provost; and told him, That in Obedience to his Commands, the Men were all ordered to be in Readiness, their Arms put in order, and loaded; whereof the Provost approved, and told the Pannel, That he was to be ready betwixt Two and Three in the Afternoon, with his Guard, and to draw out until the Party of the King's Troops, from the *Cannon-gate* past him; and that so soon as the King's Troops were drawn up in the *Lawn-market*, the Pannel, with the City Guard should forthwith march to the Prison, and conduct the Prisoner to the Place of Execution, without allowing him first to go to the Town's Council-house, as usual, still with Intention, as would seem, to prevent any Opportunity of Rescue, or Disturbance upon that Head; and at this Time in the Forenoon the Pannel humbly proposed to the Magistrates of the City, that they would send a Proclamation through the Town, as a Caution to such Innocent unwary People, as might by Curiosity be drawn to the Sight of the Execution, warning them of their Danger, in case any Disturbance should happen, or attack be made upon the Guard. And accordingly *George Lindsey* one of their Clerks, made a Scroll of the said Proclamation to be sent through the Town; but for what Reason it was not proclaimed, the Pannel knows not, and at the same time the Pannel remembers some one or other of the Common-Council of the City proposed in case of Disturbance, the reading of the Riot Act, and for that Purpose sent for a Dozen of Copies of the Act to a Booksellers Shop, in order to distribute them among the proper Officers of the Law, authorized to read and proclaim such Act; but it seems at no time either of those Proposals were put in Execution; nor at the Time of the said Execution, did any Officer of the Law, authorized to proclaim such Act, attend with the Pannel.

A short space before the Pannel marched with his Men from the Guard-house, towards the Place of Execution, he was heard say, That he had no Cartrages in his Box; on which a Corporal told him, that he would get him some; and accordingly the Corporal did, in presence of several of the Men, open the Pannels Cartrage Box, wherein it was observed there were no Cartrages, and put three Cartrages therein, with one of which the Pannel loaded his Piece, and immediately marched away with the Men.

When the Criminal was conducted to the Scaffold erected for his Execution, the Detachment of the City Guard were posted on the the Street, in a Circle surrounding the Scaffold, in order to keep off the Mob; but because of a certain Building, called the *Corn-market*, nigh adjoining to the Scaffold, part of the Men did also incircle that Building. And here it may not be improper for the Court to cast their Eye upon a Plan of the Ground, and the Posture of

the Men, in order to have a clearer view of the Descriptions to be hereafter mentioned.

So soon as the Criminal was thrown over the Ladder, and so left hanging upon the Gibbet, the City Baillies immediately withdrew nigh to, directly opposite, and in view of the Scaffold, but without leaving any Order or Officer of the Law to attend with the Pannel: And it had happened, that some short Space before the Act of Execution, while the Minister was assisting the Criminal by Prayer, the Pannel had gone up to join, leaving his Piece with the Serjeant; and so soon as publick Prayer was ended, or some short time after, and the Convict left to his own private Devotion, the Pannel took back his Piece in his Hand, and afterwards came off the Scaffold, and posted himself at the West End of the Detachment of the Guard.

So soon as the Convict had been hung up as aforesaid, and that the City Baillies had withdrawn from the Scaffold, the Mob became to be troublesome, intending, as would seem, to use this last Shift, immediately to cutt down the Criminal, and endeavour to bring him to Life by bleeding; an Expedient, which when timeously applied, has on many other Occasions been known to be attended with Success, and the Mob fell a murmuring, that they would have him instantly cutt down, and if it were not quickly done, they would do it themselves: And at this time they pressed hard upon the Guard, striking at them with Sticks, seizing of their Fire Arms and Bayonets, and throwing exceeding big Stones at the Guard; one whereof cutt a Drummer to the Scull, another broke one of the Men's Shoulder Bones, another wounded one of the Men's Legs, and several others of the Men were wounded, whereby they are yet unable to do Duty: The Truth of all which can be attested by their common Surgeon, who is by the City ordered to attend them upon all Exigencies.

This Insolence in the Mob alarm'd the Pannel, and still observing it to encrease, he was apprehensive that the Mob might obstruct the perfecting of the Execution; for no Criminal can be cutt down from the Gibbet, but upon the Order of a City Bailiff, upon a Judgement that the Criminal has hung up until he is compleatly dead, agreeable to the Sentence which always commands such Convict to be hang'd until he be dead; therefore it was that the Pannel sent a Message to the Bailiffs, to know if he should suffer the Criminal to be cutt down from the Gibbet; who brought back an Answer, That the Convict was to hang there yet for a Quarter of an Hour.

At this time the Mob wax'd exceeding bold, became very turbulent, and prest hard upon the Guard, and while the Pannel was endeavouring to keep off the Crowd from pressing among the Soldiers, at one End of the Scaffold, some of the Convicts Friends, assisted by the Mob, catched an Opportunity and cutt him down without any Order: And tho' the Convict, being thus cutt down, was in the Possession and Keeping of the Mob, who were endeavouring to recover him to Life, by causing the Veins of both Arms to be opened: Whither it was that they were apprehensive, that the Guard would recover him out of their Hands, as having been cutt down without Order; or that the Officers of the Law were designed to see to his Interment, and that he was executed to death; or that the Convict's Body

was intended to be given to be anatomized by the Surgeons, as is sometimes practised, where Persons of low Degree or notorious Offenders, are sentenced to Death; or from whatever Motive it proceeded, the Mob began to insult and attack the Guard: And upon this Attack it was, that the Man aforesaid had his Shoulder Blade broken; and another so bruised, that he has been never able to do Duty since; and the Timber of the Drum was broke by the force of an exceeding large Stone that was thrown, and several others of the Men were hurt and wounded.

This Violence in the Mob so alarmed the Pannel, that he made a Step or two forewards to the Westward of the Scaffold, turning about his Face towards the West Port, from whence the throwing of the Stones mostly proceeded; and having put his Piece to his Shoulder, he levelled it at the Mob, and pointing it around to them, threatening with an audible Voice, That if they would not be at Peace, and leave off throwing Stones, and attacking the Men, he would fire among them; but immediately recovered his Piece without firing it; the Threats being only intended to intimidate the Mob.

But unfortunately upon this ensued the whole Tragical Scene; for no sooner had the Pannel stept forward, threatening to fire as aforesaid, but one of the Men came up from behind him, and running by him upon his Right Hand, instantly discharged his Piece, upon which one of the Crowd dropt down, supposed to be *Charles Husband*, and which *Charles Husband* will upon Proof be found to have been the Person who tumultuously stept in and cut down the Criminal.

Immediately upon this first Fire, another of the Guard came up to the Pannel, with his Piece presented and cocked, and ask'd if he should fire; to which the Pannel answered with some Vehemence, No, by no Means, and struck up his Piece, bidding him go to his Rank, and actually thrust him thereto.

After the Example of this first Fire, several more of the Men were heard to discharge their Pieces, but upon what Provocation the Pannel cannot tell; these Shots having been at a considerable Distance from the Pannel, proceeding, as is supposed, from such of the Men as were standing at the South-west Corner of the *Corn-market*; whereas, as has been noticed, the Pannel was still standing at his former Station, to the West of the Scaffold and Gibbet.

The Pannel not knowing the fatal Consequences of those Shots, but suspecting however that Mischief would happen, seeing the Men had been so rash as to fire without Orders, thought it was the best Course he could take, to lead off the Men of the Guard as soon as he could; and for that end he called aloud to them to follow him, and after having given Orders to the Serjants to gather them together (for it was impossible to bring them into Ranks by the confusion of the Mob) he marched off as many of them as he could find, by the North-side of the Scaffold, towards the Foot of the *West Bow*, and towards a Parcel of the Men, whom one of the Serjants had gote together at the Foot of the *Bow*, but as he was going to join that Parcel of the Men, he heard a Piece fired near him, with which he was a good deal surprized, and yet more, when he observed two or three People fall to the Ground, and which Observation was the first

first thing that greatly alarmed the Pannel, as knowing from thence, that certainly Mischief was done: But it is certain that this fatal Shot did not proceed from the Pannel, but from a certain Man in the Guard, that can be well proven; who, after having fired this Shot, immediately retired amongst the Croud, and then gote himself joined to the Party: And surely the Magistrats of the City will remember, that when a Precognition was taking of the several Facts and Occurrences upon this tragical Day, that a certain Person told them, That if they would be pleased to sift the whole Band of the Guard before them, he would point out the Man who made this last Fire, but the Magistrats overlooked this Offer.

As soon as the Pannel saw there was no restraining the Men from Irregularities, he marched off so many of them as he had gote together, without taking time to forme them into any Order; giving Orders at the same time to the Serjants, to beat and press off the rest with all manner of Dispatch. Upon which he observed those that had straggled come off partly from about the Scaffold, and partly from East-end of the *Corn-market*, and fall into the Rear; and while the Pannel was thus marching up the *Bow*, upon the Front of the foremost Part of the Men, and had come as far as the Turn of the *Bow*, he heard some dropping Shots firing in the Rear, and about thirty or forty Paces distant from him, which he supposes may have proceeded from those Men who were straggling upon the East-side of the *Corn-mercate*, nigh to the Head of the *Cow-gate*, but upon what Occasion the Pannel knows not; but being alarm'd with the Shots, he looked back, supposing the Men might be attack'd by the Mob, and observing no Marks of any such Attack, he thought the most prudent Course he could take was forthwith to march off the Men.

It falls here to be noticed, That all this Firing, from first to last, and whereby so much Mischief has been done, lasted not above two or three Minutes; and therefore, considering the Violence of the Mob, and the straggling Situation of the Men of the Guard, and supposing the Truth of the above Narrative, which will be attested in proper Time by the Oaths of many Gentlemen of undoubted Veracity; and who had fair Opportunity of Observation at the Time, it is left with the Court, and to every impartial By-stander, whether the Pannel could well have done more for the Safety of the Burgh; considering that it shall also be proved, that during these few Minutes of Firing, accompanied with great Hurry and Confusion, the Pannel gave several repeated Orders to the Men to restrain from firing; but observing those Orders prove ineffectual, he endeavoured to sweep them off the Field with all manner of Precipitation.

The Pannel marched on with the Men to the Guard-house, and as he thinks with Coolness and Deliberation, passing by the King's Troops in the *Lawn-market* (a Thing generally esteemed somewhat inconsistent with Guilt, especially such horrible Guilt as he is charged with.) Upon his Arrival at the Guard-house, he drew up his Men there, sending a Serjant to the Provost for Orders, which were brought, That they should wait on their Arms till the King's Troops past; and some of the Men in waiting, offering and attempting to clean their Guns, but the Pannel

discharged it, and would not allow it to be done; mean time a certain Person of Credite came up to the Pannel, and asked if he had fired? To whom he made answer, He had not; but the Person not being satisfied with the Answer, put his Finger into the Muzzel of the Pannel's Piece, and after having rubbed it about, and after having also viewed the Lock, said to the Pannel, I see you have not fired, and I am glad of it.

The King's Troops having passed the Guard, the Pannel filed off the Men into the Guard, and ordered the Serjeants to keep them close till further Orders, and by all means not to suffer them to clean their Pieces: And at the same time the Pannel delivered his Carabine, loaded as aforesaid, at the Guard Door, to one of the Guard, neither entering the Guard himself, nor any other House, but went immediately to the Provost: Thus his own Piece was brought back loaded, and apparently without having been fired, and the other two Cartrages which he had gote at the Guard were found upon his return in his Cartrage Box.

When the Pannel went up to the Provost, some Person there present alledged he had seen the Pannel fire, which he contradicted, and beg'd the Provost to send for his Piece, which he told he had deliver'd at the Guard as aforesaid, and that it would appear from inspecting of her, that she had not been fired: And the Piece being accordingly sent for, and brought up to the Council Chamber, and after being strictly inspected, it was agreed by all present that she had not been fired; and in this Condition she still lies loaded, in the Custody of the Magistrates along with the Cartrage Box, containing the two Cartrages, as aforesaid.

Tho' the Pannel has a pretty important Prize at Stake, yet he rests in full Security, that he will prove to the Conviction of the Court every Article above recited, and a good deal more in his behalf to be hereafter mentioned: And if it should here be made matter of Wonder, how such different Accounts as are given of this Matter can consist together, seeing Numbers of People are impressed with the Guilt of the Pannel, and that even good, well-meaning People, who were present upon the Spot, persist in affirming that the Pannel was guilty, by both firing himself, and giving repeated Orders to fire.

The Pannel can give no other Account of this Matter than in this Way. A miserable Slaughter was, some how or other, committed within the Town. The Guilt must be laid to some-body's Door; and whether any Art might be used to lay the heavy Load upon the Pannel, in order to draw the Attention of the Multitude from another Point in View, the Pannel shall not say; but intreats the Honourable Court, and every candid Reader, who may happen to take up this Information, to look into the *Caledonian Mercuries* of the fifteenth and nineteenth of *Aprile* last, Papers supposed to be published by Authority; where will be found a most charitable Account of the Matter, touching this misfortunate Pannel, who was then lying in close Confinement, without any body being allowed Access to him; and of consequence, could have no Opportunity of vindicating himself, until once the Prejudices were deep-rooted and rivetted, so as even to catch the unwary, though well-meaning, Part of the People; and these beautiful Relations of this

Transaction, are adorned with some witty Sarcasms, very proper to this melancholy Occasion, and painted out with ingenious Reflections, and quaint rhetorical Invectives, very suitable to the Authors of these historical Relations.

And indeed the Authors of these Accounts of the Matter, whoever they are, have the Impudence to affirm, and the Wickedness to endeavour to fix it upon the Pannel, as an Instance of Premeditation and Felony forethought, that the Pannel had ordered the Detachment of the Guard to load with Ball and Slug-shot, before they marched from the Guard: And this worthy Author affirms, that such doing was unprecedented, and such as the Pannel would not pretend Orders for; notwithstanding that it is now, with his usual Candor, admitted by his Majesty's Advocat in his Information against the Pannel, and dare not be denied, but that the Pannel had Orders to see the whole Mens Pieces loaded with Bullet and other Shott, and even to fire those Pieces amongst the Mob in case of Exigency.

The Prejudices against the Pannel being once artfully rooted, it was an easy Matter to catch the giddy Mob, who are not able to look back and discern the true Springs and Causes of Things: For such is the Nature of human Passions, that if they are once artfully moved, they will be apt to misguide the Understandings; even of Persons of Observation; and thus the Speat having once been created against the Pannel, it grew into a Torrent, and flew like a Train of Fire, every one adding Fuel to the Flame, and Sparks originally increase into a mighty Combustion; and so, in like manner, Things entirely of themselves innocent, may be multiplied into horrid Cruelties and savage Barbarity.

It might also operate to the Prejudice of the Pannel, that this Scene was acted in a very short Space, attended with great Commotion and Confusion. Words and Actions might be misconstrued (whereof more particular Notice shall be taken hereafter) whereby Persons even of Judgement, might be deceived, and thereby fall into the vulgar Notions. And here it cannot be deemed an useless Digression in the Pannel to give a Caution to all Gentlemen, who may happen to be called in Evidence upon this Trial, (for 'tis feared the Mob are not capable of this Advice) not to affirm Things upon Oath, except their Observations have been accompanied with all that Certainty which those Sensations wherewith Mankind is endued, can admit of; because any inconsiderate Rashness to the Prejudice of the Life or Fame of the Pannel, cannot fail, for hereafter, to be attended with very painful Stings of Remorse.

It was observed for the Pannel, as a Thing that could not be denied, that upon many former Occasions, he had been singled out as the fittest Person to maintain the Peace of the City, by quelling of Mobs and Tumults; and that he had never hitherto, during all the many Occasions on which he had been employed, ever discovered any imprudent Rashness or cruel Temper in the Exercise of his Command, but had exposed his Person to very great Danger, rather than involve the City in Blood, or proceed to such Extremities, as the Law even would have entirely justified.

It was also observed in Behalf of the Pannel, that it was no new Thing for the private Men in

the City Guard, who, though they are tolerably acquainted with Discipline, yet are not subject to the military Law, to take upon them to fire upon the Multitude, without any Order from their Commander, whereof the following Instances are offered, and which cannot be denied; to witt;

That at the Settlement of Mr. *Wotherpoon*, as a Minister in the West Church Parish, a Party of the City Guard under the Pannel's Command, did, one or more of them, in the Rear Ranks, within the West-gate of *Edinburgh*, while the Pannel was marching on their Front, face about and fire upon the Mob, without any Order, and by which Fire severals were dangerously wounded; and the like happened in a few Years ago, after the Execution of one *Campbel*, when a Detachment of the City Guard were conducting the Corps of the Person executed, which was delivered over to the Surgeons of *Edinburgh*, by Order of the Magistrates. And the same Thing happened a few Years ago at a Race at *Leith*, where the Party of the Guard was commanded by Captain *Lind*, whereby several Persons were wounded. And another Instance was given, where the same Irregularity happened, within these few Moneths at the Execution of *Brown* the Smith, when the Detachment of the City Guard was commanded by both Captains, *Lind* and *Ferguson*. And, indeed, innumerable other Instances might be given of the Rashness of the Men in this Particular, which it is needless to condescend upon, because they are notourly known in the City.

It may also deserve Notice, that the private Men of the Guard might be prompted to fire without Orders, partly from Resentment, that *Robertson* before-mentioned had escaped out of their Hands, and partly from being encouraged by the general Order they heard was given by the Magistrates to fire, in case of Resistance: For it is now found, that severals of them were heard say before they went out to the Execution of *Wilson*, that now they had got Arms and Ammunition put in their Hands, and therefore would not fail to use them, in case they were attacked, or any Resistance made.

These Observations 'tis humbly thought cannot fail to operate in favours of the Pannel, in case the Proof of the Libel shall be attended with any Uncertainty or Dubiety: And altho' the Pannel is not so weak of Judgement, as to imagine that such Presumptions can prevail against positive and certain Proof; yet he doubts not, that in due Time, when the Proof is led, such Observations must have Weight with the candid Jury.

One Thing more we must observe in general, That as he has been employ'd for these many Years past, as the Scourge of the Mob, tho' never once known to proceed to Extremities; yet such Station of his may be the Cause of drawing Resentment from the lower Sort of the People against him.

The Pannel has just Reason to ask the Forgiveness of the Honourable Court for dwelling so long upon Generals; but 'tis hoped, from what is above noticed, and that this is the first Occasion he had of vindicating himself from the Aspersions and Prejudice of his Adversaries, he may merit the Pardon of the Court.

And now to proceed to the Particulars in the Indictment: And whereas it sets forth, That the Pannel conceiving a most wicked and malicious Purpose

Purpose of destroying, wounding, and maiming Numbers of his Majesty's Subjects, Inhabitants of the City of *Edinburgh*, had acted the several Matters and Things charged in the Indictment: The Pannel must observe, that the Circumstances of the Case naturally exclude any Supposition of premeditate Malice and Resentment in the Pannel, because 'tis impossible to conceive, that the Pannel should have retain'd any Malice against a Multitude of Persons, of whom he neither had, nor can be supposed to have had, any Acquaintance: And tho' it was admitted, that the Circumstances of the Case do exclude any supposed long premeditated Malice; yet it was urged, that in Law every wicked Action does presume Malice, tho' instantaneous to such Wickedness committed.

To which it was answered in Behalf of the Pannel, That the Circumstances of the Case, as laid in the Indictment, do even exclude any Presumption of Malice accompanying the Acts charged in the Indictment; because every Action must be construed in the most favourable Sense; and therefore the Actions charged against the Pannel, must even be construed to have proceeded from a principle of Duty in the Pannel, in maintaining the Peace of the Place, and in supporting the Authority of the Laws, and the guarding of that Execution of them, which was committed to him by lawful Authority.

In the next Place, An Exception was taken to the Indictment, as not having been laid with sufficient Certainty; the Indictment no where expressing the particular Places of that large Street wherein the Guilt is charged to have been committed, whereby the Pannel was precluded from making his Defences with Certainty: For had it been laid in the Indictment at what Places in the Street the particular Persons, affirmed to have been killed and wounded, were so killed or wounded; the Pannel might have had an Opportunity of proving, from the Circumstances of his Situation at the several Periods, that it was impossible that such Wounds could have been received from his Hands. And tho' it may be true, that such Part of the Indictment as charges the Pannel's Order to fire, would be of universal Influence, and reached over the whole Circumstances of Guilt charged in the Indictment, yet as actual Execution made by the Pannel was charged separate from his Order to fire, such Proof of Innocence, whereof the Pannel pleaded an Opportunity might have afforded him a Defence against such Part of the Indictment as charges his own Firing and Killing.

To this it was answered by his Majesty's Advocat, That the Lybel was as particular as the Law required, describing the Street where the Execution was committed, which is all that the utmost Scrupulosity could expect in this Case: Because minute Circumstances cannot be known to the Prosecutor, or certainly discovered, but by Proof upon Trial, and that every Circumstance of the Pannel's own acting must be known to him. And therefore, if from the Position or Situation in which he was at the Time of the Firing, the Pannel can shew that it was impossible he could have killed the Person whom he is charged to have shot; by describing and proving these Circumstances, he may have Advantage from them, but cannot object to the Prosecutor, that he did not minutely describe his Situation,

which was not known to him; and that by the describing of which, perhaps erroneously, the Prosecutor might minister an unjust Occasion to a Criminal to escape Justice.

To which it was replied for the Pannel, That tho' it is true that, in most Cases, the describing the Street where the Guilt was committed, would be a sufficient Description; yet, that, in the present Case, where it was laid in the Indictment, That in a Crowd or Multitude, various Shots were fired by different Hands, and thereby Wounds given; 'tis even necessary to describe the particular Place of the Street where such Wounds were received, in order to form a Judgement from whose Hands those Wounds had proceeded. The Pannel might have fired elusory, or in the Air, and the Wounds received may have proceeded from the Shots of others: That tho' the Pannel knows his own Position and Situation, and can prove them; yet such Proof could not avail him, nor be received by the Court in the Point of Relevancy; because it would be a simple Negative, which could not be admitted of, nor would not apply, unless the particular Places of the Street, in which the Wounds are said to have been received, had been described to him; a Situation which the Pannel cannot be supposed to know; whereas the Prosecutor must be supposed to have known it, seeing the same Information that led him to know of the Wounds received, must necessarily upon Inquiry have certiorated him at what Places of the Street such Wounds were received, seeing the Matters and Things laid in the Indictment, are charged to have been committed at High-daylight, in Presence of Multitudes. And tho' the Pannel is fully satisfied of the good Disposition of the Honourable Prosecutor, to lay a fair and certain Inditement against every Pannel, yet it must be admitted, that all Indictments ought to be laid with all that Accuracy and full Description that the Nature of the Thing can admit of: And, as to such Part of the Answer for his Majesty's Advocat, as saith, that such particular Description of Place, if perhaps erroneously described, might minister an unjust Occasion to the Pannel to escape Justice; it's answered, That such erroneous Description of Place could in no sense affect the Trial, because tho' such Description should not be proved, it would not vary the Case, providing the act of Killing were proved against the Pannel, because such Description of Place is but a Circumstance immaterial to be proven by the Prosecutor; but for the Reasons above assigned, highly material for the Pannel to know, in order to lay his Defence before the Court.

It was in the next Place offered as a Defence for the Pannel, That the Resistance of the Mob was so great, and the Attack of the City Guard so violent against them, in beating, bruising, and wounding the Men, as has been above noticed, while they were in the lawful Execution of that Office, committed to them by lawful Authority, that such Resistance and Attack must have justified the Guard, in repelling the Violence of the Mob; since such Proceedings in the Guard were acted in support of the due Execution of the Laws, which the Mob were highly Criminal in disturbing. That this Argument as pled for the Pannel, was not only consonant to the Rules of Reason, but agreeable to sundry Judgements and Precedents of the Court, particularly that in the

Year One thousand six hundred and ninety two, it appears from the Books of Adjournal, That *James Gordon* Messenger at the Execution of a Caption, did, with many others his Assistants, armed with Guns, Swords, and other hostile Weapons, shoot several Shots, whereby one *Alexander Jack* was killed dead upon the Spot, amidst a numerous Crowd, which the Alarm of Noise and Tumult had drawn together, and whereof only part can be supposed to have come there with Intention to resist the Messenger; and the said *James Gordon* and the others his Assistants, being indicted for Murder, the Lords sustained this Defence to him, relevant to elide the Libel simply, *viz.* That he, in the Execution of a Caption, haven his Blazen displayed, was by force of Arms hindered to enter the House of *Loanmy*, by the Persons within that House, and that they did threaten and menace the Messenger and his Assistants, and that they threatened to raise the Country, and that the Country did accordingly rise, and beset and surround the Messenger, either in the House, or without the House; the said Country People being armed with Guns, Swords, and other invasive Weapons.

Here your Lordships perceive, that the Court justified the Messenger in shooting amongst the Mob, and killing; because the Persons in the House forcibly hindered him from entering, and threatened and menaced him, being armed with invasive Weapons; and the present Case is more favourable in behalf of the Pannel, who acted by lawful Authority, as well as *Gordon* in the other Case did, and who was supporting the Execution of the Laws, as well as *Gordon* was; with this Difference upon the side of the Pannel, That he was not only hindered and menaced in the Execution of his Duty, but he and his Guard invaded and assaulted, beat, bruised, and wounded, as has been above noticed, and whereof a strong Proof shall be brought; and that the Mob in the present Case were not only armed with, but in their Attack upon the Guard, made use of, big Stones, of Two or Three Pound weight, which must be allowed to be very invasive Weapons; and therefore the Pannel subsumes, that the Defence offered for him in the present Case, is stronger, and ought rather to be allowed him, than that which was sustained to *Gordon*. Only the Pannel must do the Justice to His Majesty's Advocat, as to acknowledge, that this Precedent was not hitherto offered in the Debate; but when the Record is inspected, will be found to stand in the precise Terms as above-mentioned.

There was in the former Debate, a Precedent of the Court offered, as against the Pannel, which the Pannel, with Submission, apprehends makes for him, namely *Captain Wallace's* Case, sometime after the Revolution. *Captain Wallace* was indicted in the One thousand six hundred and ninety two, for having refused in the One thousand six hundred and eighty eight, to deliver up himself, in Obedience to an Order of the President of the Council, and several Privy Councilers, whereof Two were Officers of State; and the Bailiffs of *Edinburgh*, having gone down to the *Cannon-gate*, with a Heralld and Pursevant, with their Coats of Arms displayed, to put the Order of Privie Council in Execution; notwithstanding which, *Captain Wallace* would not deliver himself up, but retired with the Men under

his Command to the *Abbey*, and defended himself, and fired upon the Bailiffs, Herallds, and Pursevants; shot several Persons dead upon the Spot, and wounded a great many others.

The Defence pled for *Captain Wallace* was, That the keeping of the *Abbey* was committed to him by order of the Privy Council, which he was obliged to maintain so long as the Trust of it was committed to him; That as to the Order of Privy Council, to deliver up his Person, it was contrair to an Act of Parliament *James* the Sixth, whereby any General Warrant, for putting the Person of any Man in Ward, except where such Warrant was signed by four Officers of State, whereof the Chancellor, Treasurer, or Secretary of State to be one, which had not been practised in *Wallace's* Case, was prohibited and discharged.

The Lords, after a very learned Debate, did sustain these Defences to *Captain Wallace*, *viz.* That on the Sabbath Night, or shortly before, a Rabble did meet in several Places, in great Numbers, and that severals of them did declare to *John Paterfon* their Resolution to trouble the Pannel on his Guard, and to pillage the *Abbey*, relevant to restrict to an arbitrary Punishment.

Here your Lordships perceive, that the Court sustained a previous Intention only declared, that they would trouble the Pannel on his Guard, and pillage the *Abbey*, sufficient to moderate the Punishment; so tender are the Laws towards any Person committing Hostility in Defence of his Guard: And then the Lords sustained the following Defence relevant to elide the Libel altogether, to wit, That the Rabble did, in a tumultuous Manner, come down the *Cannon-gate* with Swords and Fire Arms, and did beat some of the Pannels Centinels; and being desired to stand, they notwithstanding advanced so near, that the Pannel could speak with them; and after he had desired them to remove, or be at their hazard, they, notwithstanding thereof, still persisted to advance.

The Application in the present case is easy: The Pannel many Times exhorted the Mob to stand off; notwithstanding of which, they still pressed upon him; he many times advertised them of their Hazard; threatned to fire upon them if they would not keep off; his Centinels were not only beat, but bruised and wounded; all which is offered to be proved.

Another case was mentioned in the Debate to your Lordships, which strongly supported the Plea of the Pannel, because it was a Judgement of your Lordships pronounced but very lately, after the most solemn Declaration of the Court; and wherein, the Pannel is informed, The Court was unanimous; and which Judgement seemed to be of that Importance, as to induce the Court to reverse the Proceedings of the High Court of Admiralty, after a solemn Trial by Jury in that Court; a Verdict returned, finding the Lybel proven, and the Defence not proven; and a Sentence of Death pronounced by the Judge of the High Court of Admiralty.

The case before the Admiralty was this; A Corporal and a private Centinel in *Collonel Hamilton's* Regiment were indicted before the Admiral for Murder; for that they had, upon the High Seas, killed *Hugh Fraser* younger, of *Belnain*, by stabbing him with a Bayonet in the Breast,

Breast, and afterwards throwing him into the Sea, whereof he instantly died.

The Defence plead for the Pannels, was this, That the Pannels were by military Order, appointed to attend the Officers of the Customs in seizing of Goods by Law made seizable; and that the Pannels being in a Boat, upon the Seas, along with the Custome-house Officers, in quest of such Goods, the Person killed did come up with them in another Boat, with others in Company with him; and that *Frazer* the deceas'd jumped into the Boat, where the Pannels and the Custome-house Officers were, and endeavoured to take hold of their Arms; which was both a Resistance and an Attack of the Custome-house Officers while in the Execution of their Duty.

Upon the other hand, it was pled against the Pannels, That *Frazer's* jumping into the Boat, was with no Intention to make Resistance, but rather to save his own Life from the Thrusts of the Pannels, their Pieces having been aimed at him; that those in the Custome-house Boat could have no just Apprehension of being mastered by Mr. *Frazer*, he having no invasive Weapon about him whatever, and being the only Person who offered to get into the Custome-house Boat, in which there were several Persons well armed.

The Judge of the High Court of Admiralty admitted of the Pannels Plea, in this Manner only, sustains the Defence of Self-Defence proponed by the Pannels, that the killing of the said *Hugh Frazer*, by them, or either of them, was in the necessary Defence of their Lives, and repelled the whole other Defences proponed for the Pannels.

The Jury returned their Verdict, finding the Pannels both guilty, art and part, of killing the said Mr. *Frazer*; and finding it not proven, that the killing of Mr. *Frazer* was in the necessary Defence of the Pannels Lives: Upon which Verdict returned, the Judge sentenced both the Pannels to be hanged,

The Proceedings of the Court of Admiralty were laid before your Lordships for a Review, which, 'tis believed, is the single Instance wherein it was ever contended, that the Proceedings of the High Court of Admiralty in Matters Criminal could be reviewed by any other Court.

Notwithstanding of which, your Lordships, were pleased to reverse the Sentence of the Judge Admiral; no doubt, upon supposed Error in his Proceedings; because the Verdict of a Jury, pronounced upon Evidence, cannot be reversed; and in consequence of which Judgement of your Lordships, the Pannels were sett at Liberty.

Now the Pannel is advised, that such Judgement in your Lordships could stand upon no Foundation other than this, *viz.* That your Lordships had reversed the Judgement of the Admiral as erroneous, in not sustaining this Defence to the Pannels: That they were resisted by Mr. *Frazer* deceas'd, while they the Pannels were in the Execution of their Duty.

And as the degree of Resistance offered by Mr. *Frazer* to the Pannels, was by the Pannels themselves maintained to have been no higher than what has been set forth to your Lordships; the forsaid unanimous Judgement of your Lordships pronounced after many solemn Deliberations, does by consequence show, that it was your Lordships unanimous Opinion, that a very small degree of Resistance of Persons in the Execution

of their Duty; will justify the Persons resisted in the Act of killing the Resister.

And if that was the solemn and unanimous Opinion of the Court in a Case so recent; must not such Judgement afford a strong Argument to the Pannel, that he and his Guard were resisted, while in the undoubted Execution of their Duty, in being beat, wounded, and bruised by an unruly Mob; who, there was good Reason to apprehend, intended to defeat the Execution of the Criminal;

To this last Case, the Pannel met with no other Answer from his Majesty's Advocat, but this, That the Pannel cannot plead the Benefite of this Case; because he neither does, nor can aver that the firing proceeding from him or his Order, was necessary for securing of the Execution of that Trust that was committed to him: His Majesty's Advocat does admitt, that where a Person has by lawful Authority Weapons put into his Hands, to be employed either in defence of his Life, when attackt, or in support of the Execution of the Laws, or of the Property of the Crown, or Property of the Subject; such Person may use those Weapons, not only when his own Life is so far in danger, that he cannot probably escape without making use of them, but also where there is imminent Danger, that he may by Violence be disabled to execute his Trust: But withall seems to contend, that the Pannel was under none of those Circumstances at the time he committed the Guilt charged upon him in the Indictment; for that the Execution of the Criminal was over before the Scuffle began, or any Resistance was made to the Pannel, and the Guard under his Command; and that being the Case, the Pannel can plead no other Defence, than such as might arise from his being put under the imminent Danger of his Life.

But with great Submission, These Positions of his Majesty's Advocat are assumed without any Authority, and, as would appear, not only in plain Opposition to the Laws, but to the many Precedents already offered in behalf of the Pannel; for it's hoped it must be admitted, even by my Lord Advocate himself, and is indeed so admitted by him, that the Pannel was once in the lawful Execution of his Duty, and was obliged at all Hazards to support the Execution of that Criminal who was committed to his Guard; surely then, the Execution of the Pannel's Duty can never be said to have been at an end, until once the Criminal was fully executed to Death, and as such ordered to be cut down by lawful Authority; unless it shall be said that it was the Pannels Duty, the Moment the Convict was hung up, to let him instantaneously be cut down, rescued by the Mob, and brought to Life again; which seems to have been their plain Intention: For it seems to be confessed upon all Hands that there was danger of a Rescue, which seems to have been the occasion of all this extraordinary Apparatus; and for preventing of which 'tis admitted, that the whole Guard was sent out with their Pieces loaded, and even with Orders to fire at all Ventures in Case of such Rescue. Was it not then a necessary part of the Pannel's Duty to protect and support the Execution of the Convict, when hanging by the Neck in the Air, until such time as he was cut down by lawful Authority, as supposed fully dead? And 'tis certain that in answer to the Pannel's Message, Orders were brought

brought from the Bailiffs that he should yet hang a quarter of an Hour, which surely it was the Pannel's Duty to see obeyed, and which Orders of the Bailiffs the Mob nevertheless did resist, and cut down the Criminal long before that time was elapsed, and which the Pannel was in duty bound to oppose; and from this Contrast, it is offered to be proved, all the Violence in the Mob proceeded: But can it be with any Justice affirmed, but that the Pannel was in the Execution of his Duty, while he and his Guard were standing upon the Spot under Arms? Is not every Person in the Execution of his Duty while he is either going to, or coming from any lawful Expedition? and therefore it seems impossible to maintain, but that the Pannel, and the Detachment under his Command, were in the lawful Execution of their Duty, until they had once returned, and were dispersed and dismissed from Duty, at which time only they were reduced under a private Capacity.

And even the Protection of the Hangman, who had actually received several Wounds and Contusions, and was in danger of being tore to Pieces by the Mob, was a part of the Pannel's Duty: For tho' he is a Minister of the Law, somewhat odious; yet he is a necessary One for the Society, and lies under a greater Necessity of being protected, from his being so obnoxious to the Resentment of the Mob; and at least in Humanity, must have such Protection afforded him, as to defend him from having his Brains knocked out.

How then can it be said, in any Sense, that the Pannel was in such Situation, that he could only plead the Benefite of Self-defence? It is a known Rule in Self-defence, that a Person invaded must retire as far as he can with Safety: But if that is the Case of a City Guard (maintained at great Expence) that so soon as they are invaded, they must immediately betake themselves to their Heels, it will be apparent, that they are but kept up for very useless Purposes.

At the same time the Pannel can with great Candor aver, That he is far from being of that Disposition of Mind, as to be ready to take the Advantage, which the Law might afford, against an unruly giddy Mob; whereof he has given Proof upon many former Occasions, as must be allowed him; and whereof even the present Case will be an Instance in his Favours, if he meets with Justice from the Evidence: But with all, he must be allowed to observe, that it would be a dangerous Position, That a Guard kept up for the Maintenance of the Peace of the capital City of this part of the Nation, when they are assembled together upon Duty, should be allowed to plead no higher Privilege, than that of Self-defence in the strictest Sense.

And whereas my Lord Advocate seems only to admitt, That a Person who has Weapons put in his Hands by lawful Authority, for the Defence of the Property of the Crown, or Liberty of the Subject, may only use these Weapons when he is in imminent Danger of having the Execution of his Trust defeated by Violence: If such is the Case, the Execution of Duty will become a very ticklish Point; and 'tis apprehended, that few Folk will be fond of it, if they can possibly live without it; and of Consequence, such Doctrine must very much discourage any Persons

from offering their Service, either to the Crown or Commonwealth.

And as the Supreme Executive Power is by the Constitution vested in His Sacred Majesty, our Sovereign; therefore my Lord Advocat, who, by his Office, is of Council for His Majesty in all Causes, will, no doubt, have due Consideration, how far an Argument is to be pressed against the Pannel; which by plain Consequence, must tend to weaken, if not defeat, the Execution of the Laws.

One would rather be inclined to think, That where a Person has the Trust of the Execution of the Laws committed to him, the smallest Resistance to this Trustee, as such, is a guilty Aggression, and that every Opposition of such Aggression is lawful Defence; because no Man must be above the Laws; and the Life of the Laws, in which the common Good is employed, is of greater Value than the Lives of any One or Number of the Individuals, and so ought to be defended at all Perils.

His Majesty's Advocat upon this Head, in his Information against the Pannel, does assume this Fact, That the Mob or Multitude assembled at the Execution, were behaving themselves peaceably; and from this seems to draw his Inferences against the Pannel, which indeed will run high enough. The Pannel very well knows, that no Order whatever will justify the Person executing that Order, if such Order appears evidently to be unlawful; and yet in Cases which appear doubtful, an Order from a Superiour will have it's own Weight; more especially in military Matters, or such other Things as resemble them.

But with Submission, This Reasoning upon the Mobs being supposed quite peaceable and innocent, is entirely out of the Case; for, as we are now upon Relevancy, the Facts must be supposed, and then the Argument considered in that View: And as the Pannel does aver, That he and his Guard, while in the Execution of their Duty, did meet with strong Resistance from the Mob, in so much that many of the Men were greatly hurt and bruised: And if that was the Case, it was an unlawful Invasion of Persons, to whom the Execution of the Laws were committed; and so might be by them, in support of those Laws, resented to a pretty great Length; except it shall be maintained, that in the Situation of the Pannel and his Men were posted, they could plead no higher Priviledge than that of Self-defence; which, with great Respect, cannot be maintained, but rather seems to be a Contradiction; because they had not only their own Defence to take care of, but also the Defence of the Peace and Quiet of this City, and of the Execution of the Laws, and that due Obedience was given to them.

In a Word, upon this Head, the Pannel's Argument is not only supported from the Nature of the Thing, because a Man who fights with the Laws upon his side, fights with great Advantage against those who are fighting against the Laws; and for that reason, if a Man were to fight a Duel, the Laws would be the best Second; but also, 'tis believed, that no Instance can be given in this Country, or in any other of civilized Policy and Government, where a Person, proceeding to what Extremities whatever against Persons who had assailed him, while in the due Execution

Execution of the Law, ever suffered the Pains lybelled.

My Lord Advocat seems to insinuate, as if the Reading of the Riot-act, had been a Duty incumbent upon the Pannel, whereby the Innocent Part of the Multitude would have had time to have taken care of their own Safety: But then his Lordship will be pleased to consider, that no Person is by Law authorized to proclaim that Act, other than a Justice of Peace, Sheriff, Mayor, Bailiff, or other Head Officer; and no Person, under any of these Characters, was left with the Unfortunate Pannel; but he was abandoned and left to grapple with Occurrences in the best Manner his own Discretion could suggest to him.

But then the Reading of that Act could not answer the present Exigency: For tho' the Reading of that Law may perhaps sometimes answer the End for which it was intended, namely, The preventing the Demolition of any House or Meeting-house; but if the Pannel in the present Case, should be supposed bound to have kept his Hands across for the Space of one Hour, after the Reading of this Act; then it is certain that the Mob might have prevented the Execution of the Law in far less Space. And it is certain, that by the Act, the Mob is not put in Contempt, or exposed to the Penalties of it, until once they continue together one Hour after the Reading thereof.

His Majesty's Advocate is also pleased to hint, as if the offering of this Plea in Behalf of the Pannel, founded upon the Resistance of the Mob, was in some sort inconsistent with another to be hereafter mentioned for him, *viz.* his Innocence of the Facts: But, no doubt, my Lord very well knows, that by the Laws of *Scotland* there is no Inconsistency in such different Pleas. And this leads to the Consideration of the Exculpation offered for the Pannel, arising from his Innocence of the Guilt, either of the Action, Command, or Order charged against him in the Indictment.

And in the first Place, as to such Part of the Indictment as charges him with either having fired himself, or having given Orders to fire, whereby *Charles Husband* was killed. Though it is indeed true, that it is impossible, from the Nature of the Thing, for the Pannel to prove an absolute Negative; because, as His Majesty's Advocate very justly argues, if the Charge in the Lybel is proven, to witt, That the Pannel either did fire, or gave Orders to fire, at this Time himself, no negative Evidence can prevail against it; yet as to this Point, the Pannel offers to prove, what the Lawiers call a circumstantiate Negative, which in a good Measure resolves into an Affirmative, *viz.* That at this Time, when *Charles Husband* fell, and got the Wounds charged in the Indictment, whereof it's supposed, he died, the Pannel as has been above recited, was in the following Situation; that is to say, he was pointing his Piece with his Face towards the West Port, threatening the Mob, that if they would not keep off, he would fire; and that immediately, upon this Expresssion, a private Centinel of the Guard, came up from behind him, and discharged his Piece, by which it will be proven *Charles Husband* received his Death Wounds; because it shall be proven, by Persons of undoubted Veracity, that were hard by the

Pannel all the Time, that they not only observed, that he did not fire his own Piece, and gave no Order for firing; joined with this other Circumstance, that no Proof will appear, during the whole Scuffle, that ever the Pannel made use of any Firelock, but his own; and that his Piece, when returned to the Guard, was found loaded, and in such Condition, that it was even confessed by the Magistrates themselves, and many others, not to have been fired; with this further Addition to exclude that further Part of the Charge in the Inditement, of the Pannels having made use at any Time of any other Piece than his own, *viz.* that he carried his own Piece in his Hand the whole Time, except during the Space of Prayer above-mentioned, when he gave it to his Serjant: And it shall also be proved, that there was but one Shot fired at this Time, at which *Charles Husband* is supposed to have received his Death Wounds. And as to the other dropping Shots that are charged in the Indictment to have followed upon this first Shot, if from the Evidence adduced, the Pannel's Proof shall appear to be most pregnant, that he gave no Orders to fire at this Time, then he is not chargeable with the Consequence of such Firings.

And this further Circumstance must strongly operate in favours of the Pannel; to witt, that at the Time of this supposed Orders to fire, the Men were not drawn up in a regular Line or Band; but were either straggling, mixt with the Mob, or in a circular Form, surrounding the Scaffold in the *Grass-Market*, which excludes all Possibility of any supposed general Order to fire; unless it be supposed that the Pannel was a mad Man, seeing any Compliance with such Order must have led the Men to fire each in his opposite Neighbour's Breast, and a great many into that of the Pannel.

It is not altogether impossible that the Pannel's Expresssion of the Word *Fire*, might have erroneously induced this Fellow that came from behind his Back (who of himself perhaps was too forward to embrace such Order, had it been given) to discharge his Piece: And if the Person firing was guilty of an Error, or of a Misconstruction of Duty, the Pannel is not chargeable therewith; seeing that every Person that has the least Knowledge of the Exercise of Arms, must know, that he is not to receive an Order to fire from Implication, but from some known certain Rule of Discipline.

And for this Reason it is, that the Pannel takes it to be a very wise Part of the military Institution, to avoid Misconstructions, That no Man receives Orders to fire (especially when he is resting or shouldering his Arms) but upon a precedent Series of Exercise attended with some Solemnity, to avoid Mistakes; greater or less indeed according to the Nature of the Occasion.

Sometimes indeed, as was observed in the Debate on the Side of his Majesty's Advocate, Persons will, very justly, fire upon so short Advertisement as the Tuck of a Drum; but 'tis believed, that is never practised, but during the Noise or Tumult of Battle; when it is supposed that the Voice of verbal Order cannot reach the Men; and then this Tuck of the Drum, or any other Signal of firing, must be previously advertised to be the Signal of such Action.

Another thing falls also to be noticed here, touching this first Charge in the Indictment, and

which may be even taken thro' the whole ; That when two or more Persons are nigh together, levelling their Pieces at the same time, it is not easy for the sharpest Eye, especially if at any Distance, to determine from what Piece the Fire proceeded ; and of this Point military Men, best acquainted with the Exercise of Fire Arms, can give the best Account.

And lastly, upon this Head, the best Conjecture the Pannel can make, is this, That upon this first Fellow's firing, without either Order or Example from the Pannel his Commander, the other dropping Shots that ensued, proceeded from other rash Fellows of the Guard ; who encouraged by this first Example, directed and discharged their Pieces against such Part of the Mob, as they respectively supposed any Injury or Invasion upon them had proceeded.

The next material Circumstance, charged in the Indictment, is that, touching the Pannel's Behaviour at the *West-bow* ; where it is charged, That he commanded the Men to face about, and fire upon the People ; and that at or about the same time, he fired a Musket or Firelock that was in his own Hand ; having either reloaded, or caused to be reloaded, his own Piece, or taken another out of the Hand of one of the Guard ; and that upon this second Example and Command of the Pannels, several others of the Guard, under his Command, did fire ; whereby the Persons mentioned in the Indictment were killed and wounded.

As to which Part of the Charge, the Pannel offers the following Proof: And First, As to Order he shall prove by Multitudes of Persons nigh him at the time, and who were narrowly observing him (and Orders are generally given with an audible Voice) they heard no such Order given, nor heard no Expression of the Pannel, that, by the most remote Consequence, could have been interpreted an Order to fire: And here the Pannel's Memory, upon the most ferious Reflection, cannot divine what could have given Occasion to any Body's conjecturing that he gave an Order to fire at this time. And here also the former Observation falls to be noticed, touching the Solemnity of an Order for firing.

2^{do}. As to the Action of firing charged against the Pannel himself, for firing at this time ; the Pannel offers to prove the very Centinel, at least, that it was a Centinel of the Guard, who gave the first Fire at this time, which was the Shot at *Robertsons Closshead*. And the Pannel is informed, as has been above noticed, That at the time of taking the Precognition, an Offer was made to the Magistrates to single out the Fellow, if they would suffer the Guard to be drawn out, who fired that Shot towards *Robertsons Closshead*, by which the two or three People fell. And further, The Pannel offers to prove, upon this Head, not only that this Fellow was the first Person that fired, without any Order from the Pannel circumstantiated, as is above noticed, but also by many Persons of undoubted Credite, that they could not observe the Pannel fire, or discharge any Piece himself, during the whole Time that this Firing is supposed to have continued. And here the

Pannel could evidently cast up many Inconsistencies to your Lordships, that must necessarily be implied, and many Presumptions that strongly exclude any supposed Order or Example of the Pannel at this Time ; but does not think it altogether so prudent to mention them at present.

As to the taking a Piece out of another Man's Hand, and firing of it, such Action was a remarkable Occurrence, and must have fallen out under Observation ; and so the Pannel can say nothing about it, but leave it to Evidence, with this only Observation, That, as it was a notable Event, it will operate almost as strong in the Negative as in the Positive. And it must be left to the Jury to balance the Evidence, if a Contrariety shall appear ; and to lean to that Side attended with the greatest Credibility, taken the known Rule of the Law into the Compass, namely, Favour to the Pannel in case of Dubiety. Only this Observation falls to be made to your Lordships, That the Circumstances of the Case call aloud for the Pannel's being allowed a Proof upon this Part of the Indictment.

The Pannel does agree with His Majesty's Advocate, That no negative Evidence can take away a positive Proof ; but the Pannel humbly thinks he has offered a pretty circumstantiate one : And as my Lord Advocate seems to admitt the Necessity of a Proof on both Sides, so the Pannel will not labour that Point with your Lordships ; not doubting but you will allow him in general, to prove what he can, to exculpate him from the Guilt laid in the Indictment ; and that your Lordships by your *Interloquitor* will allow him as much Scope in that Particular, as any Precedent of your Lordships Court can authorize. And there are several Instances, and one very particular one, wherein great Latitude was allowed, both as to the Circumstances precedent, concomitant, and even subsequent to the Acts charged in the Indictment.

Some general useful Reflections might be made, but this Paper is already drawn out into too great Length, and as the Pannel has learned Judges, and a discerning and candid Jury, the less needs be said ; because 'tis supposed they will naturally occur to these interested in the Trial ; and no doubt such will lay aside all Prejudices and Prepossessions ; and will never once think of, but utterly despise the Consequences of popular Rage or vulgar Clamour.

If the Pannel is guilty of the Charge in the precise Way and Manner it is laid against him in the Indictment, he is of Opinion himself he deserves to suffer : But if upon the other hand, it shall come out that he is entirely innocent of the Blood of those Men where-with he is charged ; he thinks his Case deserves singular Commiseration : Because, if Bonds and Imprisonment, Loss of Employment and Bread, Obloquy, and Reproach of Blood-guilt, and Massacre, and, of Consequence, loss of Character, be Calamities in human Life ; then has he had as great a Share of them as ever attended Innocence. *Sic subscribitur.*

Ja. Grabame, jun.

Curia Justiciaræ, S. D. N. Regis, tenta in Prætorio Burgi de Edinburgo, Decimo sexto Die Mensis Julii, Millesimo septingentesimo trigesimo sexto, per Honorabiles Viros, Andream Fletcher de Milton, Justiciarium Clericum, Dominum Jacobum Mackenzie de Roystoun, Magistrum Davidem Erskine de Dun, Dominos Gualterum Pringle de Newhall, et Gilbertum Eliot de Minto, Commissionarios Justiciarum, dictos S. D. N. Regis. Curia legitime affirmata.

Intran.

JOHAN PORTEOUS lately one of the Captain Lieutenants of the City Guard of Edinburgh, Pannel,

INDICTED and ACCUSED as in the former Sederunt,

The Lords, Justice Clerk, and Lords Commissioners of Justiciary, having considered the Indictment pursued at the Instance of *Duncan Forbes Esquire*, his Majesty's Advocate, against *John Porteous Pannel*, with the foregoing Debate thereupon, FAND, That the Pannel having at any of the Times and Places libelled, fired a Gun among the People assembled at the Execution libelled, or having given Orders to the Soldiers under his Command to fire; and thereupon, they the Soldiers or any of them having accordingly fired; and upon the firing, either by himself or them, the Persons mentioned in the Indictment, or any of them, were killed or wounded, or the Pannel's being art and part of any of the forsaide Crimes; all *seperatim* relevant to infer the Pains of the Law: But allowed the Pannel to adduce what Evidence he could with respect to his Behaviour at the Time the forsaide Crimes are libelled to have been committed; for taking off the Circumstances which should be brought for inferring his being guilty, or art and part of the Crimes lybelled; and remitted the Pannel and the Indictment as found relevant to the Knowledge of an Affize, *Sic Subscibitur*

Andr. Fletcher, I. P. D.

The Lords, Justice Clerk, and Lords Commissioners of Justiciary, continued the above Diet at the Instance of his Majesty's Advocate, against Captain *John Porteous*, till Monday next at Seven of the Clock in the Morning; and ordains Assysers and Witnesses then to attend, under the pain of Law, and the Pannel to be carried back to Prifon.

Curia Justiciaræ, S. D. N. Regis, tenta in Novo Sessionis Domo Burgi de Edinburgo, Decimo nono Die Mensis Julii, Millesimo septingentesimo trigesimo sexto, per Honorabiles Viros, Andream Fletcher de Milton, Justiciarium Clericum, Dominum Jacobum Mackenzie de Roystoun, Magistrum Davidem Erskine de Dun, et Dominum Gilbertum Eliot de Minto, Commissionarios Justiciarum, dict. S. D. N. Regis.

Curia legitime affirmata.

Intran.

JOHAN PORTEOUS lately one of the Captain Lieutenants of the City Guard of Edinburgh, Pannel,

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INDICTED and ACCUSED as in the former Sederunts. Thereafter the Lords proceeded to make Choice of the following Persons to pass upon the Affize of the said *John Porteous*,

A S S I Z E,

Sir <i>John Inglis</i> of <i>Cra- mond.</i>	<i>James Hunter</i> , Wright there.
<i>Alexander, Gibson</i> of <i>Pent- land.</i>	<i>William Wight</i> , Baxter there.
<i>George Halyburton</i> of <i>Fordell.</i>	<i>John Bell</i> , Brewer in <i>Edinburgh.</i>
<i>James Baird</i> of <i>Chester- hall.</i>	<i>James Davidson</i> , Book-feller there.
<i>John Hogg</i> of <i>Cambo.</i>	<i>David Inglis</i> Merchant there.
<i>Thomas Dundas</i> of <i>Le- them.</i>	<i>Alexander Sharp</i> , Mer- chant there.
<i>Alex. Brand</i> of <i>Brand- field.</i>	<i>Patrick Manderstoun</i> , Merchant there.
<i>John Follie</i> , Vintner in <i>Edinburgh.</i>	

The above Affize being all lawfully sworn, and no Objection of the Law in the Contrary;

THE Pannel *John Porteous* judicially confessed, That Time and Place libelled, the several Persons mentioned in the Indictment to have been killed and wounded, *viz. Archibald Ballantyne*, Son to *John Ballantyne* the younger, *Dyster* in *Dalkeith*; *Margaret Arthur*, alias *Airth*, Residenter in the *Cannon-gate* near the *Water-gate* thereof; *John Anderson*, Son to *George Anderson* in *Craighead*, Drover; *Jean Peat*, Servant to *James M^r Dowal*, Merchant in *Edinburgh*; *David Wallace*, Journey-man Wright in *Edinburgh*; *James Philp*, late Servant to *Lauder Esq*; Residenter in the *Cannon-gate*; *David Kidd*, Taylor in *Edinburgh*; *Patrick Spaldan*, Apprentice to *David Mitchell*, Jeweller in *Edinburgh*; *James Lylk*, and *Alexander Wallace*, both Servants to *James Wight*, Staymaker in *Edinburgh*; *John Miller*, Taylor in *Edinburgh*; *David Ogilvie*, Writer in *Edinburgh*; and *James Nevin*, late Servant to *William Sellers*, Writer in *Edinburgh*, now Residenter in the *Potteraw*; *Alexander M^r Niel*, Son to *Edward M^r Niel*, Indweller in *Mertounball*; *Margaret Gordon*, Servant to *William Ogilvie*, Taylor in *Saint Mary Wynd*, in *Edinburgh*; and *Henry Grabame*, Taylor in *Cannon-gate*; and *Charles Husband*, Servant to *Paul Husband*, Confectioner in the *Abbey of Holy-rood-house*; were so killed or wounded by Firing proceeding from the Party of the City Guard, then under his Command, as mentioned in the Indictment. *Sic subscibitur,*

John Porteous.

Andr. Fletcher, I. P. D.

His Majesty's Advocate for proving his Lybel, adduced the Witnesses after deponing, *viz.*

JAMES DRUMMOND Merchant and Residenter in *Edinburgh*, aged Thirty Years or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, that Time and Place libelled, and after *Andrew Wilson* had hung some Time upon the Gallows, about a quarter of an Hour, as the Deponent thinks; he saw the Executioner going up the Ladder, as the Deponent apprehended, to cut him down; upon which he saw some small Stones thrown by the Mob at the Executioner;

some whereof the Deponent believes might have fallen upon the Guard : Upon which he saw the Pannel advance from the Guard West-ward, resting his Firelock upon his Thigh; as if he had been bending it, and thereafter saw him raise it to his Breast, moving it from one Point to another : And soon thereafter, the Deponent heard a Shot from the Place where the Pannel was standing, but did not observe, whether the Shot came from Captain *Porteous's* Firelock; and, much about the same time, observed one of the Soldiers go out of his Rank Westward, and upon the North-side, and saw him go further West than the Place where Captain *Porteous* was; the Side of the Window, where the Deponent was standing in *Robertson's* House, covered the said Soldier from the View of the Deponent, by the Time the first Shot was fired; and which Soldier had a Gun and a screwed Boyonet in his Hand, levelled with the Butt end of it at his Breast; and the Deponent did apprehend at the time that Captain *Porteous* had fired, because he saw him in a firing Posture, and immediately heard a Shot, and saw a Man in a few Minutes thereafter, as soon as the Mob dispersed, lying upon the Street, upon a Line, whither the Deponent saw Captain *Porteous's* Piece directed; and that the above-mentioned Soldier came from the Body of the Guard which was behind Captain *Porteous*. *Causa Scientiæ patet.* And this is the truth, as he shall answer to God. *Sic subscribitur*

J. Drummond.
Andrew Fletcher.

Sir *William Forbes* Advocat, aged Thirty Years or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, and after the deceast *Andrew Wilson* had hung about Twenty or Twenty-five Minutes upon the Gallows, The Deponent from a Window in *Orr* the Stablers House, opposite but a little to the West-ward of the Gallows, saw the Executioner go up some Steps of the Ladder, as the Deponent believes, to cut down the said deceast, and saw thereupon, Stones thrown at the Executioner; upon which the Executioner immediately retired to the Guard, and the Mob continued throwing of Stones; so that the Deponent does believe some of the Stones might have touched the Guard; and about this time, the Guard were drawing together to the North and West of the Gallows, where the Captain was standing, and did soon thereafter see the Pannel, advancing Westward, fire his Gun among the People assembled at the Execution; and observed the Fire and Smoak issuing out at the Muzzle of his Piece, to the best of the Deponent's Observation; which he thought at the time very distinct, and that the said Shot was the first which the Deponent heard; and the Deponent at the Time did imagine, that the Pannel had fired his Shot high, but whether that proceeded from the Situation that his Firelock was in, or from the Appearance that the Fire and Smoak made that issued out of his Piece, the Deponent cannot now particularly charge his Memory. That thereafter the Deponent heard several dropping Shots, about Twenty, but cannot be positive as to the Number; that when the forsaide Facts happened, the Deponent was upon the South-side of the Street, and the Pannel to the North of the Middle of the

Street almost opposite to the Window where the Deponent was; and when the Pannel so fired, the Deponent did not observe any Soldier so far advanced West-ward from the Body of the Guard as the Pannel was. *Causa scientiæ patet.* And this is the Truth as he shall answer to God. *Sic subr.*

William Forbes.
Andrew Fletcher.

Mr. *William Fraser* Son to the Lord *Saltoun*, aged twenty four Years or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was in a Window in one *Orr's* House in the *Grass-Mercat*, the South Side of the Street, that Day that *Andrew Wilson* was execute; that after *Wilson* had hung some time on the Gallows, he saw the Executioner go up some Steps of the Ladder, as he apprehended, to cut him down; and then saw the Mob throw Stones and Dirt at him; upon which the Hangman came down, and went in amongst the Soldiers that were standing at the Foot of the Scaffold: That soon after the Hangman had come down, he saw the Pannel present and level his Gun, moving the Muzzle to and fro, and then saw him fire; and to the best of his Knowledge or Apprehension, saw the Smoak issue out of the Mouth of the Piece; that immediately thereafter within a Second or two, he heard several dropping Shots fired by the Soldiers, who were there on their Arms; that he thinks the dropping Shots he then heard came from near the Place where the Pannel was standing. And deponed, that at the Time forsaide the Pannel fired his Gun, he did not observe any of the Soldiers advance before him and present their Guns. *Causa scientiæ patet.* And this is the Truth as he shall answer to God. *Sic. subr.*

William Fraser.
Ja. Mackenzie.

Mr. *William Urquhart* of *Meldrum*, aged thirty eight Years or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, that he was present at *Andrew Wilson's* Execution the Time libelled, in the House of one *Orr*, on the South Side of the Street, in Company with Sir *William Forbes* and Mr. *Fraser*, the preceeding Witnesses; that after *Wilson* had hung some Time, he saw the Executioner go up some Steps of the Ladder in order to cut him down, as he apprehended, and saw the Mob throw several Stones at him; upon which he came down, therefore the Mob continued to throw Stones, some of which fell amongst the Guard; whereupon he heard several dropping Shots fired by the Soldiers; that he saw the Pannel present his Piece, immediately heard a Shot, which he apprehended was Shot by the Pannel, but did not observe it so narrowly as to see the Smoak or Fire issue out of his Piece. *Causa scientiæ patet.* And this is the Truth as he shall answer to God. *Sic subr.*

William Urquhart.
Ja. Mackenzie.

James Dewar of *Vogrie*, aged sixty-four Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled at *Andrew Wilson's* Execution, he was in a Window

in his own House at the Foot of the *West-bow*, in the East-side of the Way; that he saw the Hangman go up some Steps of the Ladder, after *Wilson* had hung some time; and saw the Mob throw some Stones, one of which hurt the Executioner on the Face; upon which he came down the Ladder; whereupon he saw the Pannel present his Piece and Fire, which was the first Shot he heard or saw; that when he saw the Pannel fire, his Side was to the Deponent, and that the Pannel was then standing on the East-side of the Gibbet; and that he fired his Piece to the West: And Deponed, he saw the Fire of the Powder from the Pan, and heard the Report of the Shot. Depones, That when the Pannel fired, as aforesaid, he was standing on the South-east side of the Scaffold. Deponed, That *Wilson* was cut down not by the Hangman, but by some that were standing at the Foot of the Gallows, and that *Wilson* was cut down before he heard any Shots: Deponed, That he stood at his own Window before *Wilson* was thrown over, and continued looking at the Place of Execution till he was cut down, and heard the Shots as before mentioned. And being interrogated what kind of Cloaths Captain *Porteous* had then on, declares he cannot be positive, but believes they were Red Cloaths; but is positive that he knew Captain *Porteous* Face when he saw him fire. *Causa scientiæ patet.* And this is the Truth as he shall answer to God. *Sic subr.*

James Dewar.
Ja. Mackenzie.

George Drummond, Esq; One of the Commisioners of the Customs, aged Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time and Place libelled, the Deponent was in the House of Baillie *Halyburton* on the right Hand, on the North-side of the Corner of the *Srait-bow*, the Third-story, at the time of the Execution of *Andrew Wilson*, and from a Window of the said House, after the Criminal was thrown over, and had hung for fifteen or sixteen Minutes, the Executioner was about going up the Ladder; and after he went up two or three Steps, he observed several Stones thrown at him; which made him return; and while he was on the Ground, he observed his Nose bleeding; and at this time he observed one or two Persons or more standing at the Foot of the Gallows; one of whom streatching up his Arm with a Knife, he observed cut the Rope; the Executioner having mixed with the Soldiers, he did observe the throwing of Stones to continue, and some of them fell among the Soldiers. Deponed, That immediatly thereafter he observed one of the Soldiers advance a little before Mr. *Porteous* to the West-ward, with a Gun in his Hand, which he presented; and immediatly thereupon the Deponent heard a Shot, which he imagined to be from that Soldier, but did not observe Fire or Smoak; tho' at the Time he concluded it was from that Soldiers Gun, and is positive that that was the first Shot that was fired; and the Deponent did not think that the Stones that were thrown, did give any just Cause for the Firing. Deponed, That about the Time when he observed the Soldier present his Gun, as said is, he also observed the Pannel holding his Gun in his Hand in a Level, but is not sure of his

putting the Butt of it to his Shoulder. Deponed, That after the said first Shot, within a Minute he heard another, and so it continued till about the Number of Eighteen or Twenty; and this was at the Time of the Firing observed by the Deponent; but within some Minutes thereafter, there was a second Firing, which he did hear, and upon hearing came to the Window, and observed some Lime fallen from an opposite House, which he judged to have been occasioned by the Bullets: And as to the eighteen or twenty dropping Shots, in the first Firing, were from the Soldiers immediatly behind the Pannel, betwixt whom and them, he observed no Person interposed; and he observed the Time of the first Shot the Pannel's Face was looking West-ward, as was all the Soldiers behind him, Deponed, That the Soldiers at that time, who fired, were to the Deponent's best Remembrance to the North-ward of the Scaffold; and the Pannel was then, to the best of his Remembrance, either upon a Line to the Gibbet, or a little Westward of it. Further deponed, That the Soldier who first fired, as said is, advanced from behind the Pannel, and past upon his right Hand, to the North-ward of him. *Causa scientiæ patet.* And this is the Truth as he shall answer to God. *Sic subr.* 1736.

Ge. Drummond,
Da. Arskine.

William Johnston, Druggest in *Edinburgh*, aged Forty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, Time and Place libelled, he the Deponent being present at the Execution of *Andrew Wilson*, he did observe the Pannel take a Gun out of a Soldier's Hand, at which Time he was standing 'twixt the *Corn-mercate* and one *Tod's* Shop, which is under Baillie *Halyburton's* House; thereupon he observed the Pannel advance some Steps Westward, and did see him present and level his Gun, that is to say, Hold it out and fire amongst the Multitude; and did observe the Smoak come out of the Gun: And deponed, That this was the first Shot he heard, which Shot immediatly followed after the Criminal was cut down by a Hand standing at the Foot of the Gibbet; and the Deponent at the Time was standing in a Window in the House of one *Gairdner*, Horse-Ferrier by the *Muse Well*; and when the Pannel was taking the Gun out of the Soldier's Hand, he appeared to be in Passion, and it was some short time before he was Master of the Gun. Deponed, That to the best of his Remembrance the Pannel was cloathed in red, but he being well acquainted with the Pannel's Face, he is positive, that he was the Person that took the Gun and fired as aforesaid. And Deponed, That he believes there was about thirty Yards Distance betwixt the Window where the Deponent was, and the Pannel, at the first firing. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic subr.*

Wm. Johnston,
Da. Erskine.

Mark Sprot, Skinner, and one of the Constables of *Edinburgh*, aged twenty-eight Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, as he stood on *William Orr* Stablers Window, South-

South-side of the *Grass-mercate*, he saw *Wilson* the Criminal cut down from the Gibbet; upon which Occasion he did not observe that there was any greater Disturbance than usual at Executions: That a very little while after the Criminal was so cut down, he observed the Pannel advance before the Soldier, and upon the North-side of the Scaffold over-against the Gibbet, he saw him fire his Piece towards the West, and the Smoak issue out of the Mouth of his Gun; this he says was the first Shot that was fired; but immediately, upon the back of that, a tall Man with his own Hair, about the third behind the Pannel, as he thinks, fired off his Piece likewise towards the West, but up in the Air over the Heads of the Multitude: That very soon after several other dropping Shots followed after, which when the People fell back and opened, he observed a young Man lying upon the Ground as dead, directly opposite to the Place where the Pannel fired. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic sub^r.*

Mark Sprott.
Gilb. Eliot.

George Campbell, Wright in *Edinburgh*, aged Twenty eight Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, the Deponent stood in the Window of Mr. *Carmichael's* House, in the South-side of the *Grass-mercate*, directly opposite to the Gibbet; That a very little after *Wilson* was cut down, he observed the Pannel with four or five of his Men about him, and that as he pointed his Piece to and fro towards the Multitude, he observed him receive a Stroak by a Stone thrown from behind the Scaffold, off which it rebounded and struck him; upon which he immediatly fired his Piece; but whether this was the first Shot or not, the Deponent cannot tell for there was three or four fired much about the same time; but that the Pannel fired, he is sure, for he saw Fire and Smoak issue from his Piece. That upon these Shots already mentioned, he saw a Man fall down upon his Back on the Street: That after this he saw the Pannel raise his Muffket, and put his Hand to his Cartrage Box, as if he intended to load again; but does not know what followed upon this, because he immediatly lost Sight of him. Deponed, That when the Pannel fired his Piece as above, he was standing towards the South-east Corner of the Scaffold, and pointed his Piece towards the South-west: That the Pannel's Fire with the Shots that went off at the same Time, were the first that were made on that Occasion. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic sub^r.*

George Campbell.
Gilb. Eliot.

James Bald, Merchant in *Edinburgh*, aged Thirty two Years, or thereby, Widower, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, the Deponent stood in the same Window with the immediate preceeding Witnes, or at least in a Window in the same Room: That a little after *Wilson* was cut down from the Gibbet, he saw the Pannel advance a little Westward from the *Corn-mercate*, towards

the South-side of the Gibbet, and fire off his Piece West-ward, toward the *Muse Well*: That at this Time he saw none of the Soldiers near him, nor observed any other fire but his; and before there was any more firing, when the Multitude fell back, he saw a Man lying dead, towards the Place that the Pannel pointed his Piece; that he is sure the Captain fired, since he saw the Fire and Smoak issue from his Piece. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic sub^r.*

James Bald.
Gilb. Eliot.

Andrew Daw, Servant to *James Montgomery*, Brewar in *Potteraw*, aged Twenty-two Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, the Deponent was standing at the foot of *Robertson* the Stabler's Clofs, when *Wilson* was cut down from the Gibbet; immediately after which, the Pannel, who was standing in the middle of the Street, between the Deponent and the *Corn-mercat*, fired his Piece toward the Place, where the Deponent was standing; upon which a Baxter in the *Abbey*, called *Charles Husband*, dropt just by the Deponent; and his the Deponent's Coat was torne in the Shoulder with the same Shot; that he heard the Report of the Captain's Piece, tho' he neither saw the Fire nor the Smoak, yet he is sure the Pannel fired, because he saw no other Piece presented at the same time: That the Pannel when he fired as above, was as near to the Deponent, as the End of the Table where he now stands, is to the West-end of this Room. Deponed, That the Shot mentioned to be made by the Pannel, was the first he heard that Day. Deponed, That during the whole time of the Execution he never came nearer the Scaffold than *Robertson's* Clofs-foot (by *Robertson's* Clofs-foot is meant the end nearest the *Grass-mercat*). *Causa Scientiæ patet.* And this is the Truth as he should answer to God, and declaired he cannot write. *Sic sub^r.*

Gilb. Eliot.

Walter Sheargold Indweller in *Edinburgh*, aged Twenty eight Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was present the Time and Place libelled; and after the Criminal *Wilson* was cut down, he saw Captain *Porteous* fire his Gun, holding the same streight out at the Multitude; and that the Deponent was then within three Yeards of the Captain, when he saw him fire, and that after he had fired, he heard him call, Fire; then heard some Shots, but does not know from what Hands they came, for he immediatly retired to the *Lawn-mercate*. Deponed, That when the Pannel fired, his left Hand was towards the Scaffold, and he fired towards the West-port. Deponed, That the Scaffold was nearer to the West-port than the Pannel was when he fired, that is, the Pannel was nearer to the *Corn-mercate*: Deponed, That this Shot by the Pannel, was the first that he heard at that time, and that he was present all the time of the Execution; that he was so near as to see the Fire and the Colfine fly out of the Pannel's Gun, *Causa scientiæ patet.* And this is the Truth as he should answer to God. *Sic subscribitur*

Walter Sheargold.
Wa. Pringle.

John

John Ritchie Servant to Mr. *Archibald Murray*, Advocate, aged Seventeen Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That the Time and Place libelled, the Deponent was present at the Execution of *Andrew Wilson*; and after the Criminal was cut down, he saw and heard about Three Shots fired; and then he heard a Fourth Shot, which was by Captain *Porteous*; and that he saw a Man fall down, but the Deponent imagined it was from the Pressure of the Croud, that there was very short time betwixt the Shots, but that which was by Captain *Porteous* was the last in order. That after the Criminal was cut down, the Guard drew towards the North-side of the Scaffold, that the Deponent was standing within Two or Three Yards of the Foot of *Robertson's* Clofs, when he saw and heard the firing: Deponed, he heard the Pannel mention the Word, Fire, before the firing, deponed, That the Pannel was, to the best of the Deponent's Remembrance, standing as far West as the Gallows; but he cannot be very positive; the Mob and Crowd was such, that he could not very distinctly discern: Deponed, That the Shots mentioned by the Deponent, first Three, and then a Fourth, was the first he heard that time. *Causa Scientiæ patet.* And this is the Truth as he should answer to God. *Sic sub.*

John Ritchie.
Wa. Pringle.

Thomas Crooksbank, Servant to *Thomas Frotter* Brewar in *Edinburgh*, aged Twenty two Years or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That the Time and Place libelled, the Deponent being upon the Causey on the South-side of the Scaffold, saw the Pannel, who was then standing upon the North-side of the Scaffold, fire the Gun that was in his Hand upon the Multitude; the Point of the Piece being directed Westward, and saw the Fire and Smoak issue out of the Muzzle of the Gun, that was in the Pannel's Hand. And further deponed, That the Pannel was standing at the North-side of the Scaffold, and at that end of it, which is next the *Bow*. *Causa scientiæ patet.* And this is the Truth as he should answer to God. *Sic subscribitur Thomas Crooksbank.* And being further interrogate, If the said Shot that the Pannel fired, was the first Shot, Deponed, That it was the first Shot; but that several other Shots followed immediately thereafter. And this is likewise the Truth as he shall answer to God. *Sic subscribitur Thomas Crooksbank.*
Andr. Fletcher.

James Neilson Gardiner in the *Bull Clofs* of *Edinburgh*, aged Thirty one Years or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, Time and Place libelled, the Deponent being standing within the Foot of a Turnpike near the *Muse Well*, saw the Pannel who was then standing upon the North-side of the Scaffold, a little to the East-ward, where the Gallows was; and saw the Pannel advance West-ward, towards the Multitude, with his Firelock in his Hand, moving it to and again, as if he had been beating

back the People; and at the Third or Fourth Motion, saw the Pannel fire the Piece that was in his Hand upon the Multitude, pointing it Westward, and saw the Smoak issue out at the Muzzle of the said Piece. That this was the first Shot which the Deponent heard, which was soon followed by others; for the Deponent observed the Pannel after he had fired his Piece retire some Yards to the Soldiers, and saw Five or Six of these Soldiers advance and fire upon the Multitude; and soon thereafter when the Multitude were beat off, the Deponent saw a Boy with black Hair lying within ten Yards of the Turnpike where the Deponent was standing, and saw Four other Persons lying at different Places upon the Street; and saw the first mentioned Boy bleeding at the Ear. *Causa Scientiæ patet.* And this is the Truth as he should answer to God. *Sic subscribitur*

James Neilson.
Andr. Fletcher.

William Gordon, Baxter, and servant in the common Bakehouse in *Hasties Clofs* in *Edinburgh*, aged Twenty-one Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That the Time and Place libelled, The Deponent being at the Head of the Turnpike at the back of the *Muse Well*, did from thence see Captain *Porteous* Pannel, who was then upon the North-west Corner of the Gibbet, waved his Firelock to and again; and thereafter saw the said Firelock while in his Hand, go off, and saw the Fire and Smoak go out at the Muzzle of it; and this was the first Shot which the Deponent heard that Day, but heard several Shots thereafter; and that the Shot which the Pannel fired, was soon after the deceast *Andrew Wilson* was cut down. *Causa Scientiæ patet.* And this is the Truth as he should answer to God. *Sic subscribitur*

William Gordon.
Andr. Fletcher.

James Nasmith, Servant to *Colin Alison*, Wright in *Edinburgh*, aged Twenty six Years, or thereby, married, solemnly sworn, purged of Malice; partial Council, examined and interrogate, Deponed, That Time and Place libelled, and soon after the deceast *Andrew Wilson* was cut down from the Gibbet; the Deponent being upon the Causey of the North-east end of the Scaffold, beginning to take down the Scaffold; and did then hear the Pannel who was towards the North-end of the Scaffold, say several Times to the Soldiers under his Command, Fire and be damn'd! and at the same time saw the Pannel advancing West-ward, with his Piece presented in his Hand; and immediatly after hearing the forsaid Words, he heard several Shots go off; and when the forsaid Words were spoken by the Pannel, he was passing by the Deponent West-ward, about a Yard or two distant from him. *Causa Scientiæ patet.* And this is the Truth as he should answer to God. *Sic subscribitur*

James Nasmith.
Andr. Fletcher.

David Broun Servant to *Colin Alison*, Wright in *Edinburgh*, aged Twenty eight Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed

Deponed, That Time and Place libelled, and after the deceast *Andrew Wilson* was cutt down from the Gibbet, the Deponent being standing at the East End of the Scaffold, assisting to pull it down; and then saw the Pannel going along the North-side of the Scaffold Westward, and heard him give Orders to the Soldiers under his Command to fire, but does not remember the particular Expression; and immediatly upon the Orders being given as aforesaid, he heard several Shots; and when the Deponent heard the Pannel give the forsaide Orders, he was about the Distance of the Breadth of the Scaffold from him. *Causa Scientiæ patet.* And this is the Truth as he should answer to God. *Sic sub.*

David Broun.
Andr. Fletcher.

Matthew Kid, Servant to *Thomas Milln*, Deacon of the Measons in *Edinburgh*, aged thirty-three Years, or thereby, married, solemnly sworn, purged of Malice, and partial Council, examined and interrogated, Deponed, Time and Place libelled, and soon after the deceast *Andrew Wilson* was cutt down from the Gibbet, the Deponent being standing upon the plain Stones near Capt. *Todd's* Shope, he saw the Pannel going from the Well at the *Bow-foot* Westward, and saw him fire the Gun that was in his Hand, and thereafter give Orders to the Soldiers under his Command to fire; thereafter heard him call to the said Soldiers to level their Pieces; and saw the said Soldiers fire; and that the Shot fired by the Pannel as aforesaid, was either the first or second Shot; which Shot he fired standing to the North-east of the Scaffold, half way 'twixt that and the *Bow-foot* Well; and that when the Pannel ordered the Soldiers to level their Pieces, he was some Yards nearer the Foot of the *Bow*. *Causa Scientiæ patet.* And this is the Truth as he should answer to God. *Sic subscribitur.*

Mathew Kid.
Andr. Fletcher.

James Maxwell, Servant to *Colin Alison*, Wright in *Edinburgh*, aged thirty-two Years, or thereby, married, solemnly sworn, purged of Malice, purged of partial Council, examined and interrogated, deponed, That the Time and Place libelled, after *Wilson* was cutt down and put in his Coffine, there was some Stones thrown by the Mob amongst the Guard; upon which he heard the Pannel to order the Soldiers to turn in; and immediatly heard him give the Soldiers Orders to fire, and be damn'd; and then saw him advance two or three Paces, and saw his Gun cocked, and his Thumb upon the Doghead, and saw him fire the Gun; and immediatly before he heard any other Shot, he saw a Boy fall near a Coppersmith's Shop, to the North-west of the Place, from which the Pannel fired his Gun. There were six or seven more Shot after the Orders were given; and then he saw three Men and a Woman fall, one of which had a Wound in his Forehead, and another in the Side of his Head: That after the Soldiers fired as aforesaid, he heard the Pannel say to one of the Soldiers, That if he did not fire, he would take his Piece from him. Deponed, That he the Deponent was then standing on the South-side of the Scaffold, helping to pull it down, when he heard and saw what is above deponed upon; and that the Pannel was upon the North-side of the

Scaffold, about ten Yards from it, over-against the Middle of the Scaffold: And deponed, That the Pannel's Shot at that Time was the first he heard then shot. Deponed, That he was present at the Time from *Wilson's* coming down to his Execution, till after he was cutt down and carried away; during which Time he heard no Shot fired, until that fired by the Pannel. *Causa Scientiæ patet.* And this is the Truth as he should answer to God. *Tic subscribitur.*

James Maxwell.
Ja. Mackenzie.

William Douglas, one of the Soldiers in the City Guard, *Edinburgh*, aged forty-seven Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined, and interrogated, Deponed, That the Time and Place libelled, as the Executioner was going up the Ladder to cutt down *Wilson*, there were several Stones thrown at him, which obliged him to come down the Ladder; at the same time there was several Stones thrown amongst the Guard, before *Wilson* was cutt down, at which time he heard the Pannel say to the Soldiers, Be damn'd to you, Bougars, Fire; after which he heard several Shots fired by the Men, but knows nothing of the Pannel's having fired; and that these were the first Shots he heard fired that Day, to the best of his Knowledge. Deponed, That the Pannel when he uttered the Words before-mentioned, was standing at the South-side of the Gallows. Deponed, That the first Shots were fired before *Wilson* was cutt down, and likewise some of them thereafter. *Causa Scientiæ patet.* And this is the Truth as he should answer to God; and declares he cannot write. *Sic subscribitur.*

Ja. Mackenzie.

Archibald Yetts, Litster in the *Abbey* of *Holyrood-house*, aged forty-eight Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That the Time and Place libelled, a little after *Wilson* was cutt down from the Gallows, he saw the Pannel fire his Piece among the Multitude; and immediatly heard him say to his Men, Level your Pieces, and fire and be damn'd! Whereupon there were a great many Shots fired by them, and saw the Pannel take a Gun from one of the Men, which he the Pannel fired. Deponed, That he the Deponent was within six Yards of the Pannel when he fired, and spoke the Words before-mentioned. Deponed, That at the Time when the Pannel took the Gun from the Soldier, he laid his own upon the Scaffold, and that there were some Persons, but very few, then standing upon the Scaffold. Deponed, That betwixt the Time that the Pannel fired his own Piece, and his taking the Gun from the Soldier, as aforesaid, it might be about eight or nine Minutes: And deponed, That at the time he fired the second Gun, there were several other Guns fired at the same time. Depones, That there was no Shot fired before the first fired by the Pannel; and that the second Shot fired by the Pannel was near the same Place where he fired the first; and that he had not moved above six or seven Yards betwixt the first firing and the second; and that some of the Soldiers followed the Pannel in that Space, and returned with him again

again to the Place where he fired first. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic sub.*

*Archbald Yetts.
Ja. Mackenzie.*

William Murray, Barrowman and Indweller in *Edinburgh*, aged twenty-seven Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, Time and Place libelled, the Deponent being present at the Execution of *Andrew Wilson*, he did observe two of the Soldiers under the Pannel's Command, fire their Guns; but the Guns were fired up in the Air; thereafter he observed the Pannel fire his Gun amongst the Multitude; whereupon he observed a Boy drop down, and did hear the Pannel call out to the Soldiers, Damn them for Bougars, why did they not fire, even forward, and clean the Street? At which time the Deponent was standing about the South Pillar of the *Corn-mercate*, about twenty Yards Distance from the Pannel, as he apprehends: Furder deponed, That after the said first firing, he observed the Pannel take a Gun out of a Soldier's Hand, and fire again; directing it towards a Man he was pursuing; which he did thirty or forty Yards; and upon firing, he observed the Person so pursued, fall down: And being interrogated how long his present Dulness of Hearing remained with him; Deponed, he has been as dull of Hearing these seven Years past. Deponed, That the two Shots from the two Soldiers were the first firing he heard upon that Occasion. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic sub.*

*William Murray.
Da. Erskine.*

James Nicoll Watch-maker in *Cannon-gate*, aged thirty-six Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was present, Time and Place libelled; at the Execution of *Andrew Wilson*; and then he did observe the Pannel fire his Gun, holding it out straight before him, amongst the Multitude there assembled; and as he heard the Report of the Gun, so he observed the Smoak of the Powder coming from the Gun; and this Shot was the first he heard upon that Occasion; and the Pannel when he thus fired, was standing betwixt the Gibbet and one Mr. *Cunyngbame's* Shope on the North-side of the Street, near the North-east-end of the Scaffold. *Causa scientiæ patet.* And this is the Truth as he shall answer to God. *Sic sub.*

*James Nicoll.
Da. Erskine.*

William Jameson Merchant in *Edinburgh*, aged twenty-four Years, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was present Time and Place libelled, at the Execution of *Andrew Wilson*; and about the Time when they were cutting down the Criminal, the Deponent then standing within three or four Yards of the Pannel, did hear him give Orders to the Souldiers that were behind him to fire, and immediatly thereafter he did hear the Pannel fire the Gun that was in his own Hand; and upon his firing, observed the Smoak of the Powder come from it;

thereafter he observed the Pannel take a Gun from one of the Soldiers, but what Use he made thereof, he knowes not; and it was very short Time 'twixt the Pannel's Firing, and his taking the Gun from the Soldier, as also, a very short Distance betwixt the Place where he fired, and where he took the said Gun; the Place of his firing to the Deponent's Memory, being near to *Robertson's Closshead*; and where he took the Gun, was a very little way up the Street from it: And the Shot he heard from the Pannel's Gun, was the first he heard that Day. *Causa scientiæ patet.* And this is the Truth as he shall answer to God. *Sic sub.*

*William Jameson.
Da. Erskine.*

John Moffat, Baxter and Servant in the Common Bake-house in *Haslies Closs* in *Edinburgh*, aged twenty-six Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time and Place libelled, the Deponent was standing in Mr. *Orr's* Door, on the South-side of the *Grafs Mercate*; and some short time after *Wilson* was cut down, he saw the Pannel take a Gun out of one of the Soldier's Hand, before Mr. *Todd's* Shope Door, which he immediatly fired off towards the North-west; a little before which, the Deponent saw him fire his own Gun from the same Place; that upon the Captain's Firing, the Deponent saw some of the Soldiers, who stood behind the *Corn-mercate*, fire their Guns up in the Air. *Causa scientiæ patet.* And this is the Truth as he shall answer to God. *Sic sub.*

*John Moffat.
Gilb. Elliot.*

John Stewart, Merchant in *Edinburgh*, aged thirty Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time and Place libelled, the Deponent was standing in a Window of *Wine Garden's* House, on the South Side of the Scaffold: That some short Time before *Wilson* was cut down, upon some Stones being thrown at the Hangman, he observed the Pannel jump down from the South Side of the Scaffold, and walk up briskly towards the Place where the Disturbance was, but nothing in his Hand but a Cane; inmediately after this *Wilson* was cut down; upon which the Guard that attended the Execution, began to march up the *Bow*; and that at the North-West Corner of the Gallows, he observed the Pannel take a Gun out of a Soldier's Hand, with which he pushed back the Multitude; and that when the Pannel came the Length of the *Bow-Foot*, being upon the Rear of his Men, he saw him receive a Stroke with a Stone; upon which he suddenly turned about, and waved his Piece to and again, towards the Multitude, but without firing; but a very little after that, he turned about all at once, and staped some Steps forward, and fired off his Piece towards the Crowd Westward: That this was the first Shot which the Deponent either heard or saw made that Day. *Causa scientiæ patet.* And this is the Truth as he should answer to God. *Sic sub.*

*Jn^o. Stewart.
Gilb. Eliot.*

John Gibb, Cow-feeder in *Cannon-gate*, aged forty-four Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, he was standing at Mr. *Robertson's* Clofs-head, in the *Grass-Market*; that a very little after the Hangman had been on the Ladder, as he thought, to cut down *Wilson*, he observed the Pannel with his Gun in his Hand, advance towards the Crowd, where the Disturbance was, and present his Piece three Times; the last of which Times, the Deponent thought he fired her off; for he saw the Primine burn in the Pan, but could not see the firey Smoak at the Muzzel, because of the Crowd; neither could he with Certainty distinguish the Report, because several other Pieces were fired off at the same Time: That upon these Pieces being so fired, he saw one Mr. *Niel* drop down at the *Muse Well*: That before the Firing above-mentioned, he neither heard nor saw a Shot made that Day. *Causa scientiæ patet*. And this is the Truth, as he shall answer to God. *Sic sub*.

John Gibb.
Gilb. Eliot.

Followes the Witnesses adduced for the Pannel.

G *George Smeiton*, Writer in *Edinburgh*, aged thirty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, he was present at the Execution of *Wilson*: That when the Executioner was doing his Duty, he saw Captain *Porteous* come off the Scaffold, because the Mob was crowding upon the Guard; and while the Pannel was endeavouring to keep off the Mob, he saw a Man with a Silk Napkine about his Neck, press upon the Pannel, and seem to endeavour to gressp at; but that a young Gentleman there, in green Cloaths, kept him off; and then the Pannel returned to the Scaffold; but about the time the Criminal was cutting down, or to be cut down, the Pannel went off the Scaffold again; and about that Time there was Stones thrown by the Mob at the Hangman, and the Guard; and some of them fell amongst the Guard: That so far as the Deponent could observe, being upon a Bartizine, upon the South-side of the Scaffold, five Story high, the Stones seemed to be pretty large, but the Deponent cannot tell the Dementions; and then he soon observed a Shot, which was the first that he observed, and came from one of the Soldiers; and this Shot was after the Criminal was cut down; and after this Shot, in a very little followed three or four other Shots; and at this Time the Pannel had his Piece presented towards the Multitude; and that he saw the Flash of the Pan of the Soldier's Gun that fired the first Shot. Deponed, That the Pannel was pretty near the Soldier that fired the first Gun. *Causa scientiæ patet*. And this is the Truth as he should answer to God. *Sic sub*.

Geo. Smeiton.
Wa. Pringle.

Thomas Harton, Doctor in the Regiment of *Welsh* Fuzieleers, in the *Cannongate*, aged thirty nine Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, Time and

Place libelled, he was present at the Execution of *Wilson*, when he saw several Stones thrown by the Mob at the Guard, of such Bigness, that was sufficient to have killed them, in case they had hitt them in a proper Place; which continued some little Time. Deponed, That while the Criminal was hanging upon the Gallows, the Deponent saw a Man press towards the Pannel; and being come near him, he held up his Hand to him, in a threatning Manner; but the Deponent did not hear what Words he uttered. Deponed, That when the Pannel was upon the Scaffold, he had no Gun in his Hand; but when he came off again, he took a Gun from a Soldier. Deponed, That when the Pannel came off the Scaffold, he went about to the West-side, and turned about towards the North, endeavouring to get his Men together, which he could not weel do, they being so much intersperfed with the Mob; and they continuing still to throw the Stones, the Pannel turned about with his Face towards the West; and having his Fuzie in such a Manner in his Hand, as if he had not designed to fire, but waving it from Side to Side, rather seeming to intimidate them: And at this Time there was a Soldier came upon his Right Hand, and fire close by the Pannel; and this was the first Shot the Deponent observed: And deponed, That he had his Eyes strictly upon the Pannel all this Time. Deponed, He did not see the Pannel fire; and he is very well assured, that he did not fire at that Time. Deponed, That this Shot was immediatly after the Criminal was cut down. Deponed, That after this, the Pannel endeavoured to carry off his Men. Deponed, That the Soldier that came up by the Pannel's Right-side, came up from behind him. *Causa scientiæ patet*. And this is the Truth as he should answer to God. *Sic sub*.

Tho. Harton.
Wa. Pringle.

David Rannie, Merchant in *Edinburgh*, aged Forty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That after the first Firings were over, the Deponent from his own Window in the Land above Baillie *Dewars*, at the Foot of the *Bow*, saw the Pannel draw off his Men, and marching up the *Bow*, halt at Baillie *Crocket's* Shop, at which time the Deponent heard some Soldiers fire, which the Deponent apprehended was in the Rear; the Deponent looking upwards, and they that fired not being under his Eye. *Causa scientiæ patet*. And this is the Truth as he should answer to God. *Sic sub*.

David Rannie.
Andr. Fletcher.

John Clark, Serjeant in the Regiment of *Welsh* Fuzieleers, aged Thirty-three Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That the Time libelled, the Deponent was sent by the Captain who commanded the Detachment of the King's Forces in the *Lawn-mercate* to the Place of Execution, to get Orders from the Magistrates or the Pannel; and having gone up to the Scaffold, and while the Deponent was conversing with the Pannel, he saw a Stone thrown at the Executioner, which

cut him in the Nose so that he bled ; and about the same time there was a Stone, about the Bigness of the Deponent's two Fists, hit the Calf of the Deponent's Leg ; upon which the Deponent with the Pannel came down from the Scaffold, and thereafter saw the Pannel moving his Fuzie in order to keep off the Crowd, who had by that time pressed upon the Guard, and drove them about four or five Yards from the Place where they were posted at first ; and thereafter the Deponent saw Captain *Porteous* endeavouring to keep off the Mob with his Fuzie, weaving it to and again, telling them to keep off, or he would fire, but that there was no Fire at that time : And the Deponent then walking towards the *West-bow*, saw four or five of the Soldiers presenting their Pieces, and saw one of them advance to the Right where the Deponent was standing, and fire upon the Crowd ; which was the first Shot the Deponent heard ; at which time the Deponent saw the Pannel upon his Left Hand, about seven Yards from him ; and then the Deponent saw two other of the Soldiers come up betwixt the Pannel and the Deponent, and fire in the Air ; and thereafter heard four or five more Shots, which the Deponent thinks was fired betwixt the Place where the Deponent was standing and the Pannel ; and the Deponent during that time had his Eye fixt upon those who fired, and did not observe Captain *Porteous* fire or give Orders to fire ; and upon the first Shot as aforesaid, the Deponent observed a Man drop at the Entry of *Robinson's Clofs*. *Causa scientiæ patet*. And this is the Truth as he shall answer to God. *Sic subr*.

Jn^r. Clark.
Andr. Fletcher.

Colin Campbell of *Ardonnick*, aged Forty-four Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time and Place libelled, the Deponent in a Window from Mrs. *Carmichaells*, opposite to the Scaffold, observed no Disturbance till once the Executioner was going up the Ladder to cut down the Deceased *Wilson* ; and then saw some Stones thrown at the Executioner, upon which he retired ; and as he was passing the *Corn-mercate*, the Deponent observed one of the Stones hit him, and saw some Stones thrown at the Guard, who were upon the North-side of the Scaffold ; and saw the Pannel making Motion with his Fuzie to keep off the Mob ; and afterwards turned towards the Foot of the *Bow* very civilly ; and then saw a Stone hit one of the Soldiers ; and which Soldier, the Deponent saw present his Firelock ; and saw another Stone hit the same Soldier ; and thereupon the said Soldier pointed his Firelock West-ward, and fired immediately ; and another Soldier fired immediately after him ; which Firings took the Deponent's Eyes from off the Pannel ; and which two Firings, the Deponent thinks were the first that were fired by the said two Soldiers who had advanced among the Crowd from their Party. *Causa scientiæ patet*. And this is the Truth as he should answer to God. *Sic subr*.

C. Campbell.
Andr. Fletcher.

William Meanie, Serjant in the City Guard of *Edinburgh* aged Forty-eight Years or thereby, mar-

ried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, the Time and Place libelled, and about the Time the deceased *Andrew Wilson* was cut down, there was Showers of Stones thrown at the Guard ; and particularly one big Stone lighted betwixt the Deponent, and Serjant *Finlay*, above three Pound Weight ; and that the Drummer was cut in the Head with a Stone, and the Drum struck with a Stone ; and that *Alexander Muscheat* Centinell, one of the Guard, had his Shoulder Blade broke with a Stone ; and that before these Strokes were given, the Deponent, by Order of the Pannel, was drawing off, and forming his Men in the Foot of the *Bow* ; that the Pannel gave the Deponent his Fuzie, which was the Fuzie the Pannel ordinarily carried, to keep, while he attended the Execution, and the Prayers ; which the Deponent returned to the Pannel again, upon the Signe's being given to cut down *Wilson*, and before, the Pannel came down from the Scaffold. *Causa scientiæ patet*. And this is the Truth as he shall answer to God. *Sic subr*.

William Meane.
Ja. Mackenzie.

Alexander Campbell, Apprentice to *George Young*, Surgeon in *Edinburgh*, aged eighteen Years or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time and Place libelled, he saw several Stones thrown among the Guard after *Wilson* was cut down ; and saw two of the Soldiers of the Guard step aside from among the rest and fire ; and these were the two first Shots that he heard. *Causa scientiæ patet*. And this is the Truth as he shall answer to God. *Sic subr*.

Alexr. Campbell.
Ja. Mackenzie.

Matthew Howert, Souldier in the City Guard of *Edinburgh*, aged Fourty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was present at *Wilson's* Execution, at the Time libelled ; and that before, and after *Wilson* was cut down, there was a great many Stones, both great and small, thrown among the Guard by the Mob ; that after the Pannel came down from the Scaffold, he saw him wave his Piece he had in his Hand, but did not offer to present it ; then he saw a Soldier step out from the Rest, and fire his Piece in the Air ; as likewise Two or Three Soldiers that fired thereafter, did likewise fire their Pieces in the Air ; and that these, who fired first, were standing clofs by the Pannel, and the Deponent ; and these, were the first Shots he heard that Day ; and he heard the Soldiers say, one to another, Fire, or we shall all be knockt down ; and upon more Stones being thrown among them, several of them did fire ; but before that time he heard the Pannel say to the Soldiers twice, Do not fire. After these Shots were fired, the Captain marched up towards the *Bow*, and the Men followed him ; that at the Time, that the Shots were fired, as aforesaid, the Pannel was standing at the Foot of the Steps of the Scaffold, with his Face towards the Castle : And deponed, he was one of those that followed the Captain, nor did he see the Captain fire, as he was going up the *Bow* : That

when the Captain was marching on the Head o the Men, up the *Bow*, he heard a dropping Shot, or Two, fired from the Rear; nor did he see the Captain return again towards the Scaffold, but marched straight on up to the Town. *Causa scientiæ patet.* And this is the Truth as he shall answer to God. And declared he cannot write. *Sic sub.*

Ja. Mackenzie.

David Martine, Souldier in the City Guard of *Edinburgh*, aged Fourty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he the Deponent was one of the Party of the City Guard, who attended the Execution of *Andrew Wilson*; and before there was any firing he did hear the Pannel call to them, Not to fire; and before that the Deponent had his Shoulder-blade dis-jointed with a Stroke he received upon it with a Stone. *Causa scientiæ patet.* And this is the Truth as he should answer to God. And declared he cannot write. *Sic sub.*

Da. Erskine.

William Byres, Soldier in the City Guard of *Edinburgh*, aged Fifty one Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was one of the City Guard, who attended the Execution of *Andrew Wilson*; and that he did not hear Captain *Porteous* give any Orders to fire; but when the firing happened, he was at some distance from the Pannel; after the firing of several Shots, the Pannel called unto the Soldiers, To fall into their Ranks, and follow him; which accordingly the Deponent, and the rest did; falling in gradually as they were able; and followed him to the Guard-house, till they were dismissed; and in their march up the *Bow*, did hear one Shot that came from the Rear, but by whom he knows not. *Causa scientiæ patet.* And this is the Truth as he should answer to God. *Sic sub.*

William Byres.
Da. Erskine.

James Armour, Writer to the Signet, aged Fifty Years and upwards, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was looking over a Window, to see the Execution of *Andrew Wilson*; after the Criminal was thrown over, and cut down, he observed the Croud of People throwing Stones of considerable bigness, but against whom they were directed, he knew not, but they fell among the Soldiers; upon which he heard Two or Three Shots, but from whose Hands he did not observe: Thereupon there was an Intermission for Two or Three Minutes; but thereafter, when the Pannel with his Party were retiring, which they did in great Confusion and Disorder, the Croud pursued after them, renewed the throwing of great Stones, and in great Number; upon which, some of the Soldiers turned about, and marched back, some Eight or Ten Paces, still in disorder; and then heard a good Number of more Shots fired, which to his Grief he saw did great Execution. *Causa scientiæ patet.* And this is the Truth as he should answer to God. *Sic sub.*

James Armour.
Da. Erskine.

John Robertson, Stabler in the *Grass-mercato* of *Edinburgh*, aged Thirty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time libelled, as he stood in his own Window, in the *Grass-mercato*, he saw the Pannel with his Piece in his Hand, moving it to and again, keeping off the Mob; and heard him say, Fire, or I will fire, does not know which of the Two: That immediatly after this, he saw a single Man step out, three or four Paces before Captain *Porteous*, and fire his Piece; and the Deponent verily believed, that the People who fell near his *Closs*, got their Wounds by that Shot; because they were lying that Place towards which the Man seem to point. Deponed, That he heard some firing towards the Foot of the *Bow*, before the last mentioned Shot. *Causa scientiæ patet.* And this is the Truth as he should answer to God. *Sic sub.*

Job Robertson.
Gilb. Eliot.

George Vint Coal Grieve to Sir *William Baird* of *Newbyth*, aged Fourty-six Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time libelled, he was in *John Robertson's* Window in the *Grass-mercato*; when he observed the Pannel moving his Piece to and again, as if keeping off the Mob; and at the same Time he saw one of the Soldiers, a black-haired Man, step forward before the Pannel and fire his Piece; upon which the Pannel turned about to him and pushed him into his Rank: Deponed, That he did not see the Pannel fire at that time, or any other; and that the mentioned Shot was the first he heard or saw that Day. *Causa scientiæ patet.* And this is the Truth as he shall answer to God. *Sic sub.*

George Vint.
Gilb. Eliot.

Alexander Thomson Town Officer in *Edinburgh*, aged Fourty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That being upon the Scaffold on the Fourteenth of *April* last, when *Wilson* was executed; the Pannel sent him to the Magistrats, who were in *William Orr's* House, to know of them how long the Criminal should yet hang upon the Gallows; that he returned to the Pannel with the Magistrats Direction; which was that he should still hang a quarter of an Hour; but before the half of that Time was expired, *Wilson* was cut down. *Causa scientiæ patet.* And this is the Truth as he should answer to God. *Sic sub.*

Alex. Thomson.
Gilb. Eliot.

Peter Coullson, Merchant in *Edinburgh*, aged Twenty five Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, and after the first firing the Deponent being standing under the Northwest Corner of the *Corn-mercato*, saw the Pannel march the Guard under his Command up the *West-Bow*; and saw several of the Rear of that Guard fire upon the People assembled at the Execution; and at the same time observed, That

the

the Pannel was within the first Turn of the *West Bow*, and so out of the Deponent's view. *Causa scientiæ patet.* And this is the Truth as he should answer to God. *Sic subr.*

*Pet. Coulstoun.
Andr. Fletcher.*

John Kennedy Surgeon in *Edinburgh*, aged Fifty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That some short Time after the Execution of *Andrew Wilson*, in *April* last, The Deponent attended the Persons of the Town Guard after mentioned, *viz. Alexander Musbet* Soldier, the Spine of whose Shoulderbone was crushed, and *Alexander Braid* Soldier, who had a Contusion in his right Foot; both which Persons informed the Deponent, that they received these Hurts at the Execution of the said *Andrew Wilson*; and that the last mentioned Person is lame to this Day. *Causa scientiæ.* The Deponent was employed to wait upon the saids Persons. And this is the Truth as he should answer to God. *Sic subr.*

*John Kennedy.
Andr. Fletcher.*

The Lords Justice Clerk and Commissioners of Justiciary, Ordained the Assize to inclose instantly in a Room prepared for them in the *Exchequer*, and return their Verdict in the *Old Court-House* to Morrow at Four a Clock at Night; and the haill Fifteen to be then present; each Person under the Pain of Law; and the Pannel to be carried back to Prison.

Curia Justiciariæ, S. D. N. Regis, tenta in Prætorio Burgi de Edinburgo, Vigesimo Die Mensis Julii, Millesimo septingentesimo trigesimo sexto, per Honorabiles Viros, Andream Fletcher de Milton, Justiciarium Clericum, Dominum Jacobum Mackenzie de Roystoun, Magistrum Davidem Erskine de Dun, Dominos Gualterum Pringle de Newhall, et Gilbertum Eliot de Minto, Commissionarios Justiciarum, dict. S. D. N. Regis.

Curia legitime affirmata.

Intran.

JOHAN PORTEOUS lately one of the Captain Lieutenants of the City Guard, Pannel, INDICTED and ACCUSED as in the former *Sederunts.*

The Persons who past upon the Assize of the said *John Porteous*, returned their Verdict in Presence of the saids Lords; Whereof the Tenor follows.

Edinburgh, July, 20th, 1736.

The above Assize having inclosed, did choice Sir *John Inglis* of *Cramond*, to be their Chancellor; and *James Davidson* Bookseller in *Edinburgh*, to be their Clerk: And having considered the Indictment at the Instance of *Duncan Forbes* of *Collodden*, Esq; his Majesty's Advocat for his Highness Interest, against *John Porteous*, late one of the Captain Lieutenants of the City Guard of *Edinburgh*, Pannel; with the Lord Justice Clerk, and Lord Commissioners of Justiciary, their *Interloquitor* thereupon; and Depositions of

the Witnesses adduced for proving thereof; the Pannels own judicial Confession, and Depositions of the Witnesses adduced for the said *John Porteous* Pannel; his Exculpation. They all in one voice fand it proven, That the said *John Porteous* Pannel, fired a Gun among the People, assembled, at the Place of Execution, and time libelled. As also, That he gave Orders to the Soldiers under his Command, to fire; and upon his and their so firing, the Persons mentioned in the Indictment were killed and wounded. And fand it proven, That the Pannel and his Guard were attacked and beat by several Stones of a considerable bigness, thrown amongst them by the Multitude; whereby several of the Soldiers were bruised and wounded. In Witness whereof our said Chancellor and Clerk, in our Name, have subscribed their Presents, Day, and Place for said. *Sic subr.*

*Jo. Inglis Chanr.
James Davidson Clerk.*

THE Lord Justice Clerk and Lord Commissioners of Justiciary, having considered the Verdict of Assize returned against *John Porteous* Pannel of this Date, They in respect thereof, by the Mouth of *John Dalgleish* Dempster of Court, DECERNED and ADJUDGED the said *John Porteous*, To be taken from the *Tolbooth* of *Edinburgh*, upon *Wednesday* the Eighth Day of *September* next to come, to the *Grass-mercate* of *Edinburgh*, the common Place of Execution of the said Burgh, betwixt the Hours of Two and Four of the Clock of the Afternoon of the said Day, and there to be hanged by the Neck upon a Gibbet, by the Hands of the Executioner, until he be dead; and ordained all his Moveable Goods and Gear to be Escheat and Inbrought to His Majesty's Use, which was pronounced for Doom. *Sic subr.*

*And. Fletcher.
Ja. Mackenzie.
Da. Erskine.
Wa. Pringle.
Gilb. Eliot.*

The Prisoner being thus ordered for Execution, presented the following Petition to her Majesty,

To Her Most Excellent MAJESTY,

QUEEN CAROLINE,
GUARDIAN of these REALMS;

The most humble PETITION of JOHN PORTEOUS late Captain-Lieutenant of the City-Guard of *Edinburgh*; now under Sentence of Death:

SHEWETH,

THAT a certain Person named *Andrew Wilson*, being convicted in the High Court of Justiciary of *Scotland*, for a Robbery of the Publick Money, committed on the High-Way, was sentenced to Death for that Offence; and it being apprehended, the Populace would rescue the said Offender, or commit some Outrage at his Execution, your Petitioner was appointed by the Magistrates of the said City, to attend such Execution with a Detachment of the City-Guard, with-

with Orders to see the same duly executed, and to suppress any Tumults that might happen upon that Occasion: And, for that End, the said Detachment had Powder and Ball delivered to them out of the City Magazine.

That, while the said Offender was hanging upon the Gibbet, the Populace began to insist to have his Body cut down, before the Magistrates had given Orders for that Purpose; and your Petitioner having no Authority to consent thereto, without such Orders, they threatened to cut him down by Force; and, in order so to do, crowded in great Numbers upon your Petitioner and his Men, and did actually assault them with large Stones, by which several of the Detachment were hurt and wounded.

That, during this Tumult, divers of the said Detachment, without Order from your Petitioner, unfortunately fired upon the Multitude, whereby several Persons were killed, and others wounded.

That your Petitioner, after having used his utmost Endeavours to restrain such Firing by his Men, perceiving them to run into Confusion, and to act without Orders, drew them off as fast as possible to the Guard; and committed such as he suspected to have fired, to the Custody of the Guard, together with their Pieces, which he ordered to be kept for Inspection, in the same Condition as they were then in.

That your Petitioner being accused of having himself fired upon the Multitude on this Occasion, and also of having ordered the Detachment to fire, without any just or reasonable Cause, your Petitioner was put upon his Trial in the High Court of Justiciary aforesaid, for the said supposed Offence, and the Jury empannell'd to try your Petitioner, by their Verdict, found, *That it was proved, that your Petitioner had fired a Gun, and also had given Orders to the Detachment and Guard under his Command, to fire upon the Multitude so assembled; from which firing, either of your Petitioner, or of the Detachment of Guard under his Command, by his Order, the several Persons specified in the Indictment against him, were respectively killed and wounded. And also found it proved, That the Mob assembled at the Execution aforesaid, did invade and attack your Petitioner, and the Detachment of Guard under his Command, with Stones, of a considerable Bigness, whereby several of the Men of the Guard were bruised and wounded.*

Upon which Verdict returned by the Jury, the Court decerned and adjudged your Petitioner to be hanged upon a Gibbet, upon the Eighth Day of *September* next.

That tho' your Petitioner is sensible of that Deference and Respect that's due to the Verdict of a *British* Jury, yet he humbly begs leave to represent to your most excellent Majesty, the following Circumstances as they appeared upon his Trial; *to wit*, That the Evidence against your Petitioner, as to his having fired, or given Orders to fire, was very contradictory and inconsistent; for tho' some of the Witnesses deposed, that your Petitioner fired the first Shot, yet they differed extremely as to your Petitioner's Situation, at the time he is alledged to have so fired, as well as in other Circumstances; some placing him at one Corner, and others at a quite opposite Corner of the Scaffold: Some alledging, that none of the Soldiers were then near your Petitioner,

and that no other Shots were fired at that time; while others describe your Petitioner as encompassed with Soldiers, and say, that several Shots were fired instantly upon your Petitioner's firing such first Shot; and some agree, that the first Shot was not fired by your Petitioner, but by a Centinel of the Guard, who was close by your Petitioner.

Whereas, a great many Persons, of undoubted Credit and Veracity, produced on the Part of your Petitioner, expressly swore, That, during the whole time of the Firing, (which continued about four or five Minutes) they took exact Notice of your Petitioner's Behaviour and Conduct, and could not observe that he fired at all; but that, upon the Mob's pressing severely upon your Petitioner and his Men, and pelting them with large Stones, your Petitioner called aloud to keep off, otherwise he would fire; and that upon your Petitioner's pointing his Piece, in order to intimidate the Mob, a Centinel of the Guard, (unknown to the Witnesses) advanced from behind your Petitioner, and fired the first Shot, upon which one of the Multitude fell to the Ground: From which Example, they supposed, several others fired; by means whereof, the several Persons in the Indictment mentioned, were either killed or wounded.

And as a farther Circumstance, to shew that your Petitioner did not fire, it was proved, that upon his Return from the Execution, your Petitioner went directly of his own Accord to the Magistrates, who examined his Piece, and found the same loaded, and in such Condition, that they agreed and were satisfied, it had not been fired; and the Sergeant of the Detachment attested, that your Petitioner having delivered his Piece to the Deponent to keep, while your Petitioner attended the Devotions at the Execution, the Deponent restored the same again to your Petitioner, just before your Petitioner descended from the Scaffold, which is a strong Circumstance to shew that your Petitioner must have fired his own Piece, if he had fired at all.

Your Petitioner also begs leave humbly to observe, that when a Band of armed Men are together, and some of them fire, it is very difficult, especially for those at a Distance, to discriminate the Persons that actually fired; and your Petitioner is in Charity led to believe, that the Circumstance of your Petitioner's levelling his Piece, and threatening to fire, attended with that of the Centinel's having fired just behind your Petitioner, may have induced some unwary Persons, in the heat of popular Fury and Repentment, to be too positive in the Assertion of Facts, in their nature dubious and uncertain.

And as to your Petitioner's having given Orders to the Men to fire, though two or three Persons gave Evidence against your Petitioner as to that Fact, yet neither did they agree touching the Place where your Petitioner was standing, nor in the Form of Words pretended to be used by your Petitioner in the giving thereof. Whereas it was deposed by a great Number, particularly of the Soldiers, who were close by your Petitioner during the whole Time of the Fray, that they could not observe that your Petitioner gave any such Orders; but on the contrary, that he called aloud to the Men, *Don't fire*, and that he push'd back the Man that fired the first Shot into his

his Rank, (which shews that your Petitioner did not approve thereof;) that he drew off the Men as fast as he could; and that being pursued and pelted by the Populace, divers in the Rear turned about and fired, when your Petitioner was at such Distance, that he could not possibly be privy or consenting thereto.

It was likewise observed at the Trial, and not contradicted, That upon many former Occasions of Tumults, when your Petitioner with the Guard hath been ordered to quell the same, your Petitioner had bore great Insults from the Populace, even to the Danger of his Life, without firing, or ordering his Men to fire, and that in Cafes where he would have been well justified by the Law in doing either.

So that upon the whole, as your Petitioner hath the inward Satisfaction of being conscious to himself of his Innocence of the Facts charged against him, so he humbly apprehends, that the Evidence adduced to prove the same, when compared with your Petitioner's Defence, will not appear to be certain or conclusive.

But in case your Petitioner had been guilty either of firing, or ordering his Men to fire, upon the Occasion aforesaid, your Petitioner most humbly intreats your Majesty to consider, that your Petitioner was in the Exercise of a Trust delegated to him by the lawful civil Authority; that he and his Detachment were first unlawfully assaulted and invaded by the Populace, and divers of his Men bruised and hurt; and if, in the Case of such an Insult upon the Laws, your Petitioner had proceeded to repel Force by Force, your Petitioner humbly begs leave to observe, That tho' he should look back with the utmost Sorrow upon so fatal an Event, yet he humbly hopes, that the Provocation and Aggression aforesaid, would be considered by your most excellent Majesty, in your profound Wisdom, as a great Extenuation of an Offence, which could not be supposed to be attended with any prepense Malice of your Petitioner, against Persons of whom he had no Knowledge; and that your Petitioner would be deemed a proper Object of the Royal Clemency.

Your Petitioner therefore most humbly prays your most excellent Majesty, to take your Petitioner's unfortunate Case into your Royal Consideration; and to extend that Mercy and Compassion to your Petitioner, by which your Majesty, adorned with all Excellent and Princely Qualities, is so remarkably distinguished; and that your Majesty will be graciously pleased to issue your Royal Warrant for your Petitioner's Pardon. And your Petitioner, whose Duty hath hitherto rendered him, on all Occasions, most zealously attached to his Majesty, and our happy Constitution, will, from the additional Bond of the most powerful Gratitude, devote that Life to the Service of His most excellent Majesty, and His Illustrious House, which he shall enjoy as the Fruit of Your Majesty's Clemency and Grace.

Her Majesty was pleased so far to comply with this Petition, as to grant a Reprieve, which was signified as follows.

Curia Justiciaræ, S. D. N. Regis, tenta in Novo Sessionis Domo Burgi de Edinburgo, Tertio Die Mensis Septembris, Millesimo septingentesimo trigesimo sexto, per Honorabiles Viros, Andream Fletcher de Milton, Justiciarium Clericum, Dominos Jacobum Mackenzie de Roystoun, Gualterum Pringle de Newhall, Commissionarios Justiciarum, dictos S. D. N. Regis.

Curia legitime affirmata.

THE said Day the Lord Justice Clerk delivered a Letter from his Grace the Duke of Newcastle, one of His Majesty's Principal Secretaries of State, whereof the Tenor follows.

Whitehall, August 26, 1736.

My Lords, Application having been made to Her Majesty in the Behalfe of *John Porteous*, late Captain Lieutenant of the City Guard of *Edinburgh*, a Prisoner under Sentence of Death in the Goal of that City; I am commanded to signify to your Lordships Her Majesty's Pleasure, That the Execution of the Sentence pronounced against the said *John Porteous*, be respited for six Weeks from the Time appointed for his Execution. I am my Lords, Your Lordships most Obedient Humble Servant. *Sic subscribitur.*

Holles Newcastle.

Directed on the Back thus,

To the Right Hon. the Lord Justice General, Justice Clerk, and other Lords of the Justiciary at Edinburgh.

HEREAFTER, the said Lords, gave their Warrant to the Magistrats of *Edinburgh*, for stopping the said Execution, whereof the Tenor follows. By the Right Honourable the Lord Justice Clerk, the Lords Commissioners of Justiciary: WHEREAS Her Majesty Guardian of the Kingdome, has been graciously pleased by a Letter signed by his Grace the Duke of Newcastle, one of His Majesties principal Secretaries of State, to signifie Her Pleasure to us, That the Sentence of Death pronounced against *John Porteous*, late Captain Lieutennant of the City Guard of *Edinburgh*, present Prisoner in the *Tolbooth* of *Edinburgh*, which was to have been execute upon him, upon the eight Day of *September* Instant, be respited for six Weeks from the Time appointed for his Execution. THESE THEREFORE, In Obedience to Her Majesties Commands, discharge and prohibite the Magistrats of *Edinburgh*, and all other Officers of the Law, from putting the forsaid Sentence of Death in Execution, upon the said *John Porteous*, till the Twentieth of *October* next to come; on which Day, the said Magistrats of *Edinburgh*, are hereby required and ordained to put the former Sentence of Death in Execution, upon the said *John Porteous*

in

in all Points, as they will be answerable. GIVEN at *Edinburgh*, the third Day of *September*, 1736 Years. *Sic subscribitur.*

And. Fletcher.
Ja. Mackenzie.
Wa. Pringle.

EXTRACTED furth of the Books of Adjournal, upon this, and the preceeding One hundred and twenty-four Pages. By me *John Davidson*, Clerk to the Court of Justiciary.

Jo. Davidson, Clerk.

But the Populace being greatly displeas'd with this Favour shewn to Captain *Porteous*, against whom they were mightily incens'd, audaciously took upon them to execute the Sentence themselves. Accordingly on *Tuesday*, *September* the 7th, about Ten o'Clock at Night, (being the Night preceeding the Day, which had been appointed by the Court for his Execution,) some Men by Surprize, entered the City, seized all the Fire-arms; Battle-axes, and the Drums belonging to the City Guard. The Mob in a few Minutes lock'd and secur'd all the City Gates, and with Drums beat an Alarm, then attempted to force open with Hammers and other Instruments the Prison Door; but these failing, they set fire to it, and burnt it. When they entered the Prison, they called upon the Under-Keeper who was within, and made him open the double Locks of the Apartment where Captain *Porteous* was; it had also a Bolt within, but was not bolted, so they had ready Access. He beg'd they would spare him till next Afternoon; but they refus'd his Request, and immediately hurried him away, which was about Eleven o'Clock. When brought out of Prison, he was heard to cry. They then marched out with lighted Torches before them: In their Way to the *Grass-market*, passing by a Barber's Sign-post, some called out to hang him up there; but it was resolv'd to hang him where the Murder was committed; so they proceeded to the Place that the Gallows used to be fixed for Execution, where he was about a

Quarter of an Hour, till they opened a Shop and brought out a Rope, one End of which they threw over a Sign-post, about 20 Foot high, belonging to a Dyer in the *High-street*, near the ordinary Place of Execution. He desired some Time to prepare for Death; but they answered, They would allow him no more than those who were shot. They then pulled him up in the Dress in which they found him, *viz.* a Night-Gown and Cap. He having his Hands loos'd, fixed them 'twixt his Neck and the Rope, where-upon one with a Battle-ax struck towards his Hands. They then let him down, and having on two Shirts, they wrap'd one of them about his Face, and tied his Arms with his Night-Gown; then pulled him up again, where he hung next Morning till Day-light. When he was cut down, and carried to the *Grey-Friers* Church, upon inspecting his Body, it appeared his Left Shoulder was wounded, his Back discoloured, and his Neck broke.

It was observ'd, that this Mob was under a stricter Concert and better conducted than usual; for as marching along to the Execution, *Porteous* observing a Gentleman of his Acquaintance, he gave him a Purse of 23 Guineas, which he desir'd might be delivered to his Brother. They left the Prison Doors open, and Liberty to the Prisoners to make their Escape; and after the Execution was over, they left the Arms and Drums on the Place of Execution, where they were found the next Morning. During the Tumult, Parties of armed Men, with Drums, patrolled in the different Streets, to prevent any Surprize from the King's Forces, quarter'd in the Suburbs. After the Execution was over, they went to the Lord Provost's House, and told him, they were satisfi'd, and so dismiss'd, without offering any other Violence.

There is one further Circumstance, That in order to supply the Want of Clergymen, they order'd two of the gravest of their Number to exhort him, as he went to the Place of Execution.



CXCVII. *The Trials of Samuel Goodere, Esq; Matthew Mahony, and Charles White, for the Murder of Sir John Dineley Goodere, B^t. (Brother to the said Samuel Goodere) on Board his Majesty's Ship the Ruby: At the Sessions of Peace, Oyer and Terminer, and General Goal-Delivery, held in and for the City of BRISTOL, and County of the same City, in the Guild-hall of the said City; before the Right Worshipful Henry Combe, Esq; Mayor of the said City, Michael Foster, Esq; Serjeant at Law, Recorder; and others his Majesty's Justices of Goal-Delivery. Begun on Tuesday, the 17th of March 1740. and continued by Adjournment to Thursday, the 26th of the same Month, 1741. Published with the Approbation of Mr. RECORDER.*

ON Wednesday, the 18th of March, 1740; a Bill of Indictment was found by the Grand Inquest for the City of Bristol, and County of the same City, against Matthew Mahony and Samuel Goodere, for the Murder of Sir John Dineley Goodere; when Dr. Middleton (Mr. Goodere's Physician) acquainted the Court, That, in his Opinion, Mr. Goodere was, through bodily Indisposition, unable to undergo the Fatigue of his Trial. But being ask'd by Mr. Vernon (of Counsel for the King) whether the Prisoner's Health would not permit him to be brought into Court and plead to his Indictment; and the Doctor declaring his Opinion, that he might be brought up, Mr. Recorder was pleas'd to order, that he should be brought up the next Day, in order to plead to his Indictment. Accordingly, on Thursday the 19th, Mr. Goodere and Matthew Mahony were brought to the Bar; when the Court proceeded thus:

Clerk of the Arraigns. Matthew Mahony, hold up thy Hand; Samuel Goodere, hold up thy Hand; (which they severally did.) You stand indicted by the Names of Matthew Mahony, late of the Parish of St. Stephen in the City of Bristol, and County of the same City, Labourer; and Samuel Goodere, late of the same Parish, City and County, Esq; for that you, not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, on the 19th Day of January, in the 14th Year of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, and so forth; with Force and Arms, at the Parish aforesaid, in the City aforesaid, and County of the same City, in and upon one Sir John Dineley Goodere, in the Peace of God, and of our said Sovereign Lord the King, then and there being, feloniously, voluntarily, and of your Malice aforethought, did make an Assault; and that you, the aforesaid Matthew Mahony, a certain Cord,

of the Value of one Penny, about the Neck of the said Sir John Dineley Goodere then and there feloniously, voluntarily, and of thy Malice aforethought, did put and fasten; and that you the aforesaid Matthew Mahony, with the Cord aforesaid, (by you, the aforesaid Matthew Mahony, so about the Neck of the aforesaid Sir John Dineley Goodere put and fastened) then and there him the aforesaid Sir John Dineley Goodere feloniously, voluntarily, and of your Malice aforethought, did choak and strangle; of which said Choaking and Strangling of him the aforesaid Sir John Dineley Goodere, by you the aforesaid Matthew Mahony in manner and form aforesaid done and perpetrated, he the aforesaid Sir John Dineley Goodere then and there instantly died: And that you, the aforesaid Samuel Goodere, then and there feloniously, voluntarily, and of thy Malice aforethought, was present, aiding, abetting, comforting, and maintaining the aforesaid Matthew Mahony in manner and form aforesaid, feloniously, voluntarily, and of his Malice aforethought the aforesaid Sir John Dineley Goodere to kill and murder; and so you the said Matthew Mahony, and Samuel Goodere, in manner and form aforesaid, the aforesaid Sir John Dineley Goodere then and there, feloniously, voluntarily, and of your Malice aforethought did kill and murder, against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

Clerk of the Arraigns. How sayest thou, Matthew Mahony, art thou guilty of the Felony and Murder whereof thou standest indicted, or not guilty?

Mahony. Not guilty.

Cl. of Arr. Culprit, how wilt thou be tried?

Mahony. By God and my Country.

Cl. of Arr. God send thee a good Deliverance.

Cl. of Arr. How sayest thou, Samuel Goodere, art thou guilty of the Felony and Murder whereof thou standest indicted, or not guilty?

Samuel Goodere. Not guilty.

Cl. of Arr. Culprit, how wilt thou be tried ?

Samuel Goodere. By God and my Country.

Cl. of Arr. God fend thee a good Deliverance.

Mr. Vernon. Mr. Recorder, I attend as Counsel for the King on this melancholy Occasion, and it is with no small Regret and Concern I at any time act in this Station against my Fellow-Creatures, when under Circumstances like those of the Prisoners at the Bar ; and the rather, as knowing it almost impossible so to act, in a Business of this nature, as not to be thought on the one side to have done too much, and on the other too little : However, Sir, I shall, in the Course of this Prosecution, endeavour to observe that Mediocrity which is ever inseparable from humane Minds ; and if I can be so fortunate as to conduct myself to the Satisfaction of you, Mr. Recorder, and the Court, I shall readily give up the rest, and content myself with the Thoughts of having aimed at a just Discharge of my Duty.

Sir, the Prisoners, *Mr. Goodere* and *Mabony* have thought proper to plead in chief to their Indictment, and put themselves upon their Trial in the ordinary Course of Law ; and as far as may be judged from outward Appearance, *Mr. Goodere* seems able enough at present to take his Trial on the Merits or Demerits of his Case : And if so, we for the King are ready, on our Parts, to enter upon our Duty. On the other hand, if, in the Opinion of that learned Gentleman [*Dr. Middleton*] *Mr. Goodere* is not in a fit Condition (through bodily Weakness or Indisposition) to be brought upon his Trial, God forbid we should be for pressing it on with such Celerity, as to prejudice him in making of his Defence. But then, as we would not be for accelerating his Trial, so neither would we be for giving into any affected Delay. I therefore hope, Sir, such a Day will be fix'd for the coming on of this Business, as that the Sea-faring part of our Witnesses, whom at present publick Justice calls for abroad as well as at home, may be dispatched at due time for the other necessary Service of their King and Country.

Mr. Recorder. I think we ought to proceed to the Trial immediately, unless Cause be shewn to the contrary.

Mr. Frederick, Counsel for *Mr. Goodere.* I appeal, Sir, to the Doctor, whether *Mr. Goodere's* Case and Circumstances will at present admit of it.

Mr. Recorder. Let *Dr. Middleton* be sworn.

Dr. Middleton sworn.

Mr. Vernon. *Dr. Middleton,* I think, Sir, you have attended *Mr. Goodere* (the Prisoner at the Bar) during the Course of his Illness, will you please therefore to give the Court an Account of his present State of Health ?

Dr. Middleton. *Mr. Goodere* has been my Patient for some time in a malignant Fever, which left him last Sunday Evening, and since that time he has been growing better, and on the mending hand ; in his Fever his Head was very much disordered (as at present happens to be the Case of many that are seized with this Epidemical Fever, the Head being generally much affected in most of them) I think he will not be able to bear the Fatigue of his Trial at present. If he is put upon his Trial, it will be an hardship.

Mr. Recorder. If the Case be so, that his Head is disordered, whereby he is render'd less capable of making his Defence, I think it would

be a Piece of Inhumanity not to put off his Trial. What if we adjourn it to this Day seven-night ?

Mr. Vernon. I am heartily glad to find *Mr. Goodere* is on the mending hand, and hope he will continue to mend ; his Counsel seems to think he may now come upon his Trial ; yet, for the honour of *Dr. Middleton,* I would not press it on at this Juncture.

Mr. Recorder. What doth *Mr. Goodere* himself say to it ?

Samuel Goodere. I hope in eight or nine Days to be better, or dead.

Mr. Recorder. I have propos'd this Day seven-Night.

Samuel Goodere. Whatever you please I submit to.

Mr. Vernon. *Dr. Middleton,* Sir, as you are known to be a Gentleman of great Honour and Abilities, we may safely depend upon your Account ; therefore I should be glad to know how soon (humanly speaking) *Mr. Goodere's* bodily Health may admit of his taking his Trial. I know, Sir, you are a Gentleman that has a great Regard and Care for your Patients.

Dr. Middleton. I should rather choose to exceed in Care than fall short of it.

Mr. Vernon. But 'tis possible to have an over-care : Therefore, Sir, I would ask you, whether, upon your Oath, you do not think he will be able, in point of Health, to take his Trial in three or four Days ?

Dr. Middleton. The Captain may put himself on his Trial now, if he pleases ; but I don't think he's fit for it, upon my Oath. If it was left to me, I should desire the whole Time the Recorder has mentioned.

Mr. Frederick. That is to this Day seven-night, we shall not be able to attend the Court sooner. We hope the Trial will be put off till this Day seven-night ?

Mr. Recorder. Let it be so.

Cl. of Arr. *Matthew Mabony,* you stand charged likewise upon the Coroner's Inquest for the same Felony and Murder, art thou guilty, or not guilty ?

Matthew Mabony. Not guilty.

Cl. of Arr. *Samuel Goodere,* you likewise stand charged upon the Coroner's Inquest for the same Felony and Murder ; art thou guilty, or not guilty ?

Samuel Goodere. Not guilty.

Mr. Recorder. The Prisoners may withdraw.

On Thursday, the 26th of March 1741, the Court met according to Adjournment ; and, being open'd, the Prisoners *Matthew Mabony* and *Samuel Goodere,* were brought again to the Bar ; and the Court proceeded as follows :

Mr. Shephard, Counsel } *Mr. Recorder,* the
for the Prisoner *Goodere.* } Prisoner *Goodere* has
in a great degree lost his Hearing, therefore desires that he may be brought nearer the Witnesses, that he may be able to hear what they say.

Mr. Recorder. Let him come nearer. *Mabony,* are you willing to come forward to the Bar ?

Mabony. Yes, my Lord, I am hard of hearing.

Mr. Shephard. He desires the same Indulgence.

Mr. Recorder. If he desires it, let him come forward too.

Mr. *Vernon*. Mr. Recorder, by this Indulgence being moved for on the behalf of *Mahony* as well as Mr. *Goodere*, I presume these Gentlemen attend as Counsel for them both, if Matter of Law should arise.

Mr. *Frederick*. No, Sir, I do not.

Mr. *Shepherd*. No, Sir, I do not.

Cl. of Arr. Cryer, make a Proclamation for Silence.

Cryer. Oyez, Oyez, Oyez; The King's Majesty's Justices strictly charge and command all Manner of Persons to keep silence, upon Pain of Imprisonment.

Cl. of Arr. You *Matthew Mahony* and *Samuel Goodere*, now Prisoners at the Bar, these Men which you shall hear called, and will personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your several Lives and Deaths; if you, or either of you, will challenge them, or any of them, you must speak unto them as they come to the Book to be sworn, before they be sworn. Cryer, make an Oyez, and call the petty Jury.

Cryer. Oyez; You good Men that are impannelled to try between our Sovereign Lord the King and the Prisoners at the Bar, answer to your Names, and save you Fines.

Mr. Recorder. Prisoners, you have each of you the Liberty of challenging twenty of the Jurors, without shewing Cause: But you must now declare whether you will challenge severally or not; for if you do not join in your Challenges, we must try you severally.

Mahony. I leave it to the Captain to challenge.

Cl. of Arr. *Christopher Bromadge*.

Cryer. He appears.

Cl. of Arr. Mr. *Bromadge*, to the Book.

Cryer. *Christopher Bromadge*, look upon the Prisoners; you Prisoners, look upon the Juror; you shall well and truly try, and true Deliverance make, between our Sovereign Lord the King and the Prisoners at the Bar, whom you shall have in Charge, and a true Verdict give, according to your Evidence: So help you GOD.

And the same Oath was administered to the rest, (which were sworn) and their Names are as follow:

- Christopher Bromadge*, - - - - - sworn.
- Isaac Brodrigg*, - - - - - sworn.
- John Merewether*, - - - - - sworn.
- Christopher Lilly*, - - - - - sworn.
- James Wimble*, - - - - - sworn.
- Joseph Gregory*, - - - - - sworn.
- John Scott*, - - - - - sworn.
- Isaac Bannister*, - - - - - sworn.
- William England*, Capt. *Goodere*, I challenge him.
- Francis Billow*, Capt. *Goodere*, I challenge him.
- William Jones*, - - - - - sworn.
- Samuel Page*, - - - - - sworn.
- John Perks*, - - - - - sworn.
- William Dyer*, - - - - - sworn.

Clerk of Arr. Cryer, count these.

- Christopher Bromadge*, *John Scott*,
- Isaac Brodrigg*, *Isaac Bannister*,
- John Merewether*, *William Jones*,
- Christopher Lilly*, *Samuel Page*,
- James Wimble*, *John Perks*,
- Joseph Gregory*, *William Dyer*.

Cryer. Twelve good Men, and true. Gentlemen, are ye all sworn?

Cl. of Arr. Cryer, make Proclamation.

Cryer. Oyez, Oyez, Oyez; If any one can inform the King's Majesty's Justices, the King's Serjeants, the King's Attorney or Advocate, before this Inquest be taken between our Sovereign Lord the King and the Prisoners at the Bar, of any Treason, Murder, Felony, or other Misdemeanour, committed or done by the Prisoners at the Bar, or either of them, come forth, and you shall be heard, for the Prisoners stand at the Bar upon their Deliverance; and all Persons bound by Recognizance to prosecute them, or either of them, come forth, and prosecute, or you will forfeit your Recognizances.

Cl. of Arr. *Matthew Mahony*, hold up thy Hand; *Samuel Goodere*, hold up thy Hand. Gentlemen of the Jury, look upon the Prisoners, and hearken to their Charge; they stand indicted by the Names of *Matthew Mahony*, late of the Parish of *St. Stephen* in the City of *Bristol*, and County of the same City, Labourer; and *Samuel Goodere*, late of the same Parish, City and County, Esq; for that they not having, (as in the Indictment before set forth.) Upon this Indictment they have been lately arraigned, and thereupon have severally pleaded not guilty; and for their Trials have put themselves upon God and the Country, which Country you are: Your Charge is, to inquire whether they, or either of them, be guilty of the Felony and Murder in manner and form as they stand indicted, or not guilty. If you find them, or either of them, guilty, you shall inquire what Goods or Chattels, Lands or Tenements they, or either of them had, at the time of the Felony committed, or at any time since: If you find them, or either of them, not guilty, you shall inquire whether they, or either of them fled for the same: If you find that they, or either of them did fly for the same, you shall inquire of their, or either of their Goods, and Chattels, as if you had found them or either of them guilty: If you find them, or either of them not guilty, and that they or either of them did not fly for the same, say so, and no more; and hear your Evidence.

Mr. *Vernon*. May it please you, Mr. Recorder, and you Gentlemen that are sworn on this Jury, I am Counsel for the King against the Prisoners at the Bar, who stand indicted for the Murder of Sir *John Dineley Goodere*; they stand also charged on the Coroner's Inquest with the same Murder: And tho' it is impossible for human Nature not to feel some Emotions of Tenderness at so affecting a Sight as now presents itself at the Bar; yet, Gentlemen, should the Guilt of this black and frightful Murder be fixed upon the Prisoners (as from my Instructions I fear it will) Pity must then give way to Horror and Astonishment at the Baseness and Barbarity of the Fact and Circumstances; and our Sorrow ought to be, that through the Lenity of the Laws, the Unnatural Author and Contriver of so shocking a piece of Cruelty, and this his Brutal Accomplice in the Ruffianly Execution of it, should be to share the common Fate of Ordinary Malefactors. Gentlemen, you perceive it is laid in the Indictment that the Prisoner *Mahony* strangled the Deceased, and that the Prisoner *Goodere* was present, aiding and abetting him in that barbarous Action, and so

involved in the same Guilt, and equally a Principal in the Murder: But, Gentlemen, Mr. Recorder, I believe, will tell you, that the only Matter for your Inquiry will be, Whether the Prisoners were concurring in the Murder of the Deceased, and present at the Strangling of him; for if so, whether *Mabony*, Mr. *Goodere*, or another in fact strangled him; it will in consideration of Law be the same thing, and the Act of Strangling will be as much imputable to each of them, as if they had both assisted in putting the Cord about the Neck of the Deceased, and been his actual Executioners; nor will it be material whether they strangled him with a Rope, a Handkerchief, or their Hands, so the kind of Death be proved. And, Gentlemen, as to the Crime set forth in the Indictment, I have Matter; in my Brief, for a very heavy Charge against both the Prisoners, but distinguished against the Prisoner Mr. *Goodere* with this black Characteristick, that he was Brother of the Deceased, and, as such, bound by the Ties of Blood and Nature, to have preserved his Person from Violence; and yet, Gentlemen, I am afraid it will appear, that his Brother died by his Procurement, and in his Presence, which is the same, in effect, as if he had perished by his Hand. But as it would ill become me to aggravate in a Case of this nature, I shall only state to you the most material Passages relating to the Murder of that unfortunate Gentleman, and leave the rest to come from the Mouths of the Witnesses themselves. And, Gentlemen, (as I am instructed) there had been a long and very unhapy Difference between the deceased Sir *John* and his Brother the Prisoner, owing to various Occasions; and amongst others, to Sir *John's* having cut off the Entail of a large Estate in *Worcestershire*, to which Mr. *Goodere* (as the next Remainder-man) would have otherwise stood intituled, in default of Issue of Sir *John*. Gentlemen, this Misunderstanding by degrees grew to an inveterate Grudge and Hatred on the part of Mr. *Goodere*; which was so rooted in his Heart, that it at length worked him into a formed Design of destroying his Brother, and making away with him at all hazards and events. The great Difficulty was, how to get Sir *John* into his Power, for he generally travelled armed; nor was it easy to get together a Sett of Fellows, so base and desperate, as to join with him in the carrying off his Brother. But, unfortunately for the Deceased, the Prisoner, Mr. *Goodere*, having been lately honoured by his Majesty with the Command of the *Ruby* Man of War, happened, in *January* last, to lie stationed in *King-road*, (as much within the County of *Bristol*, as the *Guild-hall* where this Court is sitting.) Sir *John* (who was advanced in years, and very ailing) had, it seems, been advised to come to *Bath* for the Recovery of his Health: And having occasion to transact Affairs of Consequence at *Bristol* with Mr. *Jarrit Smith*, Mr. *Goodere* took this Opportunity of laying a Snare for his Brother's Life, as you will find by the Event. He applies to Mr. *Smith*, and taking notice to him of the Misunderstanding between himself and his Brother, pretends a sincere Desire of Reconciliation, and desires Mr. *Smith*, if possible, to make up the Breach between them; and Mr. *Smith* promised to do his utmost towards effecting a Reconciliation, and was as good as his Word; for, by his Interest and Persuasions, he at length prevailed

upon Sir *John* to see and be reconciled to his Brother. And Sir *John* having appointed *Tuesday* the 13th of *January* last in the Morning for calling on Mr. *Smith* at his House in *Colledge-green*, Mr. *Smith* soon made his Brother, Mr. *Goodere*, acquainted therewith; and no sooner was he informed of it, but he begun to take his Measures for the executing his wicked Scheme against his Brother's Life. For on *Monday* (the Day before Sir *John* was to be at Mr. *Smith's*) Mr. *Goodere*, with the other Prisoner *Mabony*, (his inseparable Agent and Companion in every Stage of this fatal Business) went together to the *White Hart*; an Ale-house near the foot of the *Colledge-green*, in the View of, and almost opposite to Mr. *Smith's*, in order to see if it was a fit Place for their desperate Purpose: and finding it to be so, Mr. *Goodere* commended the Pleasantness of the Closet over the Porch, and said he would come and breakfast there the next Day. And accordingly the next Morning (which was *Tuesday* the 13th) Mr. *Goodere*, with his Friend *Mabony*, and a Gang of Fellows belonging to the Privateer called the *Vernon*, whom they had hired to assist them in the way-laying and seizing of Sir *John*, (but whom, one would have thought, the Name of that gallant Admiral should have inspired with nobler Sentiments) came to the *White Hart*, where having ordered they should have what they would call for, he went himself to breakfast in the Closet over the Porch, from whence he had a full View of Mr. *Smith's* House, whilst the others posted themselves below on the Look-out for Sir *John*; and it was not long before he came on horseback to Mr. *Smith's*: But his Stay was very short, being obliged to go to *Bath*; however, he promised Mr. *Smith* to be in *Bristol* again by the *Sunday* following. He was seen from the *White Hart* by Mr. *Goodere* and his Spies upon the Watch; but having a Servant, and riding with Pistols, they did not think proper to attempt the seizing of him then; but, as he rode down the Hill by *St. Augustine's Back*, Mr. *Goodere* called out to *Mabony* in these Words, *Look at him well, Mahony, and watch him, but don't touch him now.* And in fact, Gentlemen, the Prisoners and their Companions followed and watched Sir *John* a considerable way. Afterwards Mr. *Smith* acquainted the Prisoner Mr. *Goodere*, that his Brother was to be with him on the *Sunday* following; and little thinking that an Interview between Brothers could be of a fatal Tendency, advised him to be in the way, that he might bring them together: Which Advice the Prisoner observed with but too great Punctuality, taking care, in the Interim, to lay such a Train, as that it should be hardly possible for his Brother to escape falling into his Hands. He ordered the Man of War's Barge to be sent up for him on the *Sunday*, accordingly it came up about 2 or 3 that Afternoon; of which Mr. *Goodere* being informed by one *Williams*, a Midshipman, whom he had ordered up in it, he enquired of *Williams*, if he knew the River, and *Brick-kilns* going down it? And *Williams* telling him he did, Mr. *Goodere* ordered him to get all the Boat's Crew together, and be sure to place the Barge at the *Brick-kilns*, and leave but two or three Hands to look after the Barge, and bring all the rest of the Men to the *White Hart* Ale-house, and wait for him there, for he had a *Certain Person* coming on board. Accordingly, Gentlemen, *Williams* and most

most of the Barge-men came to the Place of Rendezvous at the *White Hart*, where *Mahony*, with several of the Privateer's Men (I believe, all, or most of the same Gang that had been there on the Watch the *Tuesday* before) were also met by Mr. *Goodere's* Orders to way-lay and seize Sir *John*, and stood at the Window on the Look-out, in order to watch his coming out of Mr. *Smith's*. Thus, the Ambuscade being laid, the Prisoner Mr. *Goodere* goes to Mr. *Smith's* about three in the Afternoon, (the Hour at which Sir *John* had appointed to be there;) he went directly towards his Brother Sir *John*, and kissed him, (what kind of Kiss it was, will best appear by the Sequel) and observed to him with an outward Shew of Satisfaction, that he looked in better Health than he had formerly done. Mr. *Smith* was so good to drink Friendship and Reconciliation between the two Brothers: Mr. *Goodere* pledged it in a Glass of Wine, which he drank to his Brother Sir *John*; and Sir *John* (being under a Regimen) offered to pledge him in Water, little thinking his Brother designed to end their Differences, by putting an End to his Life. But that, Gentlemen, you'll soon see was the sole End he had in view; for Sir *John* in about half an Hour taking his Leave, Mr. *Goodere* was following him, Mr. *Smith* stopt Mr. *Goodere*, saying, *I think, I have done great things for you.* Says Mr. *Goodere*, *By God this won't do;* and immediately followed his Brother: And meeting some of the Sailors whom he had posted at the *White Hart*, says to them, *Is he ready?* and being answered, *Yes*, he bid them make haste. *Mahony*, and the other Fellows who were on the Look-out at the *White Hart*, seeing Sir *John* go down *St. Augustine's Back*, immediately rush'd out, and (as they had been ordered by Mr. *Goodere*) seiz'd Sir *John* as their Prisoner. Just then Mr. *Goodere* himself was come up, and had joined his Companions, and shewed himself their Ring-leader: For (according to my Instructions) he gave them positive Orders to carry Sir *John* on board the Barge, and they but too exactly observed the Word of Command. They hurried on Sir *John* with the utmost Violence and Precipitation, forcing him along, and even striking him in the Presence of his Brother, and (as the *Romans* used to do their Malefactors) dragged him through the publick Way. The poor unfortunate Creature made repeated Outcries of Murder, that he was ruined and undone, for his Brother was going to take away his Life. He made what Resistance he could, and called aloud for Help, but all was to no purpose. Several Persons indeed followed them, and asked what was the matter? but they were answered by Mr. *Goodere* and his Associates, that the Person they were haling along was a Murderer, had killed a Man, and was going to be tried for his Life. The most of this Ruffianly Crew being armed (it seems) with Bludgeons and Truncheons, obliged the People who came about to keep off; holding up their Sticks at them, and threatening to knock them down. Gentlemen, when they had thus forced Sir *John* towards the End of the Rope-walk, Mr. *Goodere* (who all along bore them Company, and animated them as they passed along) bid them make more Dispatch, and mend their Pace. Accordingly they took up Sir *John*, and carried him by main Force a considerable way, then set him down again, and pushed and

halled him along; till they had got him to the *Slip*, (opposite to the *King's Head*.) Sir *John* cried out, *Save me, save me, for they are going to murder me.* There the Barge came up, and the Prisoner Mr. *Goodere* had his Brother forced on board, and with *Mahony* and the rest went also into the Barge. Sir *John* then called out, *For God's sake run to Mr. Smith, and tell him, I am going to be murdered, or I am an undone Man.* And crying out that his Name was *Dineley*, Mr. *Goodere* stopt his Mouth with his Hand, to prevent his telling his other Name: And though Sir *John* was in an ill State of Health, yet his hard-hearted Brother forcibly took his Cloak from off his Back, and put it upon himself: And having thus got him into his Power, he ordered the Men to row off, telling his Brother, that now he had got him into his Custody, he would take care of him, and prevent his making away with his Estate. But, Gentlemen, in fact, so little did he think himself concerned in what Sir *John* did with the Estate, that he was of Opinion, no Act of Sir *John's* could affect it longer than his Life; and that it must necessarily devolve to him (as the next in Remainder) on his Brother's dying without Issue. And this, Gentlemen, he declared to Mr. *Smith* but a few Days before. And indeed his Brother at once saw what kind of Prevention it was he meant; *I know*, says he to Mr. *Goodere*, (soon after his being forced into the Barge) *you intend to murder me this Night; and therefore you may as well do it now, as carry me down.* Poor Gentleman, his Heart misgave him, that the Design of this base and daring Outrage was to make the Ship his Prison, one of his Cabbins his Slaughter-house, and the Sea his Grave, and therefore he made it his Choice to be thrown overboard in the River (where his Body might be found) rather than buried in the Ocean. The Prisoner *Goodere* denied, indeed, he had any such Design, but yet could not refrain from the usual Exhortation to dying Persons, that HE WOULD HAVE HIM MAKE HIS PEACE WITH GOD. At the *Redcliff* the Privateer's Men were set on shore; and, I think, about Seven in the Evening the Barge reached the *Ruby Man of War*, then in *King-road*. Mr. *Goodere* had, in their Passage, talked of bleeding and purging his Brother to bring him to his Senses, pretending he was a Madman; for he knew very well that very few of his own Men would have assisted him in such an Enterprize, had they not been under a Belief that his Brother was really mad. And to keep up such a Notion, as soon as he had got him on board the *Ruby*, he hurry'd him down what, I think, they call the *Gangway*, into the Purser's Cabin, making an Apology, that he had brought a mad Fellow there; then ordered two Bolts to be clapt on the Cabin-door, for the making his Prison more secure; which was accordingly done. And now having made his Brother a Prisoner, his next Step was to destroy him. He took *Mahony* with him into his own Cabin, and there the cruel Means of murdering his Brother were concerted between them. They agreed to strangle him; and engaged one *White* (who is hereafter to stand to the Justice of his Country) to assist them in the Butchery. I should have told you, Gentlemen, that it is usual in Ships of War to place a Centinel over Persons under Arrest; and accordingly one was placed by Mr. *Goodere's* Order with a drawn Cut-

las in his Hand at the Door of the Cabbin where Sir *John* was confin'd. This Centinel, about twelve at Night, was relieved by one *Buchannan*. It was impossible for the Prisoners to put their wicked Design in Execution whilst this *Buchannan* remained at the Cabbin Door; so, to remove that Obstacle, Mr. *Goodere*, (after having been in close Conference with *Mabony* and *White*) comes down to the Purser's Cabbin, takes the Cutlas from *Buchannan*, and orders him on Deck, posting himself at the Door of the Purser's Cabbin, with the drawn Cutlas in his Hand. I shall open none of the Circumstances disclosed by *Mabony* in his Confession, as being no Evidence against Mr. *Goodere*, but it will be made appear to you in Proof, that *Mabony* and *White* came to the Purser's Cabbin whilst Mr. *Goodere* stood posted at the Door of it; that they were let into the Purser's Cabbin by Mr. *Goodere* himself. *Mabony* in particular was seen by one *Macguinefs* (who kept watch in the Gun-Room) to go into the Purser's Cabbin, Mr. *Goodere* at the same time standing Centinel at the Door of it, and waving his Cutlas at *Macguinefs*, to make him keep back. He did so; but Mr. *Goodere* waved the Cutlas at him a second time, and bid him keep back. Then, Gentlemen, it was that Mr. *Goodere* and his two Accomplices effected the cruel Murder of his unfortunate Brother. *Mabony* was heard to bid him not stir for his Life; and then in conjunction with *White*, whilst Mr. *Goodere* stood watch for them at the Cabbin Door (which Mr. Recorder will tell you was the same as being actually within it) fell on this unhappy Gentleman, as he lay in the Cabbin: And one of them having half throttled him with his Hands, they put a Rope about his Neck, and at length strangled him. Great were his Agonies, and long and painful the Conflict betwixt Life and Death. He struggled violently, and kicked against the Cabbin, crying out several times very loud, *Murder! must I die! help, for God's sake; save my Life, here are twenty Guineas, take it:* For he well knew they were strangling him by his Brother's Order, and therefore offered them a Bribe to spare his Life, but the Ruffians were relentless and inexorable. The Ship's Cooper (one *Jones*) and his Wife lying in the adjoining Cabbin, heard his dying Out-cries, and the Noise occasioned by his kicking; his Cries too were heard by others far beyond the Cabbin-Door. Nature at length gave way, and he expired under these Cruelties. Then *Mabony* called for a Light, that they might all have the Evidence of their Eye-sight that Sir *John* was actually dead; and (which is a shocking Circumstance in the Case) Mr. *Goodere* himself handed them in the Candle on that Occasion. *Buchannan* perceiving the Light disappear, was coming to him with another; but Mr. *Goodere* waved his Cutlas at him to stand off. Such, Gentlemen, was the fatal Conclusion of this tragical Business. What was seen by the Cooper and his Wife after the Candle's being handed in, with regard to rifling the Deceased, I choose should come from their own Mouths. The Murder being thus effected, Mr. *Goodere* locked the Door, and withdrew to his own Cabbin; *Mabony* and *White* were, by his Order, put aboard the Yawl, and sent to *Bristol*. They did not fly the City, Gentlemen, depending that their Fellow-Murderer would some-how smother this Deed of Darkness, and take care of their Security for the sake of his own: But Divine Providence ordered otherwise.

The honest Cooper, though he durst not give the Alarm whilst the Murder was committing, for fear of sharing the same Fate with Sir *John*, yet, as soon as he could with Safety, made a Discovery of the whole that he had heard and seen. 'Twas concluded Mr. *Goodere* had made away with his Brother; which too evidently appeared on the Cooper's forcing open the Purser's Cabbin-Door, where Sir *John* lay murdered, and thereupon the Cooper had the Resolution to seize the Murderer, who remained on board (though his Captain.) He pretended Innocence; and when brought by Warrant before Mr. Mayor and other of the City Magistrates, publickly declared he did not then know that his Brother was murdered, and went so far as to deny his having had any Hand in either the seizing, detaining, or murdering him. But, Gentlemen, if my Instructions don't mislead me, we shall fix the thing at least as strongly upon Mr. *Goodere* as *Mabony*, and more strongly upon them both than I am willing to open it. We shall therefore call our Witnesses, and, upon the whole of the Evidence on both sides, appeal to your Judgments, and to your Consciences, whether both the Prisoners, by the Parts they bore in this horrid Action, have not forfeited their Lives to the Justice of their Country as Accomplices in Guilt, and Principals in the Murder of the unfortunate Sir *John Dineley Goodere*.

Mr. *Shephard*. Mr. Recorder, I beg leave, before the Witnesses are examined, to say, that there are a great many Circumstances in the Case laid before this Court, and I don't know how material it may be for the Witnesses to withdraw, and not be in the hearing of each other during the time of Examination; I submit it to you, as it is usually done in Cases of this nature, whether it ought not to be done in this Case, where it appears from the Gentleman's own Opening, there are Variety of Circumstances. I doubt not, Sir, but that you will see equal Justice done between the King and Prisoner.

Mr. *Recorder*. It cannot be insisted on as a Matter of Right that the Witnesses be examined apart; but it is generally so ordered, if it is desired. I hope, Sir, you will observe too, that the Prisoner hath no Right to be heard by Counsel, unless in Matters of Law. If any such Matter arise, I shall be ready to hear you.

Mr. *Vernon*. If Mr. *Shephard* moves this as a Matter of Right, I would just remind him of what Lord Chief Justice *Treby* says in *Peter Cook's* Trial, that it is not of Necessity that the Witnesses should be examined apart at the Instance of the Prisoner, though an Indulgence generally granted. Sir, the Crown, perhaps, has a Right to such Examination, but not the Prisoner. We have a great Number of Witnesses, all of whom attend here on the publick Service, (and some of them Persons of Figure;) and it would, I doubt, be casting a sort of Blemish on their Credit to examine them apart. Could that Gentleman shew the least Glimmering of Suspicion as to the Fairness of our Witnesses, they ought in Justice to withdraw; but as they are free from the least Imputation in that respect, I see not why they should be incommoded, and hope he will not contend for it.

Mr. *Shephard*. I own it is not of Necessity that the Witnesses be examined apart in favour of the Prisoners, nor do I intend to throw any Imputation on the Witnesses; but by Mr. *Vernon's* Opening, some of them appear to be Witnesses

nesses who were concerned in taking away the deceased Gentleman to the Ship, and all these, I suppose, are intended to be called as Witnesses. I own it is a Matter of Indulgence, and I dare say, Sir, that you will indulge a Prisoner, in these unfortunate Circumstances, the Benefit of making the best Defence he can.

Mr. Recorder. Let the Witnesses withdraw. Officers, clear the Way.

Mr. Vernon. We hope, Sir, it is not intended that all our Witnesses in general should withdraw without Distinction.

Mr. Farrit Smith, (Solicitor for the Prosecution.) We desire there may be a Room for our Witnesses, where they shall be together, or I may lose half my Witnesses. I am myself a Witness, Mr. Recorder, must I withdraw?

Mr. Recorder. No, you shall not go out.— Who do you call first, Mr. Vernon?

Mr. Vernon. Cryer, call *Thomas Chamberlayn* Esq; (Mr. *Chamberlayn* sworn.) I think, Sir, you have been for some time acquainted with Mr. *Goodere*, the unhappy Gentleman at the Bar.

Mr. Chamberlayn. A late Acquaintance.

Mr. Vernon. Pray, Sir, will you give an Account to Mr. Recorder and the Jury, whether Mr. *Goodere*, at any time, and when, desired your Interposition with Mr. *Farrit Smith* to bring about a Reconciliation between him and his Brother Sir *John Dineley Goodere*?

Mr. Chamberlayn. Yes, Sir, he did. The Captain applied to me to go to Mr. *Smith* to interpose for him with Sir *John*; and I did apply.

Mr. Vernon. Pray, Sir, how long was it before this unhappy Affair happened?

Mr. Chamberlayn. About three Weeks, I believe.

Mr. Vernon. And did Mr. *Smith* undertake that good-natur'd Office?

Mr. Chamberlayn. Mr. *Smith* said, he should be ready to do it, and promised me to do all he could in the Affair.

Mr. Vernon. When you applied to Mr. *Smith*, was you alone, or was Mr. *Goodere* with you?

Mr. Chamberlayn. I went first alone; afterwards Capt. *Goodere* went with me to Mr. *Smith's* House.

Mr. Vernon. What was the Occasion of your going to Mr. *Smith's*?

Mr. Chamberlayn. To intreat him to use his good Officers to get a Reconciliation between Sir *John* and the Captain.

Mr. Vernon. Be pleased, Sir, to tell us what passed on that Occasion, and whether Mr. *Goodere* acquainted Mr. *Smith* with the Nature of the Misunderstanding between him and his Brother.

Mr. Chamberlayn. Yes, Sir; that they had been both at Law a great while, and spent a great deal of Money, and therefore Mr. *Goodere* was willing to have Mr. *Farrit Smith* to reconcile the Matter between them, to prevent the Ruin of the Family, and many more such Expressions as these.

(Mr. *Farrit Smith* sworn.)

Mr. Vernon. Mr. *Smith*, will you give an Account of what you know of this fatal Business.

Mr. Farrit Smith. Some few Weeks before this Murder happened, Mr. *Chamberlayn* applied to me, and told me, that Mr. *Goodere* (the Prisoner at the Bar) desired that I would use my utmost Endeavour with Sir *John Dineley Goodere* to be friends and reconciled with Mr. *Goodere*,

and that I would suffer him to bring Mr. *Goodere* to my House. I told him, I often heard Sir *John* say, that there had been warm Disputes between them, but would make use of all my Endeavours to reconcile them, and that it was pity they should live in hatred, as they were the only two Brothers. Some time after Mr. *Chamberlayn* brought Mr. *Goodere* to my House, where they staid about a Quarter of an Hour, when Mr. *Goodere* gave me Thanks for the Promise I had made to Mr. *Chamberlayn*, and he then desired I would do all I could to promote a Reconciliation. I told him, I should be glad to be a happy Instrument of that sort; and that the first time I saw Sir *John* I would speak to him on the Affair, and endeavour to prevail on him to meet Mr. *Goodere*. The Captain said, if any Man in England could do it, I could. I told him, I hoped to succeed. Mr. *Chamberlayn* and Mr. *Goodere* went away. Some little time after they were gone, I saw Sir *John*, and told him, that Mr. *Goodere* had applied to me to do all I could to reconcile them. Sir *John* seemed to speak much against it at first, and thought it would be to no Purpose; for that he had been a real Friend to the Captain, who had used him very ill; but at last he was pleased to pass a Compliment on me, and said, I can't refuse you any thing you ask of me. He then mentioned several Things the Captain had said; and in particular told me, that at the Death of Sir *Edward Goodere* his Father, Mr. *Goodere* the Prisoner had placed several Persons in the House where Sir *Edward* lay dead, in order to do him some Mischiefs, and he apprehended to take away his Life.

Mr. Shephard, I must submit it to the Court, that what Sir *John* said at that Time is not matter of Evidence.

Mr. Recorder. It is not Evidence, but perhaps it is introductory to something Mr. *Smith* has further to say; if it be not, it should not have been mentioned.

Mr. Farrit Smith. And that he had endeavoured to set aside a common Recovery, and made strong Application to the Court of Common-Pleas for that Purpose.

Mr. Shephard. Whether this be Evidence, I insist upon it in point of Law that it is not, and it may have an Effect on the Jury.

Mr. Recorder. I will take Notice to the Jury what is not Evidence. Go on Mr. *Smith*.

Mr. Farrit Smith, After Sir *John* had repeated several Stories of this sort, he concluded at last (as I told you before) and why, Mr. *Smith*, if you ask it of me, I can't refuse. I saw Mr. *Goodere* soon after, and told him I had seen Sir *John*, and talked with him, and he was pleased to tell me, that he would see him, and bid me contrive a convenient Place to bring them together. I told Mr. *Goodere* about the Attempt to set aside the Recovery. I wonder, said Mr. *Goodere*, he should mention any Thing of that, for I can set it aside when I please. I told him, I thought he could not; for, said I, I have had a good Opinion on it, and am to lend a large Sum of Money upon the *Worcestershire* Estate. He said, I wonder that any body will lend him Money upon that Estate, I am next in Remainder, and they will run a Risque of losing their Money I do assure you; and he cannot borrow a Shilling on it without my Consent: but if my Brother was reconciled, then, if we wanted Money, we might do it together,

gether, for he cannot secure it alone. He told me, that he should take it as a great Favour, if I could fix a Time as soon as I could to bring them together. Soon after I saw Sir *John*, and he told me he was very deaf, and was advised to go to the *Bath*, and then appointed to be with me on *Tuesday* the 13th of *January* last in the Morning, when he would talk with me about the Business of advancing the Money on his Estate. After this I saw Mr. *Goodere*, and told him that I had seen his Brother; that he was to be with me on *Tuesday* the 13th of *January* last, and desired him to be in the Way, for Sir *John* was always very punctual to his Appointment; and if Business or any Thing happened to prevent him, he always sent me a Letter. Mr. *Goodere* thanked me, and told me he would be in the way: and on the *Tuesday* Morning Sir *John* came to me on Horseback, just alighted, and came into my Office. I asked him to sit down, which he refused, saying his Head was bad; that he must go for *Bath*, having been advised to go there for some time, and then he did not doubt but he should be better. I told Sir *John*, that his Brother knew he was to be in Town, therefore hoped he would sit down a little, for that I had promised him to bring them together. He said, I can't now; but you shall see me again soon, and then I may do it. I asked him, when shall I see you again, to finish the Business you and I are upon, the Writings are ready, name your own Time, the Money will be paid? He appointed to be with me on *Monday* Morning to settle that Business; and said, I shall come to Town the *Saturday* or *Sunday* before, and when I come I will let you know it: He then mounted his Horse and rid off. Shortly after (as I was going to the *Tolzey*) at, or under *Blind-gate*, I met Mr. *Goodere*, and told him I was glad to see him, and that his Brother had been in Town. He said, he had seen him, and thought he looked better than he used to do. I told Mr. *Goodere*, that his Brother had appointed to be with me *Monday* Morning next on Business, and I expected him to be in Town either the *Saturday* or *Sunday* before. I then had many Compliments from Mr. *Goodere*, and he said, how good it would be to make up the matter between him and his Brother. I heard nothing of Sir *John* being in Town till *Sunday* the 18th of *January* last in the Morning, when he sent me a Letter to let me know that he came to Town the Night before, and would be glad to call upon me at any time I would appoint. I sent him for Answer, that I was to dine from Home, but would return, and be at Home at Three o'Clock that Afternoon. And as I was passing by, I stopt the Coach at Capt. *Goodere's* Lodgings in *Princes-Street*. I asked if he was at Home? found him alone, and then shewed him Sir *John's* Letter. He read it, and asked the Time I appointed. I told him Three o'Clock that Afternoon. Said he, I think my Brother writes better than he used to do. I said, Mr. *Goodere*, I think it would be best for you to be accidentally on Purpose at that Time at my House. No, says he, I don't think that will be so well, I think it would be better for you to send for me. I returned to my House, and my Servant told me that Sir *John* had called, and that he would be here again presently. Whilst my Servant was telling this, Sir *John* came in; I took him by the Hand, and asked him how he

did? I thank God, says he; I am something better; and after I have settled this Affair with you, I will go to *Bath* for some Time, and then; I hope, I shall be better. I said, Capt. *Goodere* is waiting, I beg you will give me leave to send for him; you know you said you would see him. With all my Heart, says Sir *John*; I know I gave you leave. I then sent down a Servant to Captain *Goodere's* Lodgings, to let him know that Sir *John* was with me, and desired him to come up. The Servant returned, and said, here is Captain *Goodere*; on which I said, Sir *John*, please to give me leave to introduce your Brother. He gave me leave; Captain *Goodere* came in, went directly and kissed him as heartily as ever I had seen any two Persons who had real Affections one for the other. I desired them to sit down. Sir *John* sat on one side of the Fire, and Captain *Goodere* on the other, and I sat between them. I called for a Table and a Bottle of Wine, and filling a full Glass, I said, Sir *John*, give me leave to drink Love and Friendship. Ay, with all my Heart, says Sir *John*; I don't drink Wine, nothing but Water; notwithstanding, I wish Love and Friendship. Captain *Goodere* filled a Bumper, and pledged it, spoke to his Brother, and drank Love and Friendship, with his Brother's Health. We sat some time, all seemed well, and I thought I could have reconciled them. The Cork lying out of the Bottle, Captain *Goodere* takes up the Cork in his Hand, put it into the Mouth of the Bottle, and struck it in very hard. I then said, though Sir *John* will not drink Wine, you and I will. No, says Captain *Goodere*, I will drink Water too, if I drink any more; and there was no more drank. After they had talked several things (particularly Captain *Goodere* of the Pleasantness of the Situation of the Estate in *Herefordshire*, and Goodness of the Land) in a very pleasant and friendly way, Sir *John* rose up, and said, Mr. *Smith*, what time would you have me be with you To-morrow morning? I appointed nine o'clock. He said, Brother, I wish you well; then said to me, I will be with you half an Hour before. Sir *John* went down the Steps the Captain was following; I stopt him, and said, pray don't go, Captain, let you and I drink a Glass of Wine. No more now, I thank you, Sir, said he. I think, said I, I have done great Things for you. He paused a little, and said, *By God, it will not do*; and in a very short time the Captain went very nimbly down the Steps. I followed him to the Door, and observed him to go after Sir *John* down the Hill; and before he turned the Church-yard Wall, to be out of my Sight, I observed some Sailors come out of the *White Hart* Ale-house within view of my Door, and they ran up to Captain *Goodere*. I heard him say, *Is he ready?* (I thought he meant the Boat) They said, *Yes*. He bid them make haste. Then they ran very fast towards the lower Green, one of them having a Bottle in his hand; Captain *Goodere* went very fast down the Hill, and had it not been by mere accident I should have followed him, (but some People think 'twas well I did not) for I promised my Wife to return to the House where we dined in *Queen's Square*, where I went soon after.

Mr. *Recorder*. Mr. *Smith*, did they all go towards the lower Green?

Mr.

Mr. Farris Smith. No, Sir; but some towards the Butts on *St. Augustin's Back*. *Sir John* went that way, and *Captain Goodere* followed him; but the Men who came out of the Alehouse went towards the lower Green some of them. About 5 o'clock in the Evening, as I was riding up the Hill towards the *Colledge-green*, I observed a Soldier look'd hard at me into the Coach, as if he had something to say, and seem'd to be in a Confusion. I walked into the Court, the Soldier with me, and then he said, I am inform'd, Sir, your Name is *Mr. Farris Smith*. Yes, says I, it is. (What I am now going to say, *Mr. Recorder*, is what the Soldier told me.) He told me, that as he was drinking with a Friend at the *King's Head* Ale-house at the *Lime-kilns*, he heard a Noise, and ran out to see what was the matter, when he saw a Person dress'd (as he describ'd) like *Sir John's* Dress.

Mr. Vernon. Pray, Sir, how was *Sir John* dress'd?

Mr. Farris Smith. *Sir John* was dress'd in Black Clothes, he had a ruffled Shirt on, a Scarlet Cloak, a Black Velvet Cap (for the sake of keeping his Ears warm) and a broad-brimm'd Hat flapping. He describ'd this exactly, and told me likewise, that the Captain of the Man of War and his Crew had got the Person into Custody, and by force had put him on board the Man of War's Barge or Boat lying near the *Slip*, by the *King's Head*; that the Gentleman cry'd out, for God's sake, if you have any Pity or Compassion upon an unfortunate Man, go to *Mr. Farris Smith*, and tell him how I am us'd: and that the Captain hearing him cry out, stopt his Mouth with his Hand.

Mr. Recorder. What did the Soldier desire of you?

Mr. Farris Smith. The Soldier desired me to inquire into it, for that he did not know the Intention of taking off a Gentleman in that way.

Mr. Recorder. Did you do any thing on that Request of the Soldier?

Mr. Farris Smith. Yes, Sir; it immediately occurred to me, that *Sir John*, when he left my House, told me that he was going to his Lodgings. I went to his Lodgings, (which was at one *Mr. Berrow's* near the Mint) I there asked for him, and related the Story I had heard; they told me they had not seen him since he went to my House.

Mr. Vernon. *Mr. Smith*, Sir, will you inform us by what Name the unfortunate Gentleman (you are speaking of) was commonly called.

Mr. Farris Smith. *Sir John Dineley Goodere*; his Mother was a *Dineley*, and there came a great Estate from her side to him, which occasion'd his being called by the Name of *Dineley*.

Mr. Vernon. When *Sir John* went from your House on *Tuesday*, was he alone, or had he any Attendants with him?

Mr. Smith. *Sir John* was well guarded; he had Pistols, and I think his Servant had Pistols also.

Mr. Vernon. I think you told us but now, that *Sir John* was to be with you on the *Sunday*; pray, when did you let *Mr. Goodere* know it, Sir?

Mr. Smith. I met *Captain Goodere* that very Day at *Blind-gate*, and told him of it; and he said, he had met his Brother himself.

Mr. Vernon. Pray, Sir, did *Mr. Goodere* tell you, to whom the Estate would go on *Sir John's* Death?

Mr. Smith. Yes, he has often said he was the next Remainder Man, and that the Estate would come to himself, on his Brother's Death.

Mr. Recorder. Well, *Mr. Goodere*, you have heard what *Mr. Smith* hath said, have you any Questions to ask him?

Mr. Shephard. *Mr. Recorder*, what I have to ask of you, with Submission, in behalf of *Mr. Goodere*, is, that you will indulge Counsel to put his Questions for him to the Court, and that the Court will then be pleas'd to put them for him to the Witnesses. It is every day's Practice at the Courts of *Westminster*, *Old Bailey*, and in the Circuit.

Mr. Vernon. This, I apprehend, is a matter purely in the Discretion of the Court, and what can neither in this or any other Court of criminal Justice be demanded as a Right. The Judges, I apprehend, act as they see fit on these occasions, and few of them (as far as I have observ'd) walk by one and the same Rule in this particular: some have gone so far, as to give leave for Counsel to examine and cross-examine Witnesses; others have bid the Counsel propose their Questions to the Court, and others again have directed that the Prisoner should put his own Questions: The Method of Practice in this point, is very variable and uncertain; but this we certainly know, that by the settled Rule of Law the Prisoner is allowed no other Counsel but the Court in Matters of Fact, and ought either to ask his own Questions of the Witnesses, or else propose them himself to the Court. I have one more Question to ask of *Mr. Smith* before we part with him.

Sir, I think you was present when *Mr. Goodere* was brought to *Bristol*, after his Brother's being killed, I'd be glad to know whether you then heard him say any thing, and what concerning this foul Business?

Mr. Smith. I was present when *Mr. Goodere* was brought to *Bristol* after this Murder happened, when he was asked (before the Justices) about the seizing, detaining and murdering *Sir John Dineley*; and he then directly answer'd, that he did not know that his Brother was murdered or dead. He was then asked in relation to the manner of seizing him, and carrying him away; he said he knew nothing of it till he came to the Boat, and when he came there he saw his Brother in the Boat; but he did not know that his Brother had been us'd at that rate.

Mr. Shephard. *Mr. Smith*, Sir, you are speaking about *Sir John*; by what Name did you commonly call him?

Mr. Smith. *Sir John Dineley Goodere*.

Mr. Recorder. *Mr. Goodere*, have you any Questions to ask, *Mr. Smith*?

Samuel Goodere. Yes, Sir. *Mr. Smith*, I ask you, what *Sir John Dineley's* Business was with you, and how much Money was you to advance?

Mr. Smith. Five Thousand Pounds, Sir; and I told him that I was satisfi'd that it was a good Title?

Samuel Goodere. I ask you, if you knew him to be a Knight and Baronet.

Mr. Smith. I can't tell, I never saw the Letters Patent.

Samuel Goodere. Can't you tell how you stiled him in the Writings?

Mr. Vernon. I am very loth to interrupt *Mr. Goodere*, but must submit it, Sir, that this Question is extremely improper, because personal Knowledge is by no means legal Evidence of his Brother's having been a Baronet; for Baronetage must be derived from Letters Patent: Neither can I see, Sir, (with great Submission) how it would be at all ma-

terial in this Case, whether the Deceased was a Baronet, or not. By the Indictment the Prisoners stand charg'd with the Murder of one Sir *John Dineley Goodere*, and the Witness *Mr. Smith* proves that the Party whom we shall shew to have been murdered, commonly went by that Name.

Mr. Shephard. With great Submission, Mr. Recorder, I think it a very material Question in point of Law: Upon the face of the Indictment it appears, that he is described by the Name of Sir *John Dineley Goodere*, in a Declaration for the King, the Party ought to be set forth with his Additions and Titles, the Persons committing the Fact, as well as the Person on whom it was committed: The Deceased is described by the Name of Sir *John Dineley Goodere*, and if he was a Baronet by Patent, it's not his Title, and it amounts to the same as if they had mistaken the Christian Name; if the Deceased was a Baronet, then he is improperly described, and then the Prisoners can't be found guilty on this Indictment. The Question before you, Sir, is, Whether this Question was proper to be asked the Witnesses?

Mr. Recorder. Can I presume him to have been a Baronet, or can I admit of parol Evidence to prove him so?

Mr. Vernon. Mr. Recorder, I beg leave to be heard in answer to this Observation of *Mr. Shephard's*, which I apprehend to be one of the most extraordinary I have ever heard from a Gentleman of the long Robe, and am bold to say the learned Gentleman who made it (if in earnest) is much mistaken in it, and in the Doctrine he hath advanced concerning it. With great Deference to your Judgment, Sir, I speak it, his Objection (if I apprehend it rightly) is, that the Person mentioned in the Indictment to have been murdered, is there described by the Name of Sir *John Dineley Goodere* only, and that by the Evidence it appears the Person murdered was Sir *John Dineley Goodere* Baronet; and he would from thence infer, that there is a Mistake in the Description of the Person murdered, and a Variance between the Indictment and the Evidence. Our Baronets, 'tis well known, are but of modern Institution, and their Creation by Patent from the King, as the Fountain of Honour; and whoever reads *Lord Coke's* 12th Report, will find it to have been resolved, at a learned Conference in the Time of *James* the First, That the King could erect such a Dignity by Patent descendable to the Heirs Male of the Body, as a Fee conditional and forfeitable for Felony.—But that where a Baronet is murdered, it is necessary to set forth his Name (or more properly Title of Dignity) in the Indictment, I must take the liberty to deny: The Difference, which I apprehend has been always taken and allowed, is between the Indicttee or Person charged by the Indictment with committing the Offence, and the Person on whom the Offence is laid therein to have been committed. 'Tis indisputably true, that the Indicttee's Addition (whether of Title or otherwise) must be set forth in the Indictment; but what is the Reason? Why, because it is expressly so required by the Statute of the 1st of *Henry* the 5th, which directs, that in Indictments and Writs where Process of Outlawry is awardable, the Estate, Degree or Mystery of the Defendant shall be superadded to his Name, to prevent troubling one Person for another. But, Sir, with great Submission, that Statute was never taken to extend to any other but the Defendant. All the Law requires, as to the Person on whom the

Offence is laid to have been committed, is a convenient Certainty in the Description of him; and surely a Description by the right Christian and Surname is such, and sufficient to ascertain the Person murdered, especially where it does not appear there was any other of the same Name. In the Indictment against *Coke* and *Woodburne* on the *Coventry* Act, for disfiguring *Mr. Coke's* Brother-in-Law *Mr. Crispe*, and which was settled with great Advice, the Person disfigured is described as here, one *Edward Crispe* only; and all the modern Precedents of Indictments at the *Old Baily* are silent, as to the Addition of the Person on whom the Offence is said to be committed; and it is certainly best and safest to omit it. *Lord Coke* in his first Institute lays it down, that a Person may have divers Surnames, and that a Purchase by either of them is sufficient, and yet but one of them is his true Name; which shews the Law is not so over-curious in the manner of describing Persons: and, if I mistake not, it has been held that even the Indicttee himself can take no Advantage of a Mistake of his Surname, if his Christian Name be right, and he be otherwise described with convenient Certainty. Besides, Sir, this is begging the Question; for it does not appear in Proof that the Deceased was a Baronet, he might for aught appears judicially to the Court have been baptized by the Name of Sir *John*. Baronetage as a Patent-Dignity we know is Matter of Record, which is a thing proveable only by itself; therefore if they would have taken any Advantage of it, they should have had the Letters Patent of Creation, or an Exemplification of them, at least *En Poigne*, (as the Law terms it) ready to produce in Court: and for an Authority in Point, Sir, I beg leave just to mention the Case of Sir *Richard Grabme* (Titular Lord *Preston*); he was indicted as a Commoner, and objected that he was a Lord, and as such triable by his Peers. But *Lord Chief Justice Holt*, and other Judges then present, acquainted him they could take no judicial Notice of his being a Lord (though they themselves called him so out of Courtesy when they spoke to him) unless he produced the Patent of Creation, or a Copy of its Inrollment, because Matter of Record; so his Objection vanished, and so I hope will this Gentleman's. Had we called the Deceased in the Indictment Sir *John Dineley Goodere* Baronet, then, Sir, we should probably have been told, that we had failed in Proof of the Identity of the Person, for that the Baronetage was in its Creation annexed to and made a Concomitant on the Patentee's Surname of *Goodere*, and waited only on that Name, and that the Deceased, considered as a Baronet, was not of the maternal Name of *Dineley*, and so upon the matter no such Person as Sir *John Dineley Goodere* Baronet ever in *Rerum Natura*.

Mr. Shephard. Mr. Recorder, *Mr. Vernon* says it does not appear that Sir *John Dineley* was a Baronet, and that we ought to produce the Letters Patent to shew him such; I think it a pretty hard Objection, considering that by Law a Prisoner cannot look into his Indictment, nor have a Copy of it, in order to be advised thereon. Here it comes out only on hearing the Indictment read, and the Person killed is therein described by the Name of Sir *John Dineley Goodere* only, without adding the Title Baronet; so that it was impossible for us to be prepared with the Letters Patent, or with any Evidence of his being a Baronet; therefore humbly hope we are proper in asking this Question of the Witness *Mr. Smith*, who was so conversant with
the

the deceased Gentleman, had the Perusal of his Writings; all his Title-Deeds lay before him, so that he cannot but know the Certainty of his Title and Degree.

Mr. Recorder. It is a great Mistake to say, that it is necessary to set forth in the Indictment the Addition of the Person on whom the Offence is supposed to be committed; the Law requires no such thing, and the Prisoners suffer no manner of Inconvenience by leaving out the Addition; because on this Indictment if they should happen to be acquitted, or should be convicted of Homicide under the Degree of Murder, they may plead that Acquittal or Conviction in bar of a second Prosecution for the same Fact, with an Averment that the Party mentioned in both Indictments, though under different Descriptions, was one and the same Person: It is sufficient that the Deceased is described by his Christian Name, and the Surname by which he was commonly called. The Question proposed to the Witness is improper; for it is not at all material in the present Case, Whether Sir *John* was a Baronet, or no. I would not deny the Prisoners any Advantage they are by Law intitled to, but I cannot admit of Evidence which can serve only to amuse.—*Mr. Goodere,* Have you any more Questions to ask this Witness? *Mahony,* have you any Questions to ask? [Both silent.]

(*Morris Hobbs* sworn.)

Mr. Vernon. *Mr. Hobbs,* I think you are the Landlord of the *White-Hart* Alehouse.

Hobbs. Yes, Sir.

Mr. Vernon. Pray whereabouts is the House?

Hobbs. Over-against *St. Augustine's* Church.

Mr. Vernon. Can you see *Mr. Jarrit Smith's* House from the Window of yours?

Hobbs. Yes, Sir, very plain.

Mr. Vernon. I presume you are not unacquainted with the Prisoners Faces?

Hobbs. I have seen the Prisoners several times.

Mr. Vernon. I would not lead you in your Evidence, but would be glad you'd give an Account to *Mr. Recorder,* and the Jury, whether *Mr. Goodere* (the Gentleman at the Bar) applied to you about coming to your House; if so, pray tell us when it was, and upon what Occasion?

Hobbs. The 12th of *January* (which was on *Monday*) *Captain Goodere* and *Mahony* came to my House; *Captain Goodere* asked my Wife, Have you good Ale here? She said, yes; he also asked, What Place have you over head? I answered, a Closet, a Place where Gentlemen usually sit to look out. Will you please to let me see it? says he. Yes, Sir, said I. I went up to shew it, he and *Mahony* went up; the Captain said it was a very fine Prospect of the Town; he asked for a Pint of Ale, I drew it, and he gave it to *Mahony,* he drank it: and then the Captain asked my Wife, whether he might have a Dish of Coffee made to-morrow Morning? Sir, said she, 'tis a thing I don't make use of in my way; but, if you please, I will get it for you. Then he told her, he would be there to-morrow Morning by about Nine o'clock. *Mahony* was by then.

Mr. Vernon. Did you hear this Discourse pass between your Wife and *Mr. Goodere*?

Hobbs. Yes, I did, and then the Captain paid for his Pint of Ale, and went away; and the next Morning (being *Tuesday* the 13th of *January*) he came again to my House before my Wife was up, and I was making the Fire, (for I keep no Servant.) I did not know him again, I thought he was ano-

ther Man; says he, Landlord, can't you open them Windows in the Parlour? I told him, I would, and so I did; he looked out, and I thought that he had been looking for somebody coming from Colledge Prayers. He asked where my Wife was? Says I, she is a-bed; because, said he, I talked with her about having some Coffee for Breakfast. I told him, she should come down presently, but I had much rather he would go down to the Coffee-house, where he would have it in order. No, says he, I will have it here. My Wife came down, he asked if he might go up stairs where he was before; he went up, and by and by *Mahony* and three Men more came in; I did not know *Mahony's* Name: When they came in, the Captain was above stairs, he directed me to make his Men eat and drink whatever they would, and he would pay for it; I brought them Bread and Cheese, they eat what they pleased; *Mahony* went backwards and forwards, up stairs and down several times; he went out, but where, or what for, I did not know.

Mr. Vernon. Did *Mahony,* when he went up stairs, go in to *Mr. Goodere*?

Hobbs. Yes, several times; *Mahony* put the Coffee, and some Bread and Butter, and made the Toast, and done every thing for the Captain, I thought he had been his Footman. When the Captain had breakfasted, and had made the Men welcome, he shifted himself, (some Porter brought fresh Clothes to him). By and by a Man rid along, who, I believe, was *Sir John Goodere's* Man, with Pistols before him; I heard somebody say that it was his Man: and soon after the Captain had shifted himself, *Mahony* went out about a Quarter of an Hour, and came back sweating, and went up to the Captain; and I looking out of the Window saw the Man on horseback, and leading another Horse, (which I took to be his Master's); and by and by *Sir John* mounted, and rid down between my House and the Church; and I had some glimpse of him, and heard the Captain say, look well at him, but don't touch him.

Mr. Recorder. This you heard the Gentleman above stairs say to the four Men below?

Hobbs. Yes, Sir, he spake those Words to the four who came in.

Mr. Vernon. Did *Sir John* and his Man appear to have any Arms?

Hobbs. Yes, Sir, they had both Pistols before them.

Mr. Vernon. Those Men that were along with *Mahony,* do you know what Ship they belong'd to?

Hobbs. There was a young Man, I believe something of an Officer, came to my Wife, and asked her, Is the Captain of the Man of War here? She answered, that she did not know; but there was a Gentleman above, and there were six other Men besides in the other Room in another Company, which I did not know belonged to the Captain, until he order'd six Pints of Ale for them. The Captain ordered Entertainment for ten Men.

Mr. Vernon. Where were those six Men?

Hobbs. In the Kitchen; they did not belong to the Man of War, nor were not in Company with the other four.

Mr. Vernon. Now, will you proceed to give an account what followed upon *Mr. Goodere's* saying, Look well at him, but don't touch him.

Hobbs. As soon as *Sir John* went down the Hill, this *Mahony* slept up to the Captain and came down again, and he and the other three in his Company

went down the Hill, and the Captain followed them; the Clothes which the Captain pulled off were left in the Room; when the Captain was going out at the Door with his Sword and Cloak, I thought I was pretty safe of my Reckoning, because of his Clothes being left. The Captain said at the Door, Landlady, I will come back and pay you presently.

Mr. *Vernon*. How long was it before Mr. *Goodere* returned to your House?

Hobbs. He came again in about a Quarter of an Hour: When he came again, he went up stairs, changed a Guinea, he asked what was to pay? I told him four Shillings and one Penny half-penny, and then went away. About an Hour and a half after *Mabony* and the other came again, sweating, and said they had been a Mile or two out in the Country. *Mabony* asked Credit for a Tankard of Ale, and said his Master would come upon *Saturday* following, and then he would pay for it: Well, said I, if he is to come up on *Saturday*, I will not stand for a Tankard of Ale; but if he don't come, how shall I have my Reckoning? Says *Mabony*, I live at the *Scotch Arms* in *Marsh-street*. Well, said I, I will not deny drawing you a Tankard of Ale, if you never pay me. Said he, you had best get the Room ready against *Saturday*, and make a Fire, and just dust it.

Mr. *Vernon*. Pray, when Mr. *Goodere* went away from your House, was he in the same Dress as when he came first there that Day?

Hobbs. No, Sir. When he came there he had a light-coloured Coat, and he looked like a Country Farmer at his first coming in; but when he was out, he had a Scarlet-Cloak on, wore a Sword, and had a Cane in his Hand; a Porter brought him the Things.

Mr. *Vernon*. Do you know any thing of what happened on the *Sunday* following?

Hobbs. Yes, Sir; the *Sunday* Morning *Mabony* came to my House, having Trousers and a short Jacket and Leather-Cap on, asked for a Quart of Ale, this was *Sunday*: My Wife said, don't draw any more upon tick. *Mabony* gave a Six-pence and paid for it, and said, See that the Room be clear, the Captain will be up in the Afternoon, and then he'll be here: And as he was going out of the House, he said to me, if you fortune to see that Gentleman go up with the black Cap before that time, do you send a Porter to me to the *Scotch Arms*. I told him I had no Porter, and could not send. About 3 o'clock in the Afternoon, when he came again with a Person who had a scalled Face, and one or two more, a Man who lodged in the House came and told me, that they wanted to go up stairs; but I would not let them, because it was in Service-time: They all went into the Parlour, and had a Quart of Ale, and when that was drank, *Mabony* called for another; and then eight or nine Men more came and called for Ale, and went into the Parlour, but still kept looking out; and one of them being a little Fellow, I don't know his Name, kept flammng the Door together, ready to break the House down. Says I, don't break my House down about my Ears, don't think you are in *Marsh-street*; then the little Fellow came up as if he was going to strike me, as I was coming up out of the Cellar with a Dobbins of Ale in my Hand, for a Gentleman going to the Colledge: I saw this Gentleman (pointing to the Prisoner *Samuel Goodere*) and the Deceased walk down the Hill, I looked after them, and so did *Mabony*; and

then all those Men rushed out, and followed them. *Mabony* paid the Reckoning, and went away; I ran in to see after my Tankard, for I was more afraid of losing that than the Reckoning. And that is all I do know from the Beginning to the End.

Mr. *Vernon*. How long did he continue at your House on the *Sunday*?

Hobbs. I believe, Sir, an Hour and an half; and there was some or other of them still looking out, and waiting at the Door.

Mr. *Recorder*. You say that *Mabony* desired you that if you saw the Gentleman in the black Cap go by, to send a Porter; who did you apprehend that Gentleman to be?

Hobbs. The Gentleman that rode down the *Tuesday*.

One of the *Jury*. To what Place was you to send the Porter?

Hobbs. To the *Scotch Arms* in *Marsh-street*, where *Mabony* lodged, if the Gentleman in the black Cap did go up to Mr. *Smith's*.

Mr. *Vernon*. I think, you say, you saw Mr. *Goodere* on the *Sunday* go down the Hill, after the Gentleman in the black Cap.

Hobbs. I did, Sir; but nobody at all was with him.

Samuel Goodere. Did you see me at all that Day?

Hobbs. Yes, Sir, I saw you go into Mr. *Farrit Smith's*; and when you came down the Hill, after the Gentleman in the black Cap, you called out to *Mabony* and his Company, and bid them to look sharp.

Samuel Goodere. Did you see any body with me that Day? I was not at your House that Day.

Hobbs. I did not say you were; but as you was going to Mr. *Farrit Smith's*, I heard one of your Men say, there goes our Captain, or else I had not looked out.

Mabony. I beg leave, my Lord, to ask him who it was that the Captain bid *Mabony* to look sharp to?

Hobbs. The Gentleman with the black Cap.

Mr. *Recorder*. Was the Gentleman in the black Cap, at whose going by they all rushed out, the same Gentleman whom you had seen before go to Mr. *Farrit Smith's*?

Hobbs. Yes, Sir; but *Mabony* gave Half a Crown for my Reckoning, and as they rushed out so hastily, I was afraid they had taken away my Tankard; for which Reason I went to look after it, and saw no more.

(*Thomas Williams* sworn.)

Mr. *Vernon*. Mr. *Williams*, I think you belonged to the *Ruby* at the time when this melancholly Affair happened?

Thomas Williams. Yes, Sir.

Mr. *Vernon*. What Station was you in?

Thomas Williams. I was ordered to walk the Quarter-deck.

Mr. *Vernon*. Will you give an Account of what you know in relation to the ill Treatment of Sir *John Dineley Goodere*? tell all you know about it.

Thomas Williams. I came up on *Sunday* the eighteenth Day of *January* last for my Commander, went to his Lodgings, he was not at home; I was told there, that he dined that day at Dr. *Middleton's*, and he was just gone there. I went to Dr. *Middleton's* after him, and he was just gone from thence; I then returned to his Lodgings, and found him there; I told him the Barge was waiting for his

his Honour. He ask'd me if I knew the River, and if I knew the Brick-yard at the *Lime-kilns*? I told him that I knew the *Lime-kilns*, and at last I recollected that I did remember the Brick-yard he meant. That is well enough, says he. While I was there, *Mahony* came up to him, and the Captain desired of me to go down stairs, for he wanted to speak to *Mahony* in private. I went down stairs, by and by *Mahony* came down and went away; then I went up to Captain *Goodere* again, when he directed me to get all the Hands together, and go down into the Barge, and, says he, let it be landed at the Brick-yard. He asked me if I knew the *White Hart* in the *Colledge-green*? I told him I did, and he directed me to take eight Men up with me to the *White Hart*, and let two remain in the Boat, for I have a Gentleman coming on board with me. I did as I was ordered; and when I came to the *White Hart*, I saw *Mahony*, and some of the Privateer's Men with him there in a Room; I did not like their Company, I went into the Kitchen, I asked the Landlord to make me a Pint of Toddy, he asked me whether I would have it hot or cold, I told him a little warm; he was going about it, but before it was made, *Mahony* and the Privateer's Men rushed out of the House: I seeing that, followed them, they had the Gentleman in possession before I came to them, and were dragging him along. I asked them what they were at? One of the Privateer's Men told me, if I did not hold my tongue, he would throw me over the Key River, and immediately Captain *Goodere* came there himself: The Privateer's Men asked what they should do with him, and he directed them to take him on board the Barge. I followed them down the Butts, the Gentleman cried out Murder, Murder! Mr. *Stephen Perry* the Anchor-smith came out of his House, and asked me what was the matter; I told him I did not know: *Mahony* said he was a Murderer, he had killed a Man on board the Man of War, and that he had run away, they had carried him before a Magistrate, and he was ordered back to the Man of War to be tried by a Court Martial.

Mr. Recorder. Was the Captain within hearing at the time *Mahony* said that?

Thomas Williams. He was just behind.

Mr. Recorder. Was he within hearing?

Thomas Williams. He was; and when they had brought him into the Barge, Captain *Goodere* desired to have the Cloak put over Sir *John* to keep him from the Cold, but Sir *John* said he did not want a Cloak, neither would he have it. The Privateer's Men wanted me to put them on the other side the Water, but I said I would not without the Captain's Orders. They asked the Captain, and he directed me to do it, and I put them ashore at the *Glass-house*, and just as we came over against the *Hot-Wells*, there was a Gentleman standing whom Sir *John* knew, to whom Sir *John* cried out, Sir, do you know Mr. *Jarrit Smith*? But before he could speak any more, the Cloak was thrown over him to prevent his crying out, and the Captain told me to steer the Barge on the other side, until we got clear of the noise of the People; and when we was got clear, he directed me to steer the Boat in the middle, as I ought to do. I obeyed his Orders.

Mr. Recorder. Who threw the Cloak over him?

Thomas Williams. The Captain. And the Captain being as near to Sir *John* as I am to your

Lordship, Sir *John* asked the Captain what he was going to do with him? Says the Captain, I am going to carry you on board to save you from Ruin, and from lying rotting in a Goal.

Mr. Vernon. And what Reply did Sir *John* make to that?

Thomas Williams. He said, I know better things, I believe you are going to murder me; you may as well throw me overboard, and murder me here right, as carry me on board Ship and murder me. No, says the Captain, I am not going to do any such thing, but I would have you make your Peace with God. As I steered the Boat, I heard all that passed. We brought Sir *John* on board between seven and eight o'clock, he could hardly go up into the Ship, he being so benumbed with Cold; he did go up of his own accord, with the Mens Assistance.

Mr. Vernon. How was he treated on board the Man of War?

Thomas Williams. Sir, I don't know how they treated him after he went on board the Ship, I was excused from watching that Night, so I went to my Hammock; but after I was got out of my first sleep, I heard some People talking and walking about backwards and forwards: I was surprized; at last I peeped out of my Hammock, and asked the Centinel what was o'clock? he said, between Two and Three. And then I saw Captain *Goodere* going down the Ladder from the Deck towards the Purser's Cabbin, but for what Intention I know not, I believe he came from his own Cabbin.

Mr. Recorder. Whereabout is the Purser's Cabbin?

Thomas Williams. The Purser's Cabbin is in a place called the *Cock-pit*, the lower Steps of the Ladder is just by the Door of the Purser's Cabbin.

Mr. Recorder. And it was that Ladder you saw the Captain go down, was it?

Thomas Williams. Yes, Sir, it was.

Mr. Vernon. Mr. *Williams*, you have not told us all the Particulars of Sir *John's* Treatment between the seizing and carrying him to the Barge.

Thomas Williams. One of the Men had hold of one Arm, and another the other, and a third Person was behind shoving him along.

Mr. Vernon. Where was Captain *Goodere* then?

Thomas Williams. He was just behind him.

Mr. Vernon. How near was he to him.

Thomas Williams. Sometimes he was as near to him as I am to you.

Mr. Recorder. How many were there in the Company, do you think, in the Rope-walk, when they were carrying Sir *John* along?

Thomas Williams. There were five of the Privateer's Men, and *Mahony* made six, and there were nine belonging to the Barge; about sixteen in all.

Mr. Recorder. At what distance was you?

Thomas Williams. At a pretty great distance; I walked just before them; I saw them take him along in the manner I have said; I heard Sir *John* cry out Murder several times as he went, as they took him along the Rope-walk.

Mr. Recorder. Mr. *Goodere*, will you ask *Williams* any Questions?

Samuel Goodere. What side of the Gun-room did you lie in?

Thomas Williams. The Star-board side of the Gun-room.

Samuel Goodere. Why then it was impossible for you, as you lay in your Hammock, to see any body go down to the Cock-pit.

Thomas Williams. Not at all, Sir; the Gunner's Cabbin comes out further than ever was known of that fort.

Samuel Goodere. Are there any other Cabbins besides the Purser's in the Cock-pit? did you ever examine them how strong they are, and what Partitions are there between them?

Thomas Williams. I don't know any other Cabbin but the Purser's in the Cock-pit; the Cooper lies in the Slop-room.

Samuel Goodere. Was you never in the Doctor's Cabbin?

Thomas Williams. No, never in my Life.

Samuel Goodere. Do you know where-about the *Ruby* lay, when you brought that Gentleman on board, where did you apprehend the Ship was?

Thomas Williams. I did not know the Situation of the Ship, I had no business to know that; I was but a Foremast-man.

(*Samuel Trivett* sworn.)

Mr. Vernon. Will you give an Account to Mr. Recorder and the Jury of what you know relating to this Business.

Samuel Trivett. On Sunday the eighteenth of January last I was at a Publick House in the Rope-walk, I heard a Noise of People cryed Damn ye, stand off, or else we will knock your Brains out; I stepp'd up, and asked what Right they had to carry a Man along after that manner? I followed them; their Answer was, it was a Midshipman who had committed Murder, and they were taking him down to the Ship to do him Justice: other People likewise followed enquiring what was the matter: the Gentleman was behind, and ordered them to make more haste.

Mr. Vernon. Look upon the Prisoner at the Bar, *Mr. Goodere*; is that the Gentleman that ordered them to make more haste?

Samuel Trivett. I believe that is the Man, my Lord: On the Gentleman's ordering them to make more haste, five or six of them caught him up in their Arms, and carried him along, and as they were got down about the Corner of *Mr. Brown's* Wall, he insisted upon their making more dispatch, and then they hurried him as far as *Captain Osborn's* Dock. By that time his Clothes were ruffled, and shoved up to his Arm-pits; they put him down, and settled his Clothes, and then I saw his Face, and knew him to be *Sir John Dineley*: He cried out Murder several times, and said, they were taking him on board to kill him, he believed. As they were going with him along, he cried out to *Mrs. Darby*, for God's sake assist me, they are going to murder me. I told *Mrs. Darby*, it was *Sir John Dineley*: She said, she knew him; the Cloak was then over his Face. As they got him further, he called out to a little Girl, to get some boy to assist him for they were going to murder him. They pushed him along to *Mrs. New's* House, and made a little Stop there, and then they brought him to the Water-side, where was a Boat; they put out a Plank with Ledges nailed across; he was ordered to go on board the Boat; they got him on board, and put him to sit down in the Stern-sheet: then he cried out, for God's sake, Gentlemen, if any of you know *Mr. Jarrit Smith* in the *Colledge-green*, tell him my name is *Sir John Dineley*. One of the Men put his Cloak and covered him, and before he could say any more, that

Gentleman (pointing at the Prisoner *Goodere*) took his Hand and put it on his Mouth, and would not let him speak any further, and ordered the Boat to be pushed off, which was done; and the Tide making up strong, the Boat got almost to the other side. I heard that Gentleman (pointing as before) say, Have you not given the Rogues of Lawyers Money enough already? Do you want to give them more? I will take care that they shall never have any more of you; now I'll take care of you.

Mr. Recorder. Prisoners, will either of you ask this Witness any Questions?

Samuel Goodere. No; I never saw the Man before in my Life.

(*Thomas Charnbury* sworn.)

Thomas Charnbury. On Sunday the eighteenth of January last, between the Hours of four and five in the afternoon, I was on board the Ship called the *Levant*, lying in *Mr. Thompson's* Dock; I heard a Noise coming over the Bridge of the Dock, and I saw a Man in a scarlet Cloak, and a parcel of People, some before and some behind, guarding of him, and he made a noise. I went towards them, to see what was the matter, and at *Mr. Stephen Perry's* Counting-house (they rested) I asked, what was the matter? They said, he had killed a Man on board a Man of War; that he had run away; and they had had him before a Magistrate, and he was ordered on board the King's Ship to be carried round to *London* to take his Trial. *Mr. Perry* (on hearing the Noise) came out and saw him; says *Mr. Perry*, Gentlemen, do you know what you are about? I would not be in your Coats for a thousand Pounds, for it is *Esq; Goodere*. They threatened to knock down any that should come near; a Fellow, I take him to be *Mabony*, came up to me, and threatened to knock me down several times. They took and carried him as far as *Captain James Day's* Lofts and Warehouse, where he keeps his Hemp; and there they rested him again, and threatened to knock down any that should come near them. Then said *Mabony*, Damn ye, here comes the Captain. Immediately I turned about, and saw a Gentleman with his Cane poised in one hand, and his Sword in the other, he had a dark shag Coat and yellow Buttons, whom I take to be that Gentleman the Prisoner at the Bar. They took up the Man in the scarlet Cloak again, and carried him so far as coming out from the lower *College-green* into the Rope-walk: the Prisoner *Goodere* came up to them, and ordered them to mend their Pace; they took him up again, and carried him as far as *Brown's* Garden, at the lower end of the Rope-walk, as fast as they could well carry him, where they settled his Clothes, and in the mean while the Prisoner *Goodere* came up to them again, and ordered them to mend their Pace. With much difficulty they got him between the Gate and Stile, and carried him as far as the Warehouse at the Corner of the Glass-house, there they rested and settled his Clothes again: Then they took him up and carried him down to the *Lime-kilns*, as far as the lower part of the Wall below *Madam New's*; and then brought him down to a Place opposite to the *King's Head*, and then they put him on board a Boat (I take it the Man of War's Barge) having ten Oars, and they handed him in. After, the Prisoner *Goodere* went into the Boat after him, and set *Sir John* on the Starboard side, and the Prisoner *Goodere* on the Larboard side; then *Sir John* cried out, Murder! you Gentlemen that are on shore, pray tell *Mr. Jarrit Smith* that my Name

Name is *Dineley*, and before he could say *Goodere*, the Gentleman took up the Flap of the Cloak, threw it over the Face of Sir *John*, and stopp'd his Mouth; and, says he, I will take care of you, that you shall not spend your Estate; and ordered the Barge to be put off: And then he took the Gentleman's Cloak from his Shoulders, and puts it on his own.

Mr. Recorder. Who was it that stopp'd his Mouth with the Cloak?

Mr. Charmbury. That Gentleman the Prisoner at the Bar. The Boat was so full, had so many People in it, that they were obliged to row but with eight Oars: And when they proceeded down the River, it being about three quarters Flood, and the Gentleman continually crying out, they went out of sight, and I saw no more of them.

(*Mrs Darby* sworn.)

Mr. Vernon. Mrs. *Darby*, I think, you live at the *Lime-kilns*.

Mrs. Darby. Yes, Sir, I do.

Mr. Vernon. What do you know of this tragical Affair?

Mrs. Darby. I saw Sir *John Dineley* forced along between two Men, he crying out Murder, Murder, for the Lord's sake save me, save me, for they are going to kill me!

Mr. Vernon. Pray what were they doing to him at that time?

Mrs. Darby. Forcing him along, Sir; one had him under one Arm, and another under the other.

Mr. Vernon. Did you then know him to be Sir *John Dineley Goodere*?

Mrs. Darby. Yes, Sir; last Summer we mended his Chair for him. I knew him very well.

Mr. Vernon. You say you knew Sir *John*; pray did you know this Gentleman? (pointing to *Mr. Goodere*.)

Mrs. Darby. There were a great many other Persons there; they told me that the Captain of the Man of War was there behind them, which I believe to be the Gentleman at the Bar: He was dressed in a dark Drabb-coloured Coat, and his Waistcoat trimmed with Gold.

Mr. Vernon. What further did you see pass?

Mrs. Darby. I saw them hurrying him on board the Boat, but I did not go any further than over-against my own Door; but when they were turning the Boat, I heard him cry out, but what he said I know not.

(*William Dupree* sworn.)

Mr. Vernon. Give an Account of what you know of this Matter.

William Dupree. On *Sunday* the eighteenth of *January* last I was at the Sign of the *King's Head*, upon the right-hand side of the *Red Lion* as you go down to the *Hot Well*, with a Friend of mine, a Man that works with me, drinking a Pint of Ale; there was a young Woman, she was reading at the Window. She said, she heard a great Outcry, we heard the same, we went out, saw a Company of Men forcing a Gentleman along; I saw Captain *Goodere* the Prisoner at the Bar coming behind them: when they came down to *Scriggins Slip*, they gave out a Report, that the Gentleman had murdered a Man on board a Man of War, and they were taking him on board for Justice. They put him on board the *Yawl*, and Captain *Goodere* stood by whilst they did it. The Gentleman cried out, for God's sake go and acquaint *Mr. Farrit Smith*, for I am undone, they will murder me. I went

into the House again; the People advised me to go to *Mr. Farrit Smith*, and inform him of it: as I came home I called at *Mr. Smith's*, and told him what I had seen and heard, and he told me he would see about it.

Mr. Vernon. I'd be glad to know whether upon the Gentleman's crying out you saw any thing, and what, done to him.

William Dupree. I saw the Captain, the Prisoner at the Bar, put his Hand and stop his Mouth.

Mr. Vernon. Are you positive you saw that?

William Dupree. Yes, I am.

(*Theodore Court*, Master of the Ship sworn.)

Mr. Vernon. Will you tell *Mr. Recorder* and the Jury what you know concerning the Death of Sir *John Dineley Goodere*?

Theodore Court. On the eighteenth of *January* last, being *Sunday*, the Barge went up to fetch Captain *Goodere* from *Bristol*, and about seven of the clock in the Evening he came on board, and when he came into the Gangway, says he, how do you all do, Gentlemen? Excuse me, Gentlemen, from going the right way to-night, for I have brought an old mad Fellow on board, and I must take care of him. I saw a Gentleman with a black Cap coming up the Ship's side, and his Groans shocked me, so that I could not help him; he looked much surprized as a Person used ill: As soon as he was on board, he was taken into custody, and carried by the Captain's Orders down to the Cock-pit, and put into the Purser's Cabbin, and a Centinel ordered upon him; and I saw him no more at that time. Next Morning I was told that the Captain's Brother was murdered, and that the Captain had given *Charles White* and *Mahony* leave to go on shore.

Mr. Recorder. By whose Direction was he put into the Purser's Cabbin?

Theodore Court. The Captain himself went down, and see them put him in.

Mr. Vernon. Whereabout in the Ship is the Purser's Cabbin?

Theodore Court. In the Cock-pit.

Mr. Vernon. Was it a Place where Gentlemen who came on board commonly lay?

Theodore Court. No, nobody had laid in it for a considerable time. The next Morning the Cooper met me, and said, here is fine doings to-night, *Mr. Court*! Why, what is the matter, said I? Why, said he, about three o'clock this Morning they went down and murdered Sir *John*. The Ship was in an Uproar; the Cooper said, if *Mr. Perry* (the Lieutenant) did not secure the Captain, he would write to the Board: We had several Consultations in the Ship about it. The Captain sent for me to breakfast with him, I accepted of his Invitation: I can't say but he behaved with a very good Name to all the People on board. About Ten o'clock *Mr. Perry*, myself, and the other Officers, with the Cooper, consulted about securing the Captain. *Mr. Perry* caution'd us not to be too hot; for, said he, if we secure the Captain before we know Sir *John* is dead, I shall be broke, and you too. We sent for the Carpenter, and desired him to go down and open the Cabbin-door, the Centinel who stood there having said it was lock'd; the Carpenter went down, opened the Cabbin-door, and came up and said Sir *John* was murdered; and that he lay on his Left-side, with his Leg up crooked. I told them, Gentlemen, there is nothing to be done before the Coroner comes; and therefore we must not touch him: Whereupon the Door was ordered to be fastened

fastened up: We then consulted how to take the Captain, and a Method was agreed on for that purpose. And as soon as the Captain was taken, he declared he was innocent of it, that he knew not that his Brother was murdered. When the Coroner came, I saw the Deceased, and my Heart aaked for him.

Mr. Recorder. Who was it put the Centinel upon Sir John?

Theodore Court. The Captain ordered it to be done.

Mr. Vernon. Is it usual to place a Centinel at the Purser's Cabbin-Door?

Theodore Court. No, it is not; unless there be somebody there under Confinement.

Mr. Vernon. Is there any other Cabbin near the Purser's?

Theodore Court. Yes, there is the Slop-Room just by; there the Cooper and his Wife lay that Night: there is just a little Partition of about half-inch Deal, parting the Slop-Room from the Place where Sir John lay confined.

Mr. Vernon. Pray, will you tell us whether any, and what Discourse passed between Mr. Goodere and you, about sailing; and when it was?

Theodore Court. Sir, in the Morning he asked me, will the Wind serve to sail? He said, he had another pressing Letter from the Lords of the Admiralty to sail as soon as possible. I told him, that the Wind was West-South-West, and that we could not go out to Sea; for no Pilot would take charge of the Ship, I believed. And as this is a Harbour where a Pilot is allowed, I don't pass for this Place; otherwise I must have observed his Orders.

Mr. Vernon. Did he acquaint you how far, or to what Part, he would have you sail?

Theodore Court. Yes, he said, if he got no further than the *Holmes*, he did not care; and asked me, if it was safe riding there. I told him, it was not; for it was foul Ground for such a Ship as ours.

Mr. Recorder. Mr. Goodere, will you ask this Witness any Questions?

Samuel Goodere. What Cabbins are there in the Cock-pit?

Theodore Court. I know no Cabbins there but the Purser's Cabbin and the Slop-Room, &c.

Mr. Vernon. Call Mr. Williams.

(*William Williams* sworn.)

Mr. Vernon. Mr. Williams, have you any Watch in your possession belonging to Mr. Goodere.

William Williams. I have a Watch in my Possession.

Mr. Vernon. Please to produce it, and let us know how you came by it.

William Williams. I had it from a Vault in *Back-street*.

Mr. Vernon. How came it to be searched for there?

William Williams. The Night this thing was under Examination, I was at the Council-House, and *Culliford* who keeps the Brockware Boat on the *Back*, was there under Examination; he then reported that there was a Watch and some Money left in his House: Upon which a Person was sent down, and *Culliford's* Wife at first denied the Watch, but not the Money; but at last, after close Examination, she confessed that she had thrown the Watch into the Vault. Upon which, by the Order of Mr. Alderman *Day*, I, with a Mason, opened the Vault; where, on Search, I found the

Watch, and took it out. Here is the Watch; but whose it is, I know not.

Mr. Vernon. Now I desire that Watch may be shewn to Mr. Court. [The Watch is delivered to Mr. Court.]

Mr. Vernon. Now you have looked upon the Watch, tell us if you can, whose it was.

Theodore Court. I can't swear positively to it; but I believe it was the Captain's Watch, he had such a one.

Mr. Vernon. Did Mr. Goodere use to carry a Gold Watch about him?

Theodore Court. The Captain did not usually wear a Gold Watch; but I have seen such a Watch as this is, hanging up in the Captain's Cabbin. I believe it to be the same.

Mr. Recorder. Mr. Court, you was asked by Mr. Goodere, how many Cabbins there are in the Cock-pit?

Theodore Court. There is the Steward's Room, the Purser's Cabbin, and the Slop-Room.

Samuel Goodere. Where is the Steward's Room?

Theodore Court. That is the Place where the Centinel stands; and there is a Place on the other Side where the Surgeon lies.

Samuel Goodere. What Persons were in that Place that Night, do you know?

Theodore Court. The Surgeon, I suppose.

Samuel Goodere. What other Persons were in any other of the Cabbins that Night?

Theodore Court. The Cooper and his Wife.

Samuel Goodere. Has the Cooper a Wife?

Theodore Court. I believe so.

Samuel Goodere. How long before the nineteenth of January did you new-moor the Ship?

Theodore Court. Thursday the fifteenth of January.

Samuel Goodere. How were the Bearings then?

Theodore Court. (Looking on his Journal) *Posset-Point* West and by South, *Denny-Island* North-west and by West, distant by Computation about four Miles: And the Point to the Westward of the *Hole's* Mouth South-South-East.

Mr. Recorder. Were those the Bearings on the Eighteenth too?

Theodore Court. I know no Difference; it is said here, *ditto* 18th: if there had been any Variation, I should have taken notice of it.

Mr. Vernon. In what Part of the River did the Ship lie when Sir John was murdered?

Theodore Court. She lay in *King-Road*.

Samuel Goodere. Do you know the *Denny*?

Theodore Court. Yes, I do.

Samuel Goodere. Suppose there was a strait Line drawn from the South Corner of that Island to the North part of the Water of *Avon*, would the Ship *Ruby* have been on the East or West part of that Line?

Theodore Court. As to that I am not a Judge, unless I saw a strait Line drawn.

Mr. Recorder. Mr. Court, how long did the Ship continue in this Mooring?

Theodore Court. I new moor'd the Ship the Sunday following.

Samuel Goodere. Did the Wind then blow Easterly or Westerly?

Theodore Court. The Wind blew hard Westerly the Sunday.

Samuel Goodere. As to the Distance from the *Denny*, I believe, you are right enough; but I have a Gentleman here who hath taken a Survey of the River: and the Situation of the Ship, as it lay Sunday

day the eighteenth of *January*, was in the River *Severn*, very far Eastward of the Water of *Avon*.

Mr. Vernon. Mr. Recorder, by Mr. *Goodere's* present Enquiries, he seems to be putting his and his Fellow-Prisoner's Defence on the Points of the Compass; I hope he has some better Point to go on: for if not, these I doubt will stand him in very little stead. It appears in Proof, that the Ship was stationed in *King-road*, when this Murder was committed: Now *King-road*, we all know, has been all along reputed and allowed to be within the local Limits of the City and County of *Bristol*; and the City Process runs thither, which shews it to be within the Franchise of the City; and the Sheriffs of *Bristol* do there constantly execute Writs and other Process from above, which shews it to be within their Bailiwick as a County, whose Bounds and Circuit are best ascertained and pointed out by Reputation and consentaneous Usage, which stand as perpetual Monuments of their Limits, after other Marks are effaced or obscured by Time.

Mr. Shephard. I don't at all question but this City has great Powers, and its Limits are undoubtedly set forth by Charter.

Mr. Vernon. I should be very sorry to find the Jurisdiction of a City (whose Rights are dear to me as my own) shaken by a Side-wind, and hope an Attempt of this nature will not be suffered.

(*Duncan Buchanan* sworn.)

Mr. Vernon. I think you was one of the Company that was at the *White-Hart* upon *Tuesday* the twelfth of *January* last?

Duncan Buchanan. Yes, Sir.

Mr. Vernon. Will you give Account by whose Directions you came up there?

Duncan Buchanan. On *Tuesday* the thirteenth Day of *January* last the Boat and Barge were ordered up to *Bristol*; but upon what account, I knew not. I was ordered to go to the *White-Hart* to attend the Captain, and there was *Mahony* and the Privateer's Men drinking hot Flip. I knew nothing of what they were upon. I saw a Gentleman come out of Mr. *Smith's*, I suppose it was Sir *John Dineley Goodere*; he mounted his Horse, and had Pistols before him, and his Servant followed him with Pistols also. Then some of the Men ran out; and Captain *Goodere* went out after them, and ordered them to follow the Gentleman. I staid there till the Captain came back again; and I know nothing more of what was said or done then.

Mr. Vernon. Will you give an Account what happened on the *Sunday* following?

Duncan Buchanan. On *Sunday* the eighteenth Day of *January* about seven o'clock in the Evening the Barge came along-side the Ship with the Gentleman in it, I stood in the Gang-way to receive him; when he came up, I heard him to make a moan, and the Captain said I have brought a Madman on board, bring him along, I will bring him to his Senses by and by. I saw them take him along the Gang-way; you must not mind what he says, said the Captain; and he was ordered down to the Purser's Cabbin; I was ordered Centinel there. About twelve o'clock the Captain sent for me to come up to him, and I laid down my Sword and went up, and *Mahony* was there with him; and there was a Bottle

of Rum and a Glass before them: the Captain asked me to drink a Dram, I thanked him and drank. He asked me how his Brother was? I told him he groaned a little; says the Captain, I know the Reason of that, he is wet, and I am coming down by and by to shift him with dry Stockings: so I left the Captain and *Mahony* together. Some time after the Captain came down to me, as I was at my Post at the Purser's Cabbin; he asked if his Brother made a noise? I told him no: upon which the Captain listened a little time at the Door, and then said, give me the Sword, and do you walk upon deck; for I want to speak to my Brother in private. Soon after this, *Mahony* went down, and very soon after *Mahony* was down, I heard a great struggling in the Cabbin, and the Gentleman cry out Murder! I then thought the Gentleman had been in one of his mad Fits; but now I suppose, they were then strangling him. As I was walking to and fro in the Gun-Room, I looked down, and saw the Captain take the Candle out of the Lanthorn, which was hanging up there, and he gave the Candle into the Cabbin.

Mr. Recorder. Where was Mr. *Goodere* when you heard the Cry of Murder?

Duncan Buchanan. In the Cock-pit by the Purser's Cabbin-Door, with the Sword in his Hand.

Mr. Recorder. What time of the Night was this?

Duncan Buchanan. Between two and three o'clock; I lighted a Candle at the Lanthorn in the Gun-Room, and was going down to the Captain with it, as supposing him to be without Light; and as I was going down with it, the Captain held up his Sword, waved it, and said, go back and stay where you are.

Mr. Recorder. You said, that Sir *John Dineley* cried out Murder! was that before you offered the Candle to the Captain?

Duncan Buchanan. Yes, Sir; it was before.

Mr. Recorder. How long?

Duncan Buchanan. About a Quarter of an Hour.

Mr. Recorder. How long did the Cry of Murder continue?

Duncan Buchanan. About three or four Minutes: Soon after the Captain had ordered me to keep back, he called for a Candle, and I carried one down, and he gave me the Sword, and bid me stand upon my Post; and, said he, if my Brother makes any more noise, let him alone and send for me; and he locked the Purser's Cabbin-Door, and took the Key away with him: And in the Morning the Doctor's Mate, the Cooper and I consulted together about it; and I was willing to know, if Sir *John* was dead, or not? And when we peeped into the Cabbin, we saw him lying in a very odd sort of a Posture, with his Hat over his Face, and one of his Legs lay crooked: upon which, we concluded he was dead.

Mr. Recorder. How long was you off your Post from first to last?

Duncan Buchanan. I can't tell exactly.

Mr. Recorder. Recollect as well as you can.

Duncan Buchanan. About three quarters of an Hour.

Mr. Recorder. And could you see who was at the Purser's Cabbin-Door all that time?

Duncan Buchanan. Yes, Sir; I saw the Captain stand at the foot of the Ladder at the Door, with a drawn Sword, from the time I went up to the

time I came down again; he locked the Door, and carried the Key away with him.

Mr. *Vernon*. Pray, were there any Bolts on the Purser's Cabbin-Door?

Duncan Buchanan. Yes, there were Bolts on the Door; they were put on soon after Sir *John* came on board: Sir *John* was in that Cabbin when they were put on.

Mr. *Vernon*. You say you heard a Noise and Outcry of Murder, how far was you from the Cabbin-Door when you heard that Cry of Murder?

Duncan Buchanan. I was walking to and fro the Gun-room.

Mr. *Vernon*. How far is that from the Purser's Cabbin-Door?

Duncan Buchanan. As far as I am from you.

Mr. *Vernon*. Whom did you see go into the Purser's Cabbin to Sir *John*?

Duncan Buchanan. I saw *Mahony* go in there.

Mr. *Vernon*. Did you see any other Person go in besides *Mahony*?

Duncan Buchanan. No, I did not; I saw *Mahony* go in just before the Cry of Murder, but no other Person.

Mr. *Vernon*. Do you know any thing about securing the Captain?

Duncan Buchanan. Yes, I will tell you what happened then. We went and secured him. As soon as he was laid hold of, he cried out, Hey! hey! what have I done? We told him his Brother was murdered, and that he had some Concern in it. He said, what if the Villains have murdered my Brother, can I help it? I know nothing of it.

Samuel Goodere. Did you see me in the Cabbin at all?

Duncan Buchanan. No, Sir, I don't say you was in the Cabbin.

Mr. *Recorder*. Mr. *Goodere*, the Witness does not say he saw you in the Cabbin, but at the Door, and with a Sword in your Hand, and that you handed in a Light after the Cry of Murder was over.

Samuel Goodere. I could not have been in the Cabbin without *Buchanan's* seeing me go in, because he stood at the Bulk-head of the Gun-room.

Mr. *Recorder*. *Mahony*, will you ask this Witness any Questions?

Matthew Mahony. Are you certain that I was in the Cabbin when you heard the Groans?

Duncan Buchanan. I am positive you was there in the Purser's Cabbin, when I heard the Murder cried out.

(*Daniel Weller* sworn.)

Mr. *Vernon*. I think you are the Carpenter belonging to the *Ruby* Man of War.

Daniel Weller. Yes, Sir, I am.

Mr. *Vernon*. Give an Account to Mr. *Recorder* and the Jury of what you know relating to this Business.

Daniel Weller. The eighteenth of *January* last, about seven o'clock in the Evening, the Captain came on board in the Barge; as I attended him, I observed he seemed in a pleasant Humour, he came upon the Deck at once, and said he had brought a poor crazy Man on board, who had been the Ruin of himself and Family, and that he had now brought him on board to take care of him: He took him down to the Cock-pit, and having been there a little while, one of my People came and asked for some Bolts;

I asked, what for? He told me, it was to put on the outside of the Purser's Cabbin-door, to bolt the crazy Gentleman in. I gave him a Bolt; after he had nailed it on, he came and wanted another: I had another, gave it to him, and went down to see the Bolts put on. Sir *John* cried out, What are you doing, nailing the Door up? I answered, No. I ordered the Door to be opened, to turn the Points of the Nails. The Door being opened, Sir *John* asked whether the Carpenter was there? I told him I was the Man. The Centinel told me no-body must go in there; however, I went in, while they turned the Points of the Nails. Sir *John* bid me sit down, and asked me, what does my Brother mean by bringing me on board in this manner, to murder me? No, Sir, says I, I hope not, but to take care of you. He asked me, if his Brother told me that he was mad? I saw no more of him till next Morning.

Mr. *Vernon*. And what did you see then?

Daniel Weller. Next Morning the Lieutenant sent me down to see if Sir *John* was dead. I went down, and asked the Centinel for the Key; he told me the Captain had been there in the Night, and had taken away the Key in his Pocket. I broke open the Cabbin-Door, and Sir *John* was lying on one side dead, with his Right Leg half up bent, his Hat was over his Face, with Blood bespattered about his Mouth and Nose. I went directly up, and told the Lieutenant of it.

Mr. *Recorder*. By whose Orders did you put the Bolts on the Door?

Daniel Weller. One of my People came to me for Bolts, and told me he was ordered by the Captain to put the Bolts on; and none of them ever came for any thing to be done, without an Order of an Officer.

(*Edward Jones* sworn.)

Mr. *Vernon*. Mr. *Jones*, I think you are the Cooper of the Ship *Ruby*.

Edward Jones. Yes, Sir.

Mr. *Vernon*. Was you on board upon *Sunday* the eighteenth of *January* last?

Edward Jones. Yes, Sir, I was.

Mr. *Vernon*. In what Cabbin did you lie that Night?

Edward Jones. I had no Cabbin, but I made bold to lie in the Slop-Room that Night, having my Wife on board.

Mr. *Vernon*. Pray what is that you call the Slop-Room?

Edward Jones. It is like a Cabbin.

Mr. *Vernon*. How near is the Slop-Room to the Purser's Cabbin?

Edward Jones. Nothing but a thin Deal-Partition parts it from the Purser's Cabbin.

Mr. *Vernon*. Will you relate to Mr. *Recorder* and the Jury, what you know about the Murder of Mr. *Goodere's* Brother: Tell the whole you know concerning it.

Edward Jones. About *Wednesday* or *Thursday* before this happened, the Captain said to me, Cooper, get this Purser's Cabbin cleaned out, for he said he expected a Gentleman shortly to come on board. I clean'd it out; and on *Sunday* Evening the Gentleman came on board, when the People on Deck cried, Cooper, shew a Light. I brought a Light, saw the Captain going down the Cockpit Ladder, the Gentleman was halled down; he complained of a Pain in his Thigh by their halling him on board. The Captain asked

asked him if he would have a Dram? he said no; for he had drank nothing but Water for two Years. The Captain ordered *Mahony* a Dram, he drank it: He also ordered one *Jack Lee* to put two Bolts on the Purser's Cabbin-Door. The Gentleman walked to and fro the Purser's Cabbin while they were nailing the Bolts on. He wanted to speak with one of the Officers. The Carpenter told him he was the Carpenter. Says the Gentleman, Do you understand what my Brother *Sam.* is going to do with me? and said, his Brother had brought him on board to murder him that Night. The Carpenter said he hoped not, but what was done was for his Good. The Captain said, they must not mind what his Brother said, for he had been mad for a Twelvemonth past. And the Captain went up again, and went into the Doctor's Room. I went to Bed about eight o'clock. Some time about eleven of the clock at Night I heard the Gentleman knock, and said, he wanted to ease himself; to which the Centinel gave no manner of heed. Is it not a shame, said he, to keep a Gentlemen in after this manner? At last some other Person spoke to the Centinel, and says, why don't you go up and acquaint the Captain of it, that the Gentleman may ease himself? Soon after *Mahony* comes down with a Bucket, for the Gentleman to ease himself. *Mahony* sat down in the Cabbin, and he and the Gentleman had a great deal of Discourse together: The Gentleman said he had been at the *East-Indies*, and told what he had got for his Merit; and *Mahony* said, some by good Friends. I heard the Gentleman, after *Mahony* was gone, pray to God to be his Comforter under his Afflictions. He said to himself, he knew that he was going to be murdered, and prayed that it might come to light by one means or another. I took no notice of it, because I thought him a crazy Man. I slept a little, and about two or three o'clock my Wife waked me. She said, Don't you hear the Noise that is made by the Gentleman? I believe they are killing him. I then heard him kick, and cry out, Here is twenty Guineas, take it; don't murder me; must I die! must I die! O my Life! and gave several Kecks with his Throat, and then he was still. I got up in my Bed upon my Knees, I saw a Light glimmering in at the Crack, and saw that same Man *Mahony* with a Candle in his Hand. The Gentleman was lying on one side. *Charles White* was there, and he put out his Hand to pull the Gentleman upright. I heard *Mahony* cry out, Damn ye, let us get his Watch out; but *White* said he could not get at it. I could not see his Pockets. *White* laid hold of him, went to tumbling him up to get out his Money, unbutton'd his Breeches to get out his Watch; I saw him lay hold of the Chain; *White* gave *Mahony* the Watch, who put it in his Pocket; and *White* put his Hand into one of the Gentleman's Pockets, and cursed that there was nothing but Silver: But he put his Hand in the other Pocket, and there he found Gold. *White* was going to give *Mahony* the Gold: Damn ye, says *Mahony*, keep it till by and by.

Mr. Recorder. In what Posture did Sir *John* lie at that time?

Edward Jones. He lay in a very uneasy manner, with one Leg up; and when they moved him, he still remained so; which gave me a Suspicion that he was dead. *White* put his Hand

in another Pocket, took out nothing but a Piece of Paper, was going to read it; Damn ye, said *Mahony*, don't stand to read it. I saw a Person's Hand on the Throat of this Gentleman, and heard the Person say, 'tis done, and well done.

Mr. Recorder. Was that a third Person's Hand, or the Hand of *Mahony* or *White*?

Edward Jones. I cannot say whether it was a third Person's Hand or not. I saw but two Persons in the Cabbin. I did not see the Person, for it was done in a Moment. I can't swear I saw any more than two Persons in the Cabbin.

Mr. Recorder. Did you take notice of the Hand that was laid on Sir *John's* Throat?

Edward Jones. I did.

Mr. Recorder. Did it appear to you like the Hand of a common Sailor?

Edward Jones. No; it seemed whiter.

Mr. Vernon. You have seen two Hands held up at the Bar, I would ask you to which of them it was most like in colour?

Edward Jones. I have often seen *Mahony's* and *White's* Hands, and I thought the Hand was whiter than either of theirs; and I think it was neither of their Hands by the Colour of it.

Mr. Recorder. Was Sir *John* on the Floor, or on the Bed?

Edward Jones. On the Bed; but there was no Sheets: It was a Flock-bed, and nobody had lain there a great while.

Mr. Vernon. How long did the Cries and Noise which you heard continue?

Edward Jones. Not a great while; he cried like a Person going out of the World, very low. At my hearing it I would have got out in the mean time, but my Wife desired me not to go, for she was afraid there was somebody at the Door that would kill me.

Mr. Vernon. What more do you know concerning this Matter, or of *Mahony* and *White's* being afterwards put on shore?

Edward Jones. I heard some talking that the Yaul was to go to shore about Four of the Clock in the Morning, and some of us were called up, and I importuned my Wife to let me go out. I called, and asked who is Centinel? *Duncan Buchanan* answered, It is I. Oh, says I, is it you? I then thought myself safe. I jumped out in my Shirt, went to him, says I, there have been a devilish Noise To-night in the Cabbin, *Duncan*, do you know any thing of the Matter? they have certainly killed the Gentleman, what shall us do? I went to the Cabbin Door where the Doctor's Mate lodged, asked him if he had heard any thing To-night? I heard a great Noise, said he. I believe, said I, they have killed that Gentleman. He said, he believed so too. I drew aside the Scuttle that looked into the Purser's Cabbin from the Steward's Room, and cried, Sir, if you are alive speak. He did not speak. I took a long Stick, and endeavoured to move him, but found he was dead. I told the Doctor's Mate, that I thought he was the proper Person to relate the Matter to the Officer, but he did not care to do it then. If you will not, I will, said I. I went up to the Lieutenant, and desired him to come out of his Cabbin to me. What is the Matter? said he. I told him I believed there had been Murder committed in the Cock-pit upon the Gentleman who was brought on board last Night. Oh! don't say so, says the Lieutenant. In that Interim, whilst we were

talking about it, Mr. *Marsh* the Midshipman came, and said, that there was an Order to carry *White* and *Mabony* on shore. I then swore they should not go on shore, for there was Murder committed. The Lieutenant said, Pray be easy, it can't be so; I don't believe the Captain would do any such thing. That Gentleman there, Mr. *Marsh*, went to ask the Captain, if *Mabony* and *White* must be put on shore? And Mr. *Marsh* returned again, and said, that the Captain said they should. I then said, it is certainly true that the Gentleman is murdered between them. I did not see *Mabony* and *White* that Morning, because they were put on shore. I told the Lieutenant, that if he would not take care of the Matter, I would write up to the Admiralty, and to the Mayor of *Bristol*. The Lieutenant wanted to get the Captain to drink a Glass of Wine; the Captain would not come out of his Cabbin: Then the Lieutenant went in first, I followed him. I told the Captain that my Chest had been broke open, and I desired Justice might be done. Then I seized him, and several others came to my Assistance.

Mr. Recorder. Mr. *Goodere*, do you ask Mr. *Jones* any Questions?

Samuel Goodere. Do you know whether the Midshipman was sent away on the King's Business or else only to put those two Men on shore?

Edward Jones. I know not; you was the Captain of the Ship.

Mr. Recorder. *Mabony*, will you ask this Witness any Questions?

Mabony. Did you see me lay Hands on the Gentleman?

Edward Jones. Yes I did, as I have already related. (*Margaret Jones* sworn.)

Mr. Vernon. Mrs. *Jones*, pray acquaint Mr. Recorder and the Jury what you know about the Murder of Sir *John Dineley Goodere*, (the Gentleman ordered by Mr. *Goodere* into the Purser's Cabbin.)

Margaret Jones. About seven o'clock in the Evening, the eighteenth of last *January*, the Captain (having been on shore) came on board, and came down into the Cock-pit, and asked if the Cabbin was clean? My Husband answered, Yes. On which the Captain gave Orders to bring down the Gentleman; and the Captain said to the Doctor, Doctor, I have got an old mad Fellow here, you must doctor him up as well as you can. They brought the Gentleman into the Cabbin, the Captain asked him how he did now? The Gentleman complained that he had a great Pain in his Thigh, he was hurted by the Mens halling him as they had done. The Captain asked him if he would drink a Dram of Rum? He answered, No; for he said he had drank nothing but Water for two Years past. The Captain gave a Dram to several Persons there; and he gave Orders for some Sheets to be brought; and he said to *Mabony*, As his Clothes are wet, do you pull them off: And the Gentleman said to *Mabony*, Don't strip me, Fellow, until I am dead. The Gentleman said, Brother *Sam.* what do you intend to do with me? The Captain told him, that he brought him there to save him from rotting in a Goal. About ten o'clock *Mabony* was left there; the Gentleman desired him to go; but *Mabony* said, I have Orders to abide here to take care of you. The Gentleman said to *Mabony*, I can abide by my self. Before the Captain went away, he bid *Ma-*

bony to see if his Brother had any Knife about him. The Gentleman gave up his Knife to *Mabony*, desired him to care of it, for it was his Son's Knife. The Gentleman asked about the Knife several times in the Night. About twelve o'clock I went to sleep; about two o'clock I a-waked again: I heard the Gentleman talk to *Mabony*, but *Mabony* advised the Gentleman to go to sleep. He said, I cannot sleep. They talked together a great while. *Mabony* said, I am to go on shore in the morning, and if you have any Letters to send to *Bristol*, I will carry them for you. I heard somebody say to the Gentleman, You must lie still, and not speak a Word for your Life. Some Minutes after I heard a great Struggling; who it was, I don't know. The Gentlemen cried out, Murder, help for God's sake! and made several Kecks in his Throat as though somebody was stifling him. I shook my Husband, told him that somebody was stifling the Gentleman. I heard two People in the Cabbin whispering; I don't know who they were. The Gentleman cried out Murder again, Help for God's sake! He said, I have twenty Guineas in my Pocket, here take it; must I die! Oh my Life! And just about that time, before he was dead, somebody from the Outside offered to come into the Cabbin: But I heard one of the Persons on the Inside say, Keep out, you Negro; and then a great Noise was made, I thought the Cabbin would have been beat down. Some few Minutes after the Gentleman had done struggling, a Candle was brought; I soon got up and looked through the Crevice: I saw a Man, who I believe to be *White*, take the Gentleman by the Coat, and pulled him upright. I saw *Mabony* with a Candle in his Hand; I observed the other to put his Hand in the Gentleman's Pocket. One of them said, Damn ye, pull out his Watch. Then I saw the Person take hold of the Watch-string and pull it out, and he said to the other, Here 'tis, take it, and put it into thy Pocket. Then one of them put his Hand in another Pocket, and took it out, said, here's nothing but Silver; and then he searched another Pocket, and said, here it is; and pulled out a Green Purse: Soon after that, the Door was unbolted, I heard a Person say, Where shall I run? who I believe was *Mabony*; and the other, *Charles White*, said, Follow me, Boy. And they went to go upon Deck through the Hatch-hole, which is an uncommon way: And that is all I know.

Mr. Recorder. Mr. *Goodere* and *Mabony*, do either of you ask this Witness any Questions?

Samuel Goodere. No.

Matthew Mabony. No.

(*James Dudgeon* sworn.)

Mr. Vernon. Mr. *Dudgeon*, I think you are the Surgeon's Mate belonging to the *Ruby*?

James Dudgeon. Yes, Sir.

Mr. Vernon. Give Mr. Recorder and the Jury an account what you know relating to this Matter.

James Dudgeon. I am very sorry that I should come on this Occasion against Captain *Goodere*, because he ever behaved towards me in a genteel manner. The Week before this happened, I was told by one of the Officers, that the Captain was going to bring his Brother on board; and on *Sunday* the eighteenth of *January*, about the dusk of the Evening the Barge came down to the Ship. I was at that time walking the Quarter-deck: some

some of our People seeing the Barge a coming, they said, our Captain is coming on board with his Brother sure enough; but instead of coming up the Quarter-deck, the Captain went down upon the Main-deck, and I still kept walking on the Quarter-deck, expecting to see the Gentleman when he went into the Great Cabbin; but I afterwards found that he was ordered down to the Cock-pit. Soon after, I went down there myself; and the Captain being there, said, Doctor, I have brought a Madman to you, I don't know what we shall do with him, but we must make the best of him that we can; and *Mahony* came down likewise: The Captain sent his Steward for a Bottle of Rum, *Mahony* had a dram of it. The Captain asked Sir *John*, if he would have one? Sir *John* replied, no; for, said he, I have not drank any thing of that nature for two Years past: he groaned several times. There was then one *Cole* at the Foot of the Ladder, to whom also the Captain gave a Dram: then there was a Centinel put upon the Cabbin-door; but *Cole* asked the Captain if he might go in, and the Captain said he might. The old Gentleman made a noise as the Captain went up the Ladder; the Captain told him, we have now brought you on board, and will take care you shall want for nothing. After the Captain was gone, *Cole* wanted to go in, but the Centinel would not let him; telling him, that his Orders were to let none in but *Mahony*: however *Cole* went up, and got leave of the Captain to go in, and he did go in. Soon after this, the Captain came down again to the Cock-pit, and came into my Place, and sat down; and after talking of things promiscuously, he said, he believed it would be proper for me to go and feel his Brother's Pulse; or else, Doctor, he said, do you chuse to leave it alone till To-morrow Morning? I made answer, that To-morrow Morning might be the best time; because the Gentleman may be much confused, by being brought down on the Water. Come, said he, let us go in now; for I believe, it will be as well. If you please, Sir, said I, I will; so the Centinel opened the Door, and we both went in. Immediately after, the Captain went out again, and forthwith the Door was shut upon me; which very much surpris'd me, to think that the Captain should leave me with a Madman, and I observed the Captain to peep through: I then asked the Gentleman what he mostly complain'd of, and felt his Pulse; he then made some Groans, and told me, that he had got a great cold last Week at *Bath*, and that he felt a severe Pain in his Head. I was going to ask him some more Questions, but the Captain called me, and said, Don't ask him any more questions, but only feel his Pulse. Then the Centinel opened the Door, and I came out, and the Captain and I went into my Place again. Well, Doctor, said he, how do you find his Pulse? Why, Sir, said I, his Pulse are very regular. Why, said he, I believe he was pretty much hurried upon the Water. Then the Captain went up the Ladder, and a little while after he came down again; there were two Midshipmen with me in my Place, and when the Captain came in, they went to go out, but he desired one of them to stay, for he had something to say to him, because he was to go up for Letters in the Morning: so we sat down, and talked of various things; but I informed the Captain, that the old Gentleman have had hard Lodging To-night. Why,

said he, I would put another Bed in there, and have given him clean Sheets, but he would not hear any thing of this kind. Then said he to me, Doctor, I believe it will not be amiss to take an Inventory of every thing he has about him, for fear it should be reported that he is robbed. I replied, Sir, it may not be amiss. By and by *Cole* came tumbling down the Ladder, the Midship-man opened the Curtain to see who it was; Captain, said he, that is *Cole*; and I then told that *Cole* had been drunk a great Part of that Day. Soon after that the Captain opens the Curtain, and sees *Mahony* stand by the Centry. *Mahony* said he, I thought you had been about the thing which I sent you to do; which, I take to be getting the Money out of the Gentleman's Pocket. No, Sir, said he, I chuse to do it after he is asleep. Very well, said the Captain. Then the Captain spoke to the Midship-man, and said, Mr. *Morsb*, you are to go up for Letters to-morrow, and if any one takes notice of what was done to-day, you may tell the People that it is my Brother, and he is very much disordered in his Brains, and I have got him on board in hopes of getting Relief for him. Sometimes, Doctor, says he, he can talk as well as you or I; but at other times, he is very much out of order. About eight o'clock I was for going to bed, but did not till an Hour and a half after; and about that time Sir *John* was making a great noise, and asking who is without the Door, what must I do my affairs in the Cabbin, what a shame is it, will not you let me have any thing to do it in? But nobody made any Reply. Upon which I said to the Centinel, why don't you answer the Gentleman, are not you ashamed of it? Upon which, I suppose, one went up to the Captain, and he came down, and said, he was sorry that the Gentleman should make such a Disturbance; but he hoped, that the first Night would be the worst: Upon which the Captain went up, and *Mahony* went in; and I heard the Gentleman and him talking together, and he asked *Mahony*, what his Brother was going to do with him? What, says he, does he say, I am mad? Formerly I used to be so, but now I have not tasted any thing stronger than Water these two Years, But, said he, to be sure these Fellows are not Sailors, who attacked me this day; they are not Sailors, for if so, they are sadly degenerated from what Sailors were formerly; for I myself have been at Sea, and might have been a Commander. About half an Hour after Ten, I fell asleep, but was very uneasy. About twelve the Centinel was sent for to go up to the Captain, but soon came down again; and about half an Hour after two I awaked, hearing some stir in the Cock-pit; and I heard *Mahony's* Voice in the Cabbin, saying, Lie still, and sleep, Sir. In a short time after that I heard a Struggle, and Sir *John* cried out, here is twenty Guineas for you, take it; must I die? And it seem'd to me by his speaking, that they were stifling his Mouth. Upon which the Person who stood Centry on the Cabbin turned the Key, whereupon *Mahony* cried out in a terrible pucker, Damn ye, keep the Door fast. Upon which I spake, and said, What is the matter, what a noise is that? And the Person who stood Centinel made answer, Nothing at all, nothing at all; so I lay still a while, and all was pretty quiet. A little time after that, *Mahony* called for a Light and the Cabbin-door was opened, and a Light handed

handed in; the Cock-pit was then in Darkness, so all was quiet again for some time. Soon after that the Cabbin-door was opened again, and I heard as if two or three People were coming out of the Cabbin, and heard *Mabony* say, Which way shall I go? And somebody made answer, You may go through the Hatch-hole. He repeated the Question, Which way shall I go? And the other answered, By the Ship-side. I then thought somebody had been murdering Sir *John* sure enough, and they are carrying off his Body that way; at the same time a Person stept up the Cock-pit Ladder, and I heard the Captain's Voice, and he said, Centry, if he makes any more noise, let me know it; but I thought within myself, that he was past that. After this was past, all was pretty quiet, and the Centinel kept walking without my Room: I was cautious of speaking to him, not knowing who he was; but soon after one of the Captain's Servants came down to the Store-room for Liquor, and he asked the Centry whether he had made any noise lately? To which he reply'd, you may tell the Captain that the Gentleman hath been at the Lock. About half an Hour after, the Person who was upon the Watch came to me, and asked, If I had any Commands on shore, for the Boat was going up? I told him no; but, perceiving by his Voice who it was, I called him to come to me in the dark, and I whisper'd and said to him, Mr. *Heathorne*, here hath been a hellish Cabal to-night, I believe they have murdered the Gentleman; doth *Mabony* go on shore? He answered, that he did; then, said I, the thing is done. I then asked who was the Centry without my Door, and he told me; whereupon I called the Centry to me, and asked him, what noise and cabal is this that hath been here to-night? He said, he did not know; but the Captain, said he, hath been down several times to-night, and that he had taken the Sword from him. Just after this, in came *Edward Jones* the Cooper, and his Wife, shaking and trembling; and said, *White* and *Mabony* had murdered the Gentleman sure enough. I told them, I did believe they were both going on shore; and I would, said I, have you tell the Lieutenant what you saw of the matter, and let him know that I am of the same opinion with you: but do you first go into the Steward's Room and draw the Scuttle, and then you'll see whether he is dead, or no. Upon which they went and drew the Scuttle, and a Cat fled in their Face, and they found the Gentleman lay in the same posture as *White* and *Mabony* left him. I then bid them go and tell the Lieutenant the matter, that those Fellows might be prevented from going ashore; but yet, said I, we can't stop them neither, seeing they have the Captain's Orders. Then went *Jones* up forthwith, and, I believe, told the Lieutenant; and I also stept up to him just after, and told him, that I believed Sir *John* was actually murdered; for said I, there have been a terrible noise in the Cock-pit to-night, and the Captain himself was there this Morning when 'twas almost three o'clock, and the Men that were with him are going on shore. The Lieutenant answered, that he could not stop these Men from going ashore, because the Captain hath given them leave; so, said he, we must let it alone till Morning, to see whether the Gentleman is dead, or no. About eight o'clock in the Morning I went to him again; but he told me it was best to defer it till we did

see whether the Captain sends down to him, or not. It is, said he, no way proper for us to think of seizing the Captain, till we see that the Gentleman is actually dead, and have reason to think he is murdered. When the Captain's Breakfast was ready, he sent for the Lieutenant and me to come and breakfast with him: accordingly we did; and soon after there was a Shore-boat came towards us, and then Mr. *Chamberlayne* came on board, and went to the Lieutenant's Cabbin; and the Lieutenant told that Gentleman, that they were then going to seize the Captain, for it was believed that he had been accessory to the Murder of his Brother. Immediately a Message was brought by one of the Men, that Sir *John* was dead: upon which the Captain was forthwith seized by eight or ten Men.

Mr. *Vernon*. How far was your Cabbin from the Purser's?

James Dudgeon. I can't say certainly, but believe about three Yards.

Mr. *Vernon*. Did you view the Body of the Deceased whilst he lay dead in the Purser's Cabbin?

James Dudgeon. I did.

Mr. *Vernon*. And did you find any visible Marks of Violence upon him?

James Dudgeon. Sir, I saw no Rope, but he had a Neck-cloth about his Neck, and there were some Marks in his Neck, which looked like the scratching of Nails; and I believe that he was strangled, the Blood came out of his Nose and Mouth.

(*William Macguinis* sworn.)

Mr. *Vernon*. Was you on board the *Ruby Man* of War at the time when this matter happened?

William Macguinis. Yes, Sir, I was.

Mr. *Vernon*. Then give an account of what you know concerning it.

William Macguinis. The Night in which the Gentleman came on board, I was appointed to be the Centinel at twelve o'clock; but when the Gentleman came on board, I was in my Hammock. I was called up to stand Centry in the Gun-room; and (please you, my Lord) I had not been long on my Post before I saw the Captain come down; and soon after I saw *Mabony*, that Man there (pointing at the Prisoner *Mabony*) also come down. I stopt him, and asked him where he was going? Damn your Blood, you Son of a Bitch, what is that to you; how busy you make yourself? And when he came to the bottom of the Cock-pit-Ladder, I heard him say to another Man, Come here, this is the way? But who it was he spake to, I know not. This was a little after two o'clock. The Captain espied me, he made towards me, and waved his naked Cutlash, and said, Stand back! stand back!

Mr. *Vernon*. Where was Mr. *Goodere*, when he advanced towards you, and bid you stand back?

William Macguinis. The Captain was down in the Cock-pit then.

Mr. *Vernon*. Had he any thing in his Hand?

William Macguinis. Yes; he had a Cutlash. *Duncan Buchanan* had been standing Centinel in the Cock-pit, but was released by the Captain.

Mr. *Vernon*. What more did you see?

William Macguinis. I saw *Mabony* go into the Purser's Cabbin, and afterwards, I saw the Captain and *Mabony* come up again from the Cock-pit.

Mr. *Vernon*. About what time?

William Macguinis. I believe it was then about three o'clock.

Mr. Recorder. Mr. Goodere and Mabony, do either of you ask this Witnesses any Questions?

Samuel Goodere. No.

Matthew Mabony. No.

(Mr. Walker sworn.)

Mr. Vernon. I think you are the City Mason?

Walker. I am.

Mr. Vernon. Look upon that Watch, and give an Account how you came by it?

Walker. I found it in the Necessary-house, at the Brockware-Boat, a Public-house on the Back.

Mr. Vernon. Who kept that Public-house at the time you found the Watch?

Walker. One Culliford.

Mr. Vernon. Was it accidentally, or upon Search that you found the Watch?

Walker. I searched for it in the Necessary-house, by the Justices Orders; when I found it, the Case was in one Place, and the Watch in another, about a Yard apart.

(Sarab Culliford sworn.)

Mr. Vernon. Look upon that Watch, Mrs. Culliford; you live at the Sign of the Brockware-Boat on the Back, do you not?

Sarab Culliford. Yes, Sir.

Mr. Vernon. Do you take that to be the same Watch, that was found by Mr. Walker, the City Mason, in your Necessary-house?

Sarab Culliford. Yes, Sir; I believe it is the same.

Mr. Vernon. From whom did you receive it, before it was thrown into the Necessary-house?

Sarab Culliford. I received it from Mabony's Hands, that Man there; (pointing to the Prisoner Mabony.)

Mr. Vernon. How long before he was apprehended?

Sarab Culliford. I had it in my Possession about two Hours before, and two Hours after he was taken up.

Mr. Vernon. And what became of it afterwards?

Sarab Culliford. This young Man (meaning the Prisoner Mabony) was drinking in my House, he pulled out the Watch, delivered it to me, and desired me to keep it for him until he did call for it: Some Time after I had Business to go out, I went into Town, and had the Watch in my Pocket; when I came back, my Children told me that the Constable had been there to search the House for it, which much surprized me; I went and threw the Watch into the Necessary-house, for fear I should come in Trouble.

(Josias Fussell sworn.)

Mr. Vernon. Mr. Fussell, look on that Handkerchief, and give an Account from whom you had it, and when?

Josias Fussell. I had this Handkerchief from Mabony, on the 19th of January last, the Night when we took him, I found it upon his Neck; when he was seized, he took it off; I took it out of his Hand, it was bloody then as it is now, I put it into my Pocket.

(Mr. John Mitchel, Chief Clerk to the Town-Clerk, sworn.)

Mr. Vernon. Mr. Mitchel, what Paper is that in your Hand?

Mr. Mitchel. The Examination of Matthew Mabony, the Prisoner at the Bar, taken before Henry Combe, Esq; Mayor.

Mr. Vernon. Did you see the Prisoner Mabony sign it in his Presence?

Mr. Mitchel. Yes, Sir.

Mr. Vernon. Did he do it voluntarily?

Mr. Mitchel. He did.

Mr. Vernon. Did you see Mr. Mayor sign that Examination?

Mr. Mitchel. Yes, I did.

Mr. Vernon. Then I desire it may be read?

Mr. Recorder. Read the Examination?

Clerk reads the Examination, in these Words:

City and County } to wit; THE voluntary Examination and Confession of Matthew Mabony, a Native of Ireland, aged about 21 Years. This Examinant confessedli and faith, That about sixteen or seventeen Days ago, and several times since, he was desired by Mr. Goodere, Captain of the Ruby Man of War, now lying at King-Road, in the County of the City of Bristol, to seize his, the Captain's Brother, Sir John Dineley Goodere, Bart. and bring him on board the said Man of War; and that on Tuesday last, this Examinant and the Crew belonging to the Man of War's Barge, and Edward Mac-Daniel, John Mac-Graree, and William Hammon, Privateer's Men, were placed by the said Captain at the White-Hart Alehouse opposite St. Augustine's Church, in order to seize Sir John Dineley Goodere that Day; but it so happened, the Captain forbid them to do it then. And that on Sunday last, this Examinant, the said Barge's Crew, or the greatest Part of them, and George Best Cockstern of the Barge, the said Edward Mac-Daniel, John Mac-Graree, William Hammon, and one Charles Bryer, Privateer's Men as aforesaid, were again placed at the White-Hart aforesaid, to seize the said Sir John Dineley Goodere, and waited there for some Time; and he coming out of Mr. Jarrit Smith's House, and coming under St. Austine's Church-Yard Wall, this Examinant and his Comrades pursued him, and near the Pump there, they came up with him, and told him there was a Gentleman wanted to speak with him; and he asking where the Gentleman was, was answered a little ways off, and he went quietly a little way, but no one appearing, he resisted and refused to go, whereupon this Examinant and Comrades sometimes forcibly halled and push'd, and at other Times carried him over St. Austine's Butts, Captain Day's Rope-walk, and along the Road to the Hot-Well, (Captain Goodere being sometimes a little behind, and sometimes amongst the Croud all the way) till they came to the Slip where the Barge lay. But Sir John was very unwilling to go, made the utmost Resistance, and cryed out Murder a great many Times; and when he was put into the Barge, called out and desired somebody would go to Mr. Jarrit Smith, and tell him of his ill Usage, and that his Name was Sir John Dineley. Whereupon the Captain clapt his Hand on Sir John's Mouth to stop his speaking, and told him not to make such a Noise, he had got him out of the Lion's Mouth (meaning the Lawyers Hands) and would take care he should not spend his Estate; and bid the Bargemen row away, which they did; and in their Passage to the Man of War, the two Brothers bicker'd all the Way: But when they came to the Man of War, Sir John went on board

board as well as he could, and the Captain took him down into the Purser's Cabbin, and staid a little Time with him, and treated him with a Dram of Rum, and then left him for a considerable Time. And in the Interim sent for this Examinant into his, the Captain's Cabbin, and there told this Examinant he must murder his Brother, for that he was mad, and should not live till Four o'Clock in the Morning; and this Examinant reasoning with him, and telling him he would not be concerned, and that he thought he had brought him there with Intent only to bring him to Reason, and take care that he should not spend his Estate in Law, and to have a perfect Reconciliation; but the Captain still insisting, that as this Examinant had taken him, he should do it; and this Examinant then saying, he was not able to do it of himself; the Captain replied, if this Examinant could get nobody else, he and this Examinant must do it themselves. And then ordered him to call one *Elisba Cole*, and he being too drunk to undertake such an Affair, bid this Examinant call one *Charles White*, a very stout lusty Fellow, and the Captain gave him a Dram, and bid him sit down, and soon gave other Drams, and ask'd if he could fight, and told him here's a Madman, he must be murdered, and thou shalt have a handsome Reward. And this Examinant, the said *Charles White*, and the Captain, being all agreed to murder the said Sir *John Dineley Goodere*, the Captain then propos'd the Method, and produced a Piece of Half-inch Rope of about nine Foot long, and *Charles White* having made a Noose in the Rope, the Captain said, applying himself to this Examinant and the said *Charles White*, You must strangle him with this Rope, and at the same time gave the Handkerchief now produced, that in case he made a Noise, to stop his Mouth; and said, I will stand Centinel over the Door whilst you do it; and accordingly instantly went out of his own Cabbin, and turned the Centinel from the Purser's Cabbin-Door, and let this Examinant and *White* into the Purser's Cabbin, where Sir *John Dineley Goodere* was lying in his Clothes on a Bed: The Captain having pulled to the Door, and standing Centinel himself, the said *White* first strangled Sir *John* with his Hands, and then put the Rope about Sir *John's* Neck, and halled it tight, and Sir *John* struggled, and endeavoured to cry out, but could not. And this Examinant confesses, that whilst *White* was strangling Sir *John*, this Examinant took care to keep him on the Bed, and when one End of the Rope was loose, this Examinant drew and held it tight; and thus each bore a part till Sir *John* was dead; and they having rifled the deceased of his Watch and Money, knock'd at the Door to be let out; and the Captain called out, Have you done? They replied, Yes. He opened the Door, and asked again, Is he dead? and being answered in the Affirmative, and having a Light, swore by God he'd be sure he was dead; and then went in himself, and returning, locked the Door and put the Key in his Pocket, and they all went together to the Captain's Cabbin again, and there this Examinant gave the Captain Sir *John's* Watch, and the Captain gave this Examinant his own Watch in lieu of it; and then the Captain gave them both some Money, and *White* afterwards gave this Examinant eight Guineas, as

part of the Money he took out of the Deceased's Pocket, and then the Captain ordered them to be put on shore in his own Boat. And further, this Examinant confesses, and saith, That before and after the Murder was committed, the Captain, *Charles White*, and this Examinant consulted what to do with the Corpse; and the Captain propos'd to keep it two or three Days in the Ship, and as he expected to go to Sea, would sew it up in a Hammock, or something else, and there throw it overboard: And that before this Examinant and his Comrades were sent to seize Sir *John*, as is before set forth, they were ordered by Captain *Goodere*, that, if they met with any Resistance they should repel Force by Force, and were prepared with short heavy Sticks, or Bludgeons for that purpose.

Matthew Mabony.

Mr. Recorder. [Speaking to the Jury.] Gentlemen, you are to take notice, that this Confession is Evidence against the Prisoner *Mabony* alone, and so far only ought you to regard it. It is no Evidence, nor ought you to lay any Strefs upon it, as against the Prisoner *Goodere*.

Mr. Vernon. Mr. Recorder, we have gone through with our Evidence of the Fact, and here we should have rested it, were it not that Mr. *Goodere*, by his strict Enquiry into the Spot where the Ship lay, seems to question whether it was within this County or not: A Question, which, I confess, I no more expected to hear of, than whether we ourselves are now within it. However to obviate all Pretence of that Kind, and give the Gentlemen of this Jury as full Satisfaction in the Point, as undoubtedly the Grand Inquest for the Body of this County had before they found the Bill, we shall beg leave to call a Witness or two, just to shew that *King-Road* has been constantly taken to lie within the City and County of *Bristol*; and that accordingly the Sheriffs Officers of *Bristol*, from time to time, have used to execute both the City and County Procefs in *King-Road*; which, I apprehend, will of itself be satisfactory Evidence, without entring into any other Disquisition of the County Limits. Call Mr. *Wint*.

(*John Wint* sworn.)

Mr. Vernon. Mr. *Wint*, what Officer are you in *Bristol*?

John Wint. I am an Officer to the Sheriffs of *Bristol*, and have been so for these thirty Years and upwards.

Mr. Vernon. Have you been used, as an Officer to the Sheriffs of *Bristol*, to serve Procefs in *King-Road*?

John Wint. I have served Procefs in *King-Road* forty or fifty Times.

Mr. Vernon. How far down the River?

John Wint. Very often down as far as *Poffet Point*.

Mr. Recorder. What Kind of Procefs have you served there?

John Wint. Town Actions out of the Mayor and Sheriffs Court, and out of the Piepowder Court.

Mr. Recorder. Have you ever executed Procefs there which was directed to the Sheriffs of *Bristol*?

John Wint. Yes, Sir, I have served Sheriffs Warrants, or Writs, issued from above, out

of the Court of *King's-Bench* and *Common-Pleas* to the Sheriffs of *Bristol*.

Mr. Recorder. *Mr. Goodere*, will you ask this Witness any Questions?

Samuel Goodere. Yes, Sir: Is all that is called *King-Road* within the Liberty of the City of *Bristol*?

John Wint. Yes it is.

Samuel Goodere. Are you sure of it?

John Wint. I know where the Ship *Ruby* lay was within the City of *Bristol*.

Samuel Goodere. How do you know that?

John Wint. Because I have been 'down with the Mayor to the *Holmes*.

Mr. Vernon. Call *Mr. Lowden*.

(*Mr. Lowden* sworn.)

Mr. Vernon. What Officer are you, *Mr. Lowden*?

Lowden. I have been an Officer in this City about nineteen Years: I have served Town Actions, Town Warrants, and Warrants made out upon Writs from the Courts of *Westminster-Hall*, and the *Admiralty*, in *King-Road*: And any Part of *King-Road* on the Southward of the *Denney*, we always take it to be in the Liberties of *Bristol*.

Mr. Vernon. *Mr. Recorder*, we have done.

Mr. Recorder. *Mr. Goodere*, and *Matthew Mahony*, the Counsel for the King has gone thro' with his Evidence, and now is your Time to enter upon your Defence.

Samuel Goodere. May it please your Lordship, I shall endeavour to give you and the Jury as little Trouble as possible. I shall call Evidence to prove that the Gentleman was a Lunatick, and disordered in his Senses, and I was doing my best to take care of him.

Call *Mrs. Getbins*.

Mr. Recorder. What do you call her to prove?

Samuel Goodere. I call her to prove that before my Brother was taken on board, I was to take an Upper-room of her to put him in, where he might be taken care of, to cure his Madness.

Mr. Recorder. What, *Mr. Goodere*, do you admit then that you did take your Brother on board?

Samuel Goodere. I do admit that I carried my Brother on board. I went in the Boat along with him.

(*Mrs. Getbins* sworn.)

Samuel Goodere. *Mrs. Getbins*, did I not speak to you a Fortnight or three Weeks before my Brother was taken on board the Ship, to have a Garret of you to put him in, and that *Mahony* was to have five Pounds a Month to take care of him?

Mrs. Getbins. The Prisoner Captain *Goodere*, did ask me if I had not a Garret to let him keep his Brother in, for that he was a Mad-man: And Captain *Goodere* never made it a Secret that he intended to take and keep his Brother as a Mad-man.

Samuel Goodere. Whether I did not tell you that *Mahony* was to take care of my Brother a Fortnight or three Weeks before he was taken on board? Speak to the time as near as you can recollect; and whether you knew that *Mahony* was to have five Pounds a Month, and that I made no manner of Secret of it, and that I endeavoured to take care of him as a Lunatick.

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Mrs. Getbins. Sir, I have already said that you spoke to me about a Room to put your Brother in, but what you mention about *Mahony*, I know nothing of that.

Mr. Vernon. Pray is *King-Road* in the Road to your House?

Mrs. Getbins. No, Sir.

Mr. Vernon. Was your Garret a proper Place of Accommodation for a Gentleman, and one who was esteemed an *English* Baronet think you? Pray, do you keep a Mad-house, Madam?

Mrs. Getbins. No.

Mr. Vernon. Don't you think such a Confinement would have been the way to have made him mad?

Mr. Recorder. Was any Person as you know to have taken care of him in your Garret?

Mrs. Getbins. I have heard the Captain talk with his own Doctor about it.

Samuel Goodere. I shall give you and the Jury as little trouble as may be. I have an Evidence in Relation to *Mahony* and *White's* going away at Four o'Clock in the Morning, because it is charged that I sent them away. The Boat went away in the King's Service to bring Letters.

(*Mr. Marsh* sworn.)

Samuel Goodere. Did you go ashore in the Morning about the King's Business, or what Business did you go about?

Mr. Marsh. I had an Order about Eight o'Clock the Night Sir *John* was brought on board to go up in the Morning to *Bristol* for the Letters from the Admiralty, and about Four of the Clock in the Morning I was called up to go; but the Lieutenant seemed much disordered, and bid me come to him before I set out. I waited on the Lieutenant, and told him, that *White* and *Mahony* said they had Liberty to go on shore, that the Captain had given them Liberty to go; the Lieutenant said, he knew nothing of it. But as it is always my way, before I carry any body off, I said, I would go to the Captain and ask leave. I went to the Captain, and asked him, if *White* and *Mahony* had Liberty from him to go on shore? and he said, Yes, let them go.

Samuel Goodere. *Mr. Marsh*, did you go upon the King's Business, or on purpose to take up these Men?

Mr. Marsh. I went about the King's Business.

Mr. Vernon. But it was after Sir *John* was brought on board, that *Mr. Goodere* ordered you to go up?

Mr. Marsh. Yes, Sir, it was.

Mr. Vernon. Did any body else go up with you, besides *Mahony* and *White*?

Mr. Marsh. No, there did not.

Mr. Vernon. Did *Mr. Goodere* give you Orders to put them on shore in any particular Place?

Mr. Marsh. I will do Justice between Man and Man; the Captain did not give me Orders to put them on shore in any particular Place.

Mr. Vernon. Were they landed publickly or privately?

Mr. Marsh. I put them on shore at the *Gibb*, about six of the clock in the Morning.

Samuel Goodere. Now, may it please you, Sir, I shall shew that *Mahony* had business at *Bristol* that Day by Appointment, to receive some Wages

that was due to him; for which purpose I shall call Mr. Dagg.

(*Abel Dagg*, Keeper of *Newgate*, sworn.)

Samuel Goodere. Do you know any thing of Captain *Mervin*, and of *Mabony's* coming to *Bristol* on the *Monday* to settle an Affair with him?

Abel Dagg. There was one Captain *James Mervin* who failed into this Port, and on his coming was charged as a Debtor in my House, at the Suit of some Gentleman in *London*, in an Action of three or four hundred Pounds. *Mabony* was one of his Sailors until he was prest, and he charged the said *Mervin* with an Action for his Wages. Captain *Mervin* had a desire to make up the matter with *Mabony*. I went to the Captain of the Man of War the *Tuesday* or *Wednesday* before this Affair happened, which was the first time I ever saw him, to the best of my knowledge: The Captain said he would meet me the *Monday* following, in order to accommodate the difference.

Mr. *Vernon*. Was *Mabony* appointed to meet you that Day, or not?

Mr. *Recorder*. Mind the Question, was *Mabony* to come that *Monday*?

Abel Dagg. The Captain made an Appointment, my Lord, to meet on the *Monday*; and I told Mr. *Taylor* the Attorney, that *Mabony* was to come on shore that day, to make up the matter between him and *Mervin*.

Mr. *Vernon*. I would ask you another Question; Had *White* too any Affair to make up at *Bristol*?

Abel Dagg. No, I know nothing of that.

Samuel Goodere. Now I call *Bridget King*.

Mr. *Recorder*. What do you call her for?

Samuel Goodere. Touching the Lunacy of Sir *John Dineley*.

(*Bridget King* sworn.)

Samuel Goodere. Mrs. *King*, will you give the Court an account of what you know of the Lunacy of my Brother Sir *John Dineley*.

Bridget King. Please you, my Lord, I think he was mad; for he would get up at two or three of the clock in the Morning, and call his Servants up, and fall a singing; and then he would go to bed again, and swear it was but twelve o'clock at Night, and lie a-bed all Day. He would send his Boy out all over his Grounds to pick up Stones, and have the Wheelbarrow rattling about the Streets on a *Sunday*: he hath ringed the Bell to call his Servants up to his Bed-side, and when they were come up, he would ask them what they did there, and swear they were come to shoot him? He himself hath gone over all his Grounds on a *Sunday* to pick Sticks, and hath sent his Servants to Market when there was none; and he would be busy in every thing, and hang on the Pot himself; and he hath been quite raving mad.

Mr. *Vernon*. Did you live as a Servant with Sir *John*?

Bridget King. I lived as a Servant with him in *London*, and he came down for the Air to *Tockington*; he brought me down to go to *Bath*.

Mr. *Vernon*. How long did you continue with him?

Bridget King. A Twelvemonth, Sir.

Mr. *Vernon*. And how durst you venture to live so long with a Mad-man? He did not go mad for love of you, I hope? Have you lived any time in *Bristol*?

Bridget King. No.

Mr. *Vernon*. Then I suppose you came but now from *London*.

Bridget King. Yes, I did.

Samuel Goodere. Do you believe he was a Mad-man?

Bridget King. In the Actions that I have seen by him, I have reason to think he was a Mad-man.

(Mrs. *Mary Stafford* sworn.)

Samuel Goodere. Mrs. *Stafford*, will you tell his Lordship and the Jury what you know of Sir *John* being a Lunatick?

Mary Stafford. Sir *John* hired me for a House-keeper in *London*, and told me he had a great many Servants, and he wanted a House-keeper. When he brought me down, he ordered me to his Seat at *Tockington*; where, he said, he had a great deal of Company frequently. When I came there, I found there was nothing in what he had told me; for, instead of a great many Servants, he had but one: a poor old shat-tered House, ready to tumble down about one's ears, and the Household Goods all to pieces: he was a Mad-man; for if I had followed his Directions in any thing, I should have done mischief. He hath sent me and the rest of his Servants to *Thornbury* Market, when there was none; he hath ringed the Bell to call his Servants to come to his Bed-side to him, and when we have come up to him, he hath asked us, what we did there? Sir, said I, you called me up; he hath said, he did not: and after we had been there a quarter of an Hour, he would take a Knife, Fork, Glass-Bottle, or any thing that came in his way, to throw at us, asking of us, what did we come to rob him? And I was afraid of my Life, to live with him. I do believe he was a Mad-man, or else he would never have acted as he did: he would go into the Kitchen, and take the Pot and hang it on the Fire. I style him a Mad-man by his Actions.

Mr. *Vernon*. And must he therefore be hanged himself like a mad Dog, think you?

Mary Stafford. I know nothing of that, Sir.

Mr. *Vernon*. How long did you live with Sir *John*?

Mary Stafford. Three Months, Sir.

Samuel Goodere. Call Mr. *Robert Cock*.

Mr. *Recorder*. What do you call him to prove?

Samuel Goodere. My Lord, in order to prove Sir *John Dineley* a Lunatick. Mr. *Cock*, will you give an account to my Lord and the Jury what you know of the Lunacy of Sir *John Dineley*?

(*Robert Cock* sworn.)

Robert Cock. My Lord, I have known Mr. *Dineley* at *Charlton* for some Years; I have been several times in his Company; I have seen him do several Acts of Lunacy as a Mad-man.

Mr. *Vernon*. Where do you live?

Robert Cock. I live in *Cumberland*, when I am at home.

Mr. *Vernon*. Are you of any Business?

Robert Cock. I am an Officer belonging to his Majesty.

Mr. *Vernon*. What kind of Officer?

Robert Cock. A Salt Officer.

Samuel Goodere. I will not give your Lordship and the Jury much more trouble. I am entirely innocent; they have not proved that I was present at the Death of Sir *John Dineley*.

Mr.

Mr. Recorder. Don't deceive yourself; though they have not proved that you was actually in the Cabbın, when Sir *John* was murdered, yet they have given Evidence of that, which (if the Jury give Credit to) will amount to Presence in the eye of the Law.

Samuel Goodere. I shall now call some Witneses to my Character, and likewise to shew how improbable it is, that I should be guilty of the Murder of my Brother. Call *Mr. Pritchard*.

(*Mr. Pritchard* sworn.)

Mr. Pritchard. I have known *Mr. Goodere*, the Prisoner at the Bar, many Years: He always bore the Character of a good Husband, a good Neighbour, and a kind Friend.

Samuel Goodere. I shall call a Person who saw the Will of Sir *John Dineley*; and then any body would think that I should be the maddest Man in the World to commit a Murder that I knew would be Forty Thousand Pounds Damage to me. It was my business, considering the Circumstance of the Will, and that I was Sir *John's* Heir at Law, at all events to preserve him. Call *Mr. Watkins*.

(Reverend *Mr. Watkins* sworn.)

Samuel Goodere. *Mr. Watkins*, did not you see or hear the Contents of Sir *John Dineley's* Will, and did you not tell me presently after the Will was made the Contents of it, and how long was that before his Death?

Mr. Watkins. It was above three Months, or half a Year before his Death, to the best of my Knowledge. It was so long ago, as you dined with me at *Croftborne*.

Samuel Goodere. Did you not inform me, that that Will did cut me off of every thing, and gave the Estate to the *Foots*; and that Sir *John* told you so?

Mr. Watkins. Sir *John* told me that he had made his Will, and had cut his Brother off from every thing; and that he had given the Estate to the *Foots*: of which I told *Mr. Goodere* soon after.

Samuel Goodere. How long ago?

Mr. Watkins. I can't tell exactly; about half a Year, or three quarters of a Year, it might be.

Mr. Vernon. They have been giving Sir *John* the Character of being a Lunatick; I think, Sir, you are Minister of *Croftborne*, and must, I presume, have been pretty conversant with Sir *John*, and a frequent Witness of his Behaviour in that Neighbourhood; be pleased therefore to speak what you know, as to his Sanity or Infanity of Mind.

Mr. Watkins. Sir *John's* Character in my opinion hath been very much misrepresented to the World. During my Acquaintance with him, I have found him to be a good Neighbour, and a kind Friend: He was a Man of strong Passions; if any one affronted him, he would let the Party know that he did resent it. All his Tenants of our Country, and those I have conversed with say, that he was one of the best of Landlords.

Mr. Vernon. I don't ask you, Sir, concerning his moral Character; but whether he was in his Senses, or not?

Mr. Watkins. In his Senses! I saw him last *Christmas*, he was making up his Accounts with several of his Tenants; he was then in very good Understanding.

Mr. Vernon. Pray did you ever know him visited with Lunacy?

Mr. Watkins. I never did; but on the contrary, I take him to have been a Man that always had his Senses in a regular Exercise.

Mr. Vernon. Do you know, Sir, whether there was any Misunderstanding between the two Brothers?

Mr. Watkins. There has been a long Misunderstanding between them.

Mr. Vernon. What have you heard the Prisoner *Mr. Goodere* say, in relation to Sir *John's* making his Will?

Mr. Watkins. I believe he told me, that Sir *John* had not power to make a Will: I told him it was my Opinion, if they would be reconciled together, Sir *John's* Will would not stand.

(*Mr. Thomas* sworn.)

Samuel Goodere. *Mr. Thomas*, how long have you known me, and what was my Character?

Mr. Thomas. I have known the Prisoner, *Mr. Samuel Goodere*, a great many Years, have very often been in his Company: I never found but that he ever behaved with all the Good-nature that possibly could be. I always took him to be a good-natured well-behaved Man, and he is a Man well-beloved in his Country.

(*Mr. Ashfield* sworn.)

Mr. Ashfield. I have known *Mr. Goodere* a great many Years, I never heard any ill of him till this Affair; he is reputed in the Country of a general good Character. I have been concerned for him in several Suits, I never knew any ill of him.

Mr. Vernon. Pray, Sir, what have you heard *Mr. Goodere* say, concerning his Brother's cutting off the Entail of his Estate?

Mr. Ashfield. I have heard *Mr. Goodere* say, that his Brother had no power to cut off the Entail, and that he would set the Recovery aside; I have heard him say that forty times.

Mr. Vernon. What is your opinion as to the Sanity or Infanity of Sir *John*?

Mr. Ashfield. I never thought him a Mad-man; I always thought him one of the best Understanding in the whole Family.

(Reverend *Mr. Rogers* sworn.)

Mr. Rogers. I have been acquainted with the Prisoner *Goodere* several Years, I know he hath behaved very well, done good Offices to all Mankind; and I never heard any other of him:

[*Mr. George Forcevil* sworn.]

Mr. Forcevil. The Prisoner *Goodere* hath been my Neighbour for fourteen or fifteen Years; he hath always behaved well in his Neighbourhood, and has a very good Character; he constantly attended his Church twice a Day *Sundays*, and would be there at Prayers almost every Day; he was always a sober Man, and a good-humoured Gentleman. I thought him to be a good Man.

Samuel Goodere. *Mr. Recorder*, I would not give you and the Jury any more trouble in relation to my Character; all I have to say further is, my being deprived of Evidence in my Behalf, by reason of my Disorder and the Sickness in the Goal, which hath prevented my Friends from coming to me to advise me about making my Defence; and also of having several Witneses from on board the Ship, which might have been of great Service to me. I had an Order from the Lords of the Admiralty to require them to stay on shore, if I had occasion for them; but, as the Ship was gone before the Letter came to my hands, I have no occasion now to tell the Names of the Persons.

[Mr. *Goodere* held up the Letter in his hand, but the Court did not receive it.]

Mr. *Frederick*. Mr. Recorder, there have been several Aspersions published in the New-papers, to the prejudice of Mr. *Goodere*; there has been a Pamphlet also published, which I have here in my hand, intitled, *The Bristol Fratricide*; but I hope the Gentlemen of the Jury will take no notice of, nor be influenced by them against the Prisoner.

Mr. *Vernon*. I dare say they will have no Regard to any Book, but that on which they have been sworn: those who know them and their Characters, must certainly think so.

[The Jury declared they had never seen any such Pamphlet, or Papers.]

Mr. *Vernon*. Mr. Recorder, we must beg leave to ask Mr. *Jarrit Smith's* Opinion, as to Sir *John's* being a Lunatick, or not?

Mr. *Jarrit Smith*. Mr. Recorder, I am surpris'd to hear it said by some of Mr. *Goodere's* Witneses, that Sir *John Dineley Goodere* was mad; I knew him fourteen or fifteen Years, and conversed with him both in Person and by Letter; but never discovered that he was in the least disordered in his Senses, I always took him to be a Man of sound Understanding. On the *Sunday*, the Day before his Death, he expressed himself with a great deal of Good-nature and Affection at the sight of his Brother.

Mr. *Shephard*. Mr. Recorder, with humble Submission, I am instructed to offer it in Evidence, that the Place where the Ship lay is not within this City and County of *Bristol*.

Mr. *Vernon*. We have already proved it to be within the County of *Bristol*; nor is there the least reason to apprehend, that Mr. Recorder will extend the Rule of *Boni Judicis est ampliare Jurisdictionem* to the extending of the County an Inch beyond its ancient and known Limits: He is too just to attempt it. On the other hand, we may depend he will not suffer the County-Limits to be abridged, but *servare Jus illasum*; and (as he hath hitherto done) discountenance all Encroachments on the Rights and Franchises of *Bristol*.

Mr. Recorder. It has been proved, and indeed it can't be denied, that at the time the Fact in question was committed, the Ship lay in *King-road*; and I think the Evidence which has been given of the Exercise of Jurisdiction by the Magistrates of the City and County of the City in *King-road*, and of the Sheriff's Officers executing Procefs of all kinds there, amounts to a full Proof that *King-road* is within the Body of the County of the City of *Bristol*. It is the same sort of Proof by which the Bounds of every County in the Kingdom must be ascertain'd, the doing Acts in the Place in question by the Officers of the County, which must be done in that County, and no other.

Mr. *Goodere*. All *King-road* is not in *Bristol*. Will your Lordship please to admit me to call Mr. *Hill*? he is a Gentleman that has survey'd the Situation of the Place where the Ship lay, and will describe it.

Mr. *Vernon*. I am sorry to find Mr. *Goodere* driven to this Subterfuge in his Defence, I could wish he had one to make on the Merits; if he stands upon his Innocence, what need of all this Stir about the Station of the Ship, or where on Earth can he hope to be tried before a fairer, or more impartial Judicature than the present?

Samuel Goodere. Call Mr. *Hill*.

Mr. Recorder. Mr. *Goodere*, if you can shew

that any Part of *King-road* is, or ever was esteem'd to be in any other County than the County of the City of *Bristol*, I will hear you; otherwise it will be to no purpose to describe the Situation of the Ship, since it is admitted that she lay in *King-road*.—*Mabony*, have you any thing to say?

Mabony. I hope your Lordship will consider that I was a poor, press'd Servant, and I was drunk when I made the Confession, and I was frightned out of my Wits.

Mr. Recorder. You say you were drunk when you made the Confession; 'tis possible, that Night when you were first taken and brought before the Magistrates, you were in Liquor, but it seems your Confession was not taken 'till the next Day.

Mabony. My Lord, I was in *Bridewell*, I did not sleep a Wink the whole Night.

Mr. Recorder. Have you any Witneses to call?

Mabony. No, please your Lordship, I am a Stranger here, I have no Witneses to call.

Mr. *Vernon*. Mr. Recorder, I apprehend we are in a Case exceeding clear against both the Prisoners at the Bar; and, considering that Death and Life are in the Power of the Tongue, I am unwilling to reply, where Life is at stake; but, as Mr. *Goodere* seems to lay some Stress on the Circumstance of his not being actually in the Cabbin, at the time his Brother was murder'd there, I beg, Sir, you will indulge me an Observation or two as to that single Point: Not that I imagine the least Doubt in Law can remain with Mr. Recorder, but being in the Case of a Capital Prosecution, I would leave no Objection unanswered that has the least Dependence on the Law; and I agree, Sir, that in order to bring Mr. *Goodere* within the Compass of the Indictment, he must appear to have been present, as an Abettor, at the Perpetration of the Murder. The Law is extremely clear in this Particular, but then it is as clear, that if several Persons are engaged in a Design of murdering another, and one of the Party stands upon the watch, at the Room or House-door, whilst the rest actually commit the Murder, he is, in the Judgment of the Law, present at the Murder, and as much a Principal in it as the rest: and the Law is the same, though he stood at a considerable distance from the Place where the Murder was committed, as at the Gate or the Lane's End; for it is not necessary he should be *in Conspectu*, if near enough at hand to embolden his Accomplices in the Murder, through the Hopes of present Assistance, or Security from the Person upon the watch. And so it is expressly laid down, in Lord Chief-Justice *Hale's* History of the Pleas of the Crown, in the Chapter of *Petit-Treason*; where he says, that if a Wife or Servant conspires with a Stranger to kill the Husband or Master, and be in the same House with the Stranger whilst he commits the Murder, the Wife or Servant is guilty of Petit-Treason, though not in the same Room where the Murder was committed. The same Doctrine is laid down in second *Hawkins's* Pl. Cor. 312. (whom as a living Author I cite, only for the sake of the Authorities he has been at great Pains in collecting.) And the Case of Lord *Dacre* is full in point: My Lord *Dacre*, with *Mansel* and several others, went by Night into another's Park, unlawfully to kill Deer; my Lord waited about the Park-Gate upon the watch, whilst the rest went a quarter of a Mile into the Park, where they met

met and killed the Keeper; Lord *Dacre*, though at so great Distance when the Keeper was killed, was adjudg'd a Principal in the Murder, and accordingly died for it. And agreeable to this, was likewise the Case of *Berry*, (the Porter of *Somerset-House*) who was concerned with *Green*, *Hill* and others, in the Murder of Sir *Edmund-Bury Godfrey*; some of them way-laid that worthy Magistrate, and having incited him into the Yard leading to *Somerset House*, *Green*, *Hill* and others strangled him. *Berry* was one of their Gang, and whilst the others were committing the Murder, stood at a great distance from them on the watch, upon the Stairs leading to the upper Court of *Somerset-House*: he was indicted with *Green* and *Hill*, as being present and abetting the Murder, and upon this Evidence was convicted and executed. Gentlemen of the Jury, in the Case now before you, it is fully made out in Proof, that the Deceased was under one continuing armed Force, from the Instant of his being seized to that of his Death; and that his Brother (the Prisoner Mr. *Goodere*) put and kept him under that Force. Then, Gentlemen, Mr. *Goodere's* displacing *Buchanan* from the Cabbin-door, and placing himself there in his stead, with the drawn Sword in his Hand; *Mahony's* entering into, and being let out of the Cabbin, whilst Mr. *Goodere* kept Guard at the Door of it; Mr. *Goodere* waving his Sword at *Macguinis*, and handing in the Candle; the dying Outcries of his Brother (which could not but reach his Ears, thought not his Heart) and other black Ingredients in this dreadful Case, are an undeniable Proof that Mr. *Goodere* was concerned with *Mahony* and *White* as their Accomplice in his Brother's Murder, and took his Stand at the Cabbin-door with no other Intent than to embolden and assist them in the Perpetration of that cruel Act, and keep off others from coming to his Brother's Relief, or from disturbing them in the fatal Business they were about. Under which Circumstance he is guilty in the same degree as *Mahony*; and in the Eye of the Law looked upon to have been as much present at his Brother's Death (as an Abettor of the Murder) as if he had stood by the Bed-side and held the Sword over his Head, whilst *Mahony* was strangling him. So that, Gentlemen, I apprehend we have made good the Indictment against both the Prisoners, by clear and convincing Evidence; and therefore doubt not but their Guilt will stand recorded to future Ages by the Justice of your Verdict.

Mr. *Shephard*. Mr. Recorder, will you please to indulge me a Word as to the Point of Law? Mr. *Vernon* mentions, in the Case of the Park that he hath taken notice of, the Lord *Dacre* and his Party came by Night unlawfully to kill Deer, and therefore the Law presumed they all came with an intent to oppose all that should hinder them in that Design; and so when one killed the Keeper, it must be presumed the Act of all, because pursuant to that intent. But whether the present Case is circumstanced as that Case, ought to be considered. I do admit that Mr. *Goodere* was down in the Cock-pit at the time this Fact was done, and he was certainly obliged (as hath been observed) by the Law of Nature to take care of his Brother. But if he had no other Intention of carrying him on board the Ship, than to secure and take care of him as a Person whom

he looked upon as disordered in his Senses, and with a view of reducing him to Reason; then surely Mr. *Goodere's* Case is very different from the Lord *Dacre's*. And that Mr. *Goodere* did look upon his Brother to be so —

Mr. Recorder. Mr. *Shephard*, you are going off from the Point of Law to Matter of Fact; I shall charge the Jury, that if they believe Mr. *Goodere* stood at the Cabbin-door in order to prevent any Persons coming, who might have prevented the Murder, or to encourage those within the Cabbin in the Business they were about, they must find him guilty on this Indictment; otherwise they must acquit him.

Mr. *Shephard*. If he was not there with that Intention, he cannot be guilty; and in this Case no such Intention appears.

Mr. Recorder. His Intention is Matter of Fact; which must be left to the Jury on the whole Evidence.

Gentlemen of the Jury,

THE Prisoners at the Bar, *Matthew Mahony* and *Samuel Goodere*, stand indicted for the Murder of Sir *John Dineley Goodere*. And the Indictment charges that *Mahony* strangled him; and that the Prisoner *Goodere* was present, aiding and abetting him in the Fact. They are both charged as Principals in the Murder. For, Gentlemen, in the Eye of the Law, the Person who is present, aiding and abetting, is as much a Principal in the Murder, as the Person who actually commits the Fact. Whether the Prisoners, or either of them, be guilty in manner charged in the Indictment, you are to determine upon the Evidence you have heard.

The Evidence has been very long; but I will endeavour to lay the material Parts of it before you in such a light, as may best assist you in your present Enquiry.

'Tis out of all doubt, that Sir *John Dineley Goodere* was strangled on board the *Ruby Man* of War in *King-road*, in the Night between the eighteenth and nineteenth of *January* last. And therefore what past at that time, which may affect the Prisoners, or either of them, as they stand charged on this Indictment, will deserve your principal Attention. But as the Prosecutors have (very properly I think) gone pretty far back in their Evidence, in order to shew by what means Sir *John* was got on board, it will be necessary for you to take that Part of the Evidence likewise into Consideration.

The first Witness is Mr. *Chamberlayne*, who tells you, that about three Weeks before the Murder happened, Mr. *Goodere* desired him to use his good Offices with Mr. *Jarrit Smith* a Friend of Sir *John's*, in order to bring about a Reconciliation between Sir *John* and him.

Mr. *Smith* tells you, that Mr. *Chamberlayne* did apply to him for that Purpose; and afterwards brought Mr. *Goodere* to his House on the same Errand: And that Mr. *Goodere* then repeated the same Request Mr. *Chamberlayne* had before made in his Behalf. He says he proposed the matter to Sir *John*, who with some Difficulty consented to give Mr. *Goodere* a Meeting; which was fix'd for *Tuesday* the 13th of *January*, at Mr. *Smith's* House in the *Colledge-Green*, of which Mr. *Goodere* had timely Notice. That on *Tuesday* the 13th, Sir *John* rode up to his Door, and having just

alighted and acquainted him that he could not at that time stay; but that the next Time he came to Town, which would be the *Saturday* or *Sunday* following, he would meet his Brother; he mounted his Horse, and went off, attended by his Servant, both armed with Pistols. He says, that on the same Day he met with Mr. *Goodere*, and acquainted him, that Sir *John* would be again at his House on *Saturday* or *Sunday*; and it was then agreed that Mr. *Goodere* should have notice when Sir *John* came. He says, that on *Sunday* Morning the 18th of *January* Sir *John* sent him word, that he would be at his House that Day, at any Hour he should appoint; and accordingly Three in the Afternoon was appointed. He says, that the same Morning he gave Mr. *Goodere* Notice of the Appointment. That in the Afternoon Sir *John* and Mr. *Goodere* met at his House, where mutual Civilities passed between them: That Sir *John* soon took his Leave, the Witnesses and Mr. *Goodere* waiting on him to the Door. He says, that he press'd Mr. *Goodere* to stay longer; and said to him, I hope I have done great Things. To which Mr. *Goodere* reply'd with some Emotion, By God this will not do; and immediately followed Sir *John* down the Hill. He says, that standing at his Door he observed a Company of Sailors gathering about Sir *John*, and heard Mr. *Goodere* say to them, Is *he* ready, or is *it* ready? (he is not, I believe, positive, what were the Words;) To which some of the Sailors answered, Yes, Sir. Whereupon the whole Company went hastily off, some towards the *Butts*, others towards the *Lower Green*; and Mr. *Goodere* follow'd them by the *Butts*. Mr. *Smith* had no Suspicion at that time that the Sailors were offering Violence to Sir *John*, and so made no farther Enquiry into the matter; 'till a Soldier, who is likewise produced as a Witness, told him what happen'd at the Barge.

The next Witness they produced is *Maurice Hobbs*, who, it seems, keeps the *White-Hart* Alehouse at the Foot of the *Colledge-Green*: And, Gentlemen, you will observe, that from the Front Windows of that House, one may have a View of Mr. *Smith's*. And he tells you, that on *Monday* the 12th of *January* last the Prisoners at the Bar came to his House; that Mr. *Goodere* desired to see an upper Room, over the Parlour, fronting the Street; and having seen it, said, he would come the next Morning and drink Coffee in that Room. Accordingly, the next Morning he came (early for that time of the Year,) before the Windows were opened, or Fires lighted; his Dress so different from what he wore the Day before, that the Witness did not at first recollect him. But, it seems, he changed his Clothes after he came thither. He seem'd willing to drink his Coffee in the Parlour; but being desir'd to walk up stairs, he went into the Room he had pitch'd upon the Day before. Soon afterwards the Prisoner *Mabony*, with three other Persons, came in; and after them, five or six more. These People, Gentlemen, were not all together in one Room; but they were all entertain'd at Mr. *Goodere's* Expence. The Witness tells you, that Mr. *Goodere* ordered they should be entertain'd; and at going away paid the whole Reckoning. He says, that while the Company was at his House, Mr. *Goodere* above stairs, and others below, Sir *John Dineley Goodere* rode by from Mr. *Smith's*, attended by his Servant; and

that as they pass'd by, Mr. *Goodere* called out to the People below, Look well at him, but don't touch him. He says further, that on *Sunday* the 18th of *January*, *Mabony* came to his House in the Morning, and desired him that if he saw the Gentleman in the black Cap (by which Description it appears Sir *John* was meant) go towards the *Green*, he would send a Porter to him at a Publick House in *Marsh-street*: That in the Afternoon *Mabony* came again, with a great many other People, all appearing by their Dress to be Sailors. And that as the Deceased walked by the House, they all rush'd out and went off. He goes, I think, no farther in his Evidence; for he seems to be too much concern'd for his Reckoning and his Tankard, to mind any thing that pass'd afterwards.

The next Evidence is *Thomas Williams*, who belongs to the *Ruby*. He says, that on *Sunday* the 18th, he brought up the Barge from *King-road*; and was order'd by Mr. *Goodere* to leave two Hands aboard the Barge, and take eight of the Crew to the *White-Hart* Alehouse on the *Colledge Green*, and there wait for him: for, said he, I have a Gentleman to go on board me. He accordingly went to the *White Hart* with his Men, and there found *Mabony* and four or five People belonging to the *Vernon* Privateer. He says, he had not been long there, before the Company rushed out of doors: Upon which he followed, and found they had laid violent hands on the Deceased, and were carrying him on board the Barge; giving out, that he had murdered a Person on board the Ship, and that they were carrying him thither in order, as they pretended, to bring him to Justice. He tells you, that the Prisoner *Mabony* was very active in this Outrage; and that the Prisoner *Goodere* was present, seeing and hearing all that pass'd. He likewise gives you an Account of the Conversation that pass'd between Sir *John* and the Prisoner *Goodere*, after they were in the Barge; and, among other Things tells you, that upon the Deceased's saying, You are carrying me on board to murder me; the Prisoner *Goodere* answer'd, No, I don't intend to do so, but I would have you make your Peace with God. This Witness speaks little to what pass'd after they came on board the Ship; for, says he, I had been employ'd all Day, and went To-bed early. But he tells you, that in the Night he heard a very unusual Noise on board; and that about Two in the Morning, he saw the Prisoner *Goodere* go down the Ladder leading to the Purser's Cabbin.— You have heard, Gentlemen from the Witnesses, whom I shall mention presently, that the Murder was committed in this very Cabbin.

The Prosecutors then called several Witnesses, *Samuel Trivet*, *Thomas Charmbury*, Mrs. *Darby*, and *William Dupree*; who all speak to the manner of carrying Sir *John* from the *Colledge-Green* to the Place where the Barge lay.

These Witnesses agree in general, that he was treated with great Rudeness by the Company in whose Hands he was. But, as the Prisoner *Goodere* admits, that he did take his Brother on board; and, as *Mabony* endeavours to excuse the part he had in it, by alledging that he was under Command; I need not be very particular in repeating the Circumstances attending this part of the Affair. Only, Gentlemen, it may be proper for you to observe, that the Pretence

given out to blind the People who enquired into the meaning of this Outrage, was, that the Gentleman had committed a Murder on board the *Ruby*. And that when Sir *John* was on board the Barge, and calling out for Help to the People on shore, telling them his Name, and begging them to let his Friend Mr. *Jarrit Smith* know what had happen'd to him; the Prisoner *Goodere* at that instant stopt his Mouth. This Circumstance is prov'd by three of these Witnesses.

The next Set of Witnesses who have been called, are Persons belonging to the *Ruby*. And from them you have an Account of what pass'd from the time Sir *John* was brought on board to the time of the Murder.

The first is *Theodore Court*, the Master of the *Ruby*; and he tells you, that about seven in the Evening Sir *John* was brought on board, and immediately by Mr. *Goodere's* Order carried down into that part of the Ship which is called the Cockpit, and secured in the Purser's Cabbin, and a Centinel set on him. He tells you further, that Mr. *Goodere*, as soon as he came on board, said to him and the other Company present, I have brought a Mad-man on board. And, Gentlemen, you will observe, that the Ship's Crew were made to entertain an opinion, that Sir *John* was mad; says Mr. *Goodere*, don't mind what he says, he is mad. This, all the Witnesses agree in. And you may remember too, that when the poor Gentleman was dragg'd and hurried along towards the Barge, then he had murder'd a Man on board the *Ruby*. Now he is brought aboard, where that Pretence cannot serve, he is a Mad-man, and must be confin'd. This Witness was present the next Morning when the Purser's Cabbin was broke open, and Sir *John* was found there murdered: upon which, he says, Mr. *Goodere* was made a Prisoner. But he tells you, that before this, Mr. *Goodere* expressed a great Inclination to sail that very Morning; and upon his representing to him the Danger of attempting the *Bristol* Channel without a Pilot, he answer'd, if I can but get as low as the *Holms* I don't care.

This Witness was ask'd a Question by Mr. *Goodere*, touching the Place where the *Ruby* was moor'd, at the time the Fact in question was committed; and he says, that she then lay in *King-Road*, and has described her several Bearings to *Ports-head* Point, the *Denny*, and the *Hole's* Mouth. But, Gentlemen, it will not be material in the present Case, in what part of *King-Road* the Ship then lay, if you are satisfied from the Evidence you have heard, that *King-Road* is in the County of this City, because it is admitted by the Prisoner; and indeed it is too plain to be denied, that the Ship was then in *King-Road*.

The next Witness is *Duncan Buchanan*, who was one of the Company at the *White-Hart* Ale-house, on *Tuesday* the 13th; and he confirms what *Hobbs* told you, that when Sir *John* and his Servant rode by, the Prisoner *Goodere* call'd to *Mahony* and the Company at the *White-Hart*, and bid 'em mind him well, but not to touch him. He says too, that Mr. *Goodere* at the same time order'd some of the Company to follow Sir *John*. He speaks much to the same purpose as the last Witness, touching the bringing Sir *John* aboard, and carrying him into the Purser's Cabbin; and adds, that two Bolts were put on the Out-side of the Cabbin Door by Mr. *Goodere's* Orders. He tells you, that he was the Centinel placed at the Cabbin-door by Mr. *Goodere*, who, you are to take notice, had then the Command

of the Ship; and says, that about Twelve at Night he was sent for into the Captain's Cabbin, where he found both the Prisoners at the Bar together. That Mr. *Goodere* enquir'd of him, whether his Brother made any noise, and said I believe he is wet in his Feet, I'll carry him a Pair of clean Stockings? That between One and Two the Prisoner *Goodere* came down to the Cock-pit, and listen'd some time at the Cabbin-door, where Sir *John* was; and soon afterward took the Sword from him, and order'd him up to the Deck; and stood himself as Centinel at the Door. He says, that being on Deck he saw the Prisoner *Mahony* go down the Ladder towards the Purser's Cabbin, and is positive he went into the Cabbin; the Prisoner *Goodere* standing at the same time Centinel at the Door. He tells you that a short time after this he heard a great noise and struggling in the Cabbin, a Person crying Murder, like one going into a Fit: that, I think, was his Expression. This Noise, he judges, continued four or five Minutes; and is positive that the Prisoner *Goodere* stood at the Door all that time, with the Sword in his Hand. He says, that after the Noise in the Cabbin ceas'd, he saw the Prisoner *Goodere* hand a Candle into the the Cabbin; and that he, seeing Mr. *Goodere* had no Light with him, lighted a Candle at the Lanthorn upon Deck, and was going to carry it down; upon which he says Mr. *Goodere* waved the Sword towards him, saying, Keep back, stay where you are. He says, that soon afterwards the Prisoner *Goodere* call'd for a Light, deliver'd back the Sword to him, lock'd the Cabbin-Door, and put the Key in his Pocket; and said, if my Brother makes any more noise, let me know of it.

The next Witness is *Daniel Weller*, the Carpenter of the *Ruby*: He agrees in the main with the two former Witnesses, touching the bringing Sir *John* aboard, the carrying him into the Purser's Cabbin, and putting the Bolts on the Door; and gives an account of the Conversation he had with Sir *John* in the Cabbin while the Bolts were fastening on: from which it seems natural to conjecture, that Sir *John* expected he should have foul play for his Life. He did not stay long with him; for it seems nobody was to visit the poor Gentleman but *Mahony*. He says, he broke open the Cabbin-Door next Morning, and found Sir *John* dead, and observ'd some Blood about his Mouth and Nose; which, Gentlemen, is what may be expected in case a Person is strangled.

The next Witness is *Edward Jones*, the Cooper of the *Ruby*; and he tells you, that on the *Thursday* before the Fact in question was committed, Mr. *Goodere* order'd the Purser's Cabbin to be clear'd out; for, said he, I shall bring a Gentleman aboard. He says, that soon after Sir *John* was brought aboard, Mr. *Goodere* came down to the Purser's Cabbin, and offer'd him a Dram of Rum, and also persuad'd him to make use of some to chafe his Leg, which it seems had received some hurt that Day. He says, that Mr. *Goodere*, speaking of Sir *John* to the People present, said, Don't mind what he says, he'll be well enough again. He tells you, that about eight o'clock he went to bed in the Slop-Room, which, it seems, is parted from the Purser's Cabbin by a thin Deal Partition. That before he went to sleep, he heard what pass'd in the Cabbin, particularly the Discourse between Sir *John* and the Prisoner *Mahony*, which I need not repeat to you. And says likewise, that he heard Sir *John* praying to God to deliver him

him out of his present Distress, and expresses himself as a Man sensible of his present Danger, He tells you, that between Two and Three in the Morning, his Wife, who happened then to be aboard and in bed with him, waked him, and that he then heard a great Struggle in the Cabbin, Sir *John* crying out, as a Person in great Confusion and Distress, Here's Twenty Guineas, take it, take it, must I die? He says, that in a little time all was quiet, from which he concluded the Gentleman was dispatch'd; and then a Light was brought into the Cabbin; upon this he says, he got up upon his Knees, and peep'd through a Crevice in the Partition, and saw the Prisoner *Mahony* and one *Charles White* rifling the Pockets of Sir *John*, who was laid upon the Bed, in the Posture he has described to you, and motionless. He says, at this time he saw a Hand at Sir *John's* Throat, and heard a Person say, 'Tis done, and well done; he cannot say who the Person was whose Hand was at Sir *John's* Throat, but believes 'twas not the Hand of *White*, or *Mahony*, for it was a white Hand, and not like either of theirs. He says that he lay in fear of his own Life (as indeed I think he had great Reason) 'till about Four in the Morning, and then the Men belonging to the Yawl being called up, he got up too, and acquainted the Lieutenant with what passed, and consulted with him and others of the Officers about apprehending Mr. *Goodere*, which was afterwards done in the Manner you have heard.

The next Witness is *Margaret Jones*, Wife of the last Witness. And she gives much the same Account of the bringing Sir *John* aboard, and Mr. *Goodere's* offering him Rum, as her Husband does. And says farther, that Mr. *Goodere* talk'd of ordering Sheets for Sir *John's* Bed. But, Gentlemen, it does not appear to me that any Sheets were ordered, or indeed any sort of Refreshment provided for him, except a single Dram of Rum, which he refused, having forborn the Use of strong Liquors of all sorts for a considerable time. This Witness likewise gives an Account of the Conversation between *Mahony* and Sir *John*, and tells you, that when *Mahony* offer'd to pull off Sir *John's* Stockings, he said to him, Pray don't strip me till I am dead. She says, that about Two in the Morning she heard *Mahony* desire Sir *John* to compose himself to sleep; and soon afterwards the Light was put out, and she heard *Mahony* say, You must lie still and not stir for your Life; and immediately she says there was great struggling in the Cabbin, two Persons whispering, and Sir *John* crying Murder, and kecking in his Throat (as she expresses it) so that she concluded they were strangling him. At this time, she says, somebody on the outside of the Door offer'd to come in; upon which, those in the Cabbin said, Damme you Negro, keep out. She says, the Noise and Strugglings continued for a short time afterwards, and then all was quiet, and a Light was brought into the Cabbin. She then saw the Prisoner *Mahony*, and *Charles White*, the Person her Husband spoke of, rifling Sir *John's* Pockets. The particular Circumstances she mentions in this part of her Evidence I need not repeat. She says, that after this was over, they went out of the Cabbin, and the Door was lock'd and bolted; and she heard one of the Persons say, Which way shall I go, where shall I run? To which the other answered, Follow me, my Boy.

The next Witness is *James Dudgeon*, who, it seems, is the Surgeon's Mate. And he tells you, that when Sir *John* was brought aboard, he was carried directly to the Purser's Cabbin, and a Centinel placed over him. Says Mr. *Goodere* to this Witness, Doctor, I have brought a Mad-man on board, you must do the best you can with him; pray go and feel his Pulse now; or you may let it alone till to-morrow, the first Night will be the worst with him. The Doctor did go, but was told by the Centinel, that he had Orders to let no body in but *Mahony*; however, he went in and felt Sir *John's* Pulse, and found no Disorder there but what might be occasioned by the fatigue he had undergone that Afternoon. This Witness, who, it seems, lodg'd in a part of the Cockpit near the Purser's Cabbin, says, that about Two in the Morning he heard an unusual Stir in the Cock-pit, and overheard *Mahony*, who was in the Purser's Cabbin, say, You must lie still, don't stir; and immediately there was a great Bustle in the Cabbin, Sir *John* crying, Murder, and saying here's Twenty Guineas, take it, take it. He says, that by the Noise he heard, and from other Circumstances he has mention'd, he then apprehended that somebody was strangling the Gentleman. Before the Noise was quite over, he says he heard the Lock of the Cabbin go; upon which somebody within cry'd, Damn ye, keep the Door fast. The Witness hearing this, call'd out and enquired what was the Cause of the Noise; and he says that the Person who then stood at the Door answered, 'Tis nothing at all. He does not say who the Person was, but says he is sure that the Prisoner *Goodere* was in the Cock-pit while the Outcry was in the Cabbin. Soon after the Noise was over, he says, a Light was called for, and carried into the Cabbin; and in a little time he heard the Tread of People running out of the Cabbin, and is sure he heard the Prisoner *Mahony* say, Which way shall I go? To which Answer was made, You may go by the Ship-side. He says, about this time a Person stept up the Ladder from the Cock-pit, towards the Deck, and he then heard the Prisoner *Goodere* say, If my Brother makes any more Noise, let me hear of it. These Words, Gentlemen, if you believe *Duncan Buchanan*, were spoken to him at the top of the Ladder. It seems indeed probable, that Mr. *Goodere* was solicitous to know whether Sir *John* made any Noise or no, after this time; for this Witness tells you, that Mr. *Goodere's* Servant, some time afterwards, came to him to enquire whether he had lately heard any Noise in the Cabbin? Yes, says the Witness, I heard something at the Lock. This Noise the Witness supposes was occasioned by a Cat which had been lock'd in the Room. This Witness inspected the Body the next Morning, and tells you, that he found great Impressions about the Neck, and the Marks of Nails and Fingers on it; and upon the whole, is of opinion that Sir *John* died by Strangling. And, Gentlemen, whether a Rope was made use of in the Business, or whether it was done by thrusting their Fingers between the Neck and Cravat, and so straining the Cravat close about the Neck, will not be material; for though the Indictment charges that it was done with a Rope, yet if it appears on the Evidence, that the Deceas'd was strangled by any Means whatever, such Evidence will be sufficient to maintain the Indictment.

The next Witness, and the last that has been examined touching what was done on board the Ship, is *William Macguinis*, the Centinel at the Gun-room. And he tells you, that after Two in the Morning, the Prisoner *Goodere* went down into the Cock-pit; that soon afterwards the Prisoner *Mabony* push'd by him; he says he would have kept him back, but *Mabony* gave him ill Language and pass'd on, and call'd to another Person to follow him. He says, that *Duncan Buchanan* was ordered up to Deck, and that he saw Mr. *Goodere* standing at the Purser's Cabbin-Door with a Sword drawn in his Hand; and remembers, that when he offer'd to come near the Cabbin, Mr. *Goodere* order'd him to keep back: This was at the time the Noise and Outcry was in the Cabbin. He says further, he saw *Mabony* go into the Cabbin before the Noise was heard there; and, that about Three in the Morning, he saw both the Prisoners at the Bar go up the Ladder from the Cock-pit to the Deck together.

The Prosecutors then examined two Witnesses touching the Gold Watch which has been produced. One of them, *Sarah Culliford*, says that the Prisoner *Mabony*, the Day he was apprehended, deliver'd the Watch to her, desiring she would put it by for him; that she, upon hearing that *Mabony* was taken up for the Murder, in a Surprize, threw it into the Vault. The other Witness tells you, that he, by Order of the Magistrates, open'd the Vault and found the Watch there. This Watch the Prosecutors would fix upon the Prisoner *Goodere*, and to that end, it was shewn to *Theodore Court*, who was examin'd before, to other Points. And he says, he cannot be positive, but believes it to be Mr. *Goodere's* Watch, having often seen it, or such a one, hanging up in his Cabbin. The Prosecutors then produced a Handkerchief, which was taken out of *Mabony's* Pocket the Night he was apprehended; it appears to be a little bloody, but I don't see what use they make of that Circumstance.

The next Piece of Evidence the Prosecutors went to, was *Mabony's* Examination and Confession, which has been read to you. This, Gentlemen, is very proper Evidence, and ought to have its Weight with you, as far as it concerns *Mabony* himself; but with regard to the other Prisoner *Goodere*, you are to lay no manner of Stress upon it, it is no Evidence against him.

The Prosecutors then proceeded to shew, that *King-road*, where the *Ruby* lay at the time the Fact was committed, is within the County of *Bristol*. I think indeed that some Evidence of that kind was proper to be given, for your Satisfaction, and to that end they have called Mr. *Wint* and Mr. *Lowden*, two ancient Officers well known to you all. And they say, in general, that *King-road* has always been esteemed to be within the County of *Bristol*. And they go farther and say, that they have constantly, as Occasion required, executed Procefs of all kinds in *King-road*; Warrants from the Mayor and Aldermen, Procefs from the Mayor's and Sheriff's Court, and Warrants grounded on Writs from above, directed to the Sheriffs of *Bristol*. And, Gentlemen, I must say, that tho' another sort of Evidence might have been given, touching the Bounds of this County by Water, I know no Evidence so proper to prove the Bounds of any County, as the constant Exercise of Jurisdiction in the Place in question, where that sort of Evidence can be had.

I think, I have repeated to you the material Parts of the Evidence which has been given against the Prisoners at the Bar; and you will now consider what they have offered by way of Defence to this Charge.

As for *Mabony*, I do not hear him say any thing by way of proper Defence, nor has he called a single Witness. He hopes indeed, that it will be taken by way of Excuse, that he was a poor press'd Servant, and acted by Command. But, Gentlemen, if you believe the Evidence which has been given against him, no Command of any Superiour whatsoever (supposing that to have been an Ingredient in his Case) will excuse him.

Mr. *Goodere* says, that his Brother was a Lunatick, and that he being his only Brother, thought it his Duty to take Care of him in that Condition; that in order thereto he had endeavour'd to get a Lodging in this City, where he was to be confin'd under the Care of the Prisoner *Mabony*, who was to have 5 *l.* a Month for his Attendance on him. That not being able to get a Lodging for the Purpose in the City, he took him on board the *Ruby*; in order to have him taken proper Care of there. He denies that he ever consented to the Murder, or had any Knowledge of it; and insists on the great Improbability there is that he should be concern'd in the Murder, since, he says, he knew that Sir *John* had cut off the Entail of the Family-Estate, and had actually made his Will, by which he had devised the Estate to another Branch of the Family. So that, says he, Sir *John* dying while this Will stands, I have no Chance for the Estate: whereas, as long as he lived, my Chance as Heir at Law continued; for he might have chang'd his Mind, and alter'd or destroy'd his Will.

The first Witness he call'd was Mrs. *Getbins*; who, I suppose, lets Lodgings in the City; and she says, that Mr. *Goodere* never made a Secret of his Design, of confining his Brother as a Lunatick; and that about three Weeks before this Matter happen'd, he spoke to her for a Garret in her House for that Purpose; but she remembers no Discourse the Prisoner had with her about *Mabony*.

Mr. *Goodere* then call'd two Witnesses in relation to something which was open'd against him, (but not directly prov'd by any of the Witnesses call'd by the Prosecutors) touching his sending *Mabony* and *White* away in the Yawl the Morning the Fact was committed:

They were Mr. *Marsb* and Mr. *Dagg*.

Mr. *Marsb* says, that on the *Sunday* in the Afternoon, after Sir *John* was brought aboard, he was order'd by Mr. *Goodere* to go up in the Yawl early the next Morning, to fetch Letters from the Post-Office; and he tells you that as he was setting out on *Monday* Morning he was inform'd by some of the Ship's Company, that *Mabony* and *White* were to go with him. Upon which he went to the Captain to have his Orders; for, said he, I never take any body ashore without leave. And he tells you, that Mr. *Goodere* did order him to take *White* and *Mabony* up in the Yawl. He says, that he had no Orders to land them at any particular Place; and that they were put ashore at the *Gibb*, the usual Place of Landing, about six in the Morning.

Mr. *Dagg* tells you, that *Mabony* had charg'd one *Mervin* in his Custody in an Action for Wages; that the *Wednesday* or *Thursday* before this Matter happened he waited on Mr. *Goodere* from *Mervin*, in order to accommodate Matters with *Mabony*: And that Mr. *Goodere* appointed to meet *Mervin* on that Affair the *Monday* following. He cannot say, that *Mabony* was to meet on that day (tho' indeed he says he did tell a Gentleman so) and knows not of any Business *White* had that day in *Bristol*.

Mr. *Goodere* next called three Witnesses to the Point of Sir *John's* Lunacy. The two first have lived with him as Servants, and they give you divers Instances of an extravagant unaccountable Behaviour

haviour in him; from which they conclude that he must have been a Madman. The other Witness says, that he knew Sir *John* for some Years; and in general says that from his Actions he took him to be mad.

He then called several Witnesses, Gentlemen of Worth, who have known him many Years; and they all agree in giving him a very good Character, as to his former Life and Conversation: and particularly say, that they always took him to be a good-natur'd, well-behav'd Man, and one that merited the Love and Esteem of his Neighbours. One of these Witnesses, Mr. *Forcevil*, says, that he was constant at Church on *Sundays* twice a Day, generally attended the Church-Service, and seldom misfed attending at the Sacrament.

Another of these Witnesses, Mr. *Ashfield*, having given the Prisoner a good Character, was ask'd touching Sir *John*, particularly with regard to his Sanity; and he seems surpris'd to hear Sir *John* represented as a Mad-man; and tells you, that he always took him to be a Man of good Understanding: and goes so far as to say, that he took him to be the Man of the best Sense in the Family. He was ask'd, touching the Prisoner's having been inform'd of the Contents of his Brother's Will; and he tells you that the Prisoner was inform'd of the Purport of the Will; but adds, that the Prisoner declar'd that he did not value the Will: And says, that there had been a long Misunderstanding between the Brothers.

Mr. *Goodere* call'd a Witness (Mr. *Watkins*) to prove that he was inform'd of the Contents of Sir *John*'s Will. And he tells you, that about half a Year, or three quarters of a Year ago, he did inform Mr. *Goodere*, that Sir *John* had made his Will, and had given his Estate to the *Foots*; who, it seems, are Nephews to Sir *John* and the Prisoner. But he tells you, that the Prisoner then said, he thought Sir *John* had no Power to make a Will. He says, that in discourse about the Will, he spoke it to the Prisoner as his Opinion, that if Matters could be reconciled between Sir *John* and him, that Will would not stand long: For, Gentlemen, he likewise says, that there has been a long Misunderstanding between the Brothers. This Witness was likewise ask'd, touching Sir *John*'s Lunacy, and he seems surpris'd to hear that his Sanity is call'd in question; and gives him an advantageous Character in other Respects too.

This, Gentlemen, is the Substance of the Evidence that has been given on the one side and the other. And though the Evidence has been very long, and, as you observe, chiefly pointed at the Prisoner *Goodere*; yet with regard to your present Enquiry, the Matter after all will lie in a narrow compass. You observe, Gentlemen, the Indictment charges that he was present, aiding and abetting the Murder; and therefore however instrumental you may suppose him to have been in procuring the Death of Sir *John*, by carrying him on board, and treating him there in the manner you have heard; yet if you have not Evidence to induce you to believe that he was present, aiding and abetting at the Murder, he will not be guilty on this Indictment. But, Gentlemen, you must not be deceiv'd by the meer Sound of Words. It is not necessary, in order to render a Person guilty as a Principal in Murder or other Felony, that he should be in the same Room, or on the very spot where the Fact is committed, or even in sight or hearing of it: If he be engaged in the Design, and posts himself at the time of the Execution in a proper Station to give Assistance, if need be, or to prevent a Surprise whereby the Persons actually committing the Fact are encouraged in the Perpe-

tration of it, he is in the Eye of the Law present, aiding and abetting, and equally a Principal in the Fact with those who actually commit it. An Instance or two may make this Rule better understood. If several Persons agree to commit a Murder on the High-way, or in the open Fields, and one Party of them undertakes to see the Fact committed; the others disperse themselves to their several Stations, and stand upon the Watch to prevent a Surprise: they are all equally guilty, and in the Eye of the Law present at the Fact. So, if a Number of People agree to commit a Murder, and to that end break into a House, and then disperse themselves into several Rooms; or, if any of the Company stand without, and keep the Door while the Murder is committed within, they are all equally guilty, and in the Eye of the Law present. Nay, tho' the original Intention might be barely to commit a Robbery, yet, if in Prosecution of that Design a Murder is committed, the whole Company, those who stood upon the Watch, as well as those who committed the Fact, are all equally guilty and Principals in the Murder. And therefore, Gentlemen, if, upon the Evidence which has been given, you believe that the Prisoner *Goodere* did stand at the Door of the Purser's Cabbin while the Murder was committed, in order to encourage those within in the Perpetration of the Fact, or to prevent any Assistance which might have come, you must find him guilty. And, Gentlemen, I must observe to you, that it is proved by four Witnesses, that he was in the Cock-pit while the Cry of Murder was heard in the Cabbin. Two of these Witnesses are positive that he stood at the Cabbin-Door at that time with a drawn Sword in his Hand; and that while he was there posted, he order'd them to keep back. And one of the same Witnesses is likewise positive, that soon after the Cry of Murder ceas'd, Mr. *Goodere* handed a Candle into the Cabbin.

Mr. *Goodere* indeed has call'd several Witnesses, who have given him an advantageous Character; but, Gentlemen, I think it my Duty to tell you, that tho' Character ought to have its weight when Matters are in themselves doubtful, or where the Charge is supported by Witnesses of doubtful Credit; yet in clear Cases, and when the Credit of the Witnesses is not impeach'd, I think Character alone ought to weigh very little with you. And upon the whole, if you believe the Witnesses for the King, you must find him guilty; if not, you must acquit him.

As to *Mabony*, I think you can have no Difficulty if you believe the Evidence of *Jones* and his Wife, and lay any Stress on his own Confession; and indeed he now rather endeavours to excuse than denies the Fact.

Then the Jury withdrew, to consider of their Verdict; and after a short space, return'd again.

Clerk of Arraigns. Gentlemen, answer to your Names. *Christopher Bromadge.*

Christopher Bromadge. Here. [And so of the rest.]

Cl. of Arr. Gentlemen, are you all agreed of your Verdict?

Jury. Yes.

Cl. of Ar. Who shall say for you?

Jury. The Fore-man.

Cl. of Arr. *Matthew Mabony*, hold up thy Hand. You of the Jury, look upon the Prisoner: How say you, is *Matthew Mabony* guilty of the Felony and Murder, whereof he stands indicted, or not guilty?

Jury. Guilty.

Cl. of Ar. What Goods or Chattels, Lands or Tenements had he at the Time of the said Felony and Murder committed, or at any Time since, to your Knowledge?

Jury.

Jury. None.

Cl. of Arr. Samuel Goodere; hold up thy Hand. You of the Jury, look upon the Prifoner: How fay you, is Samuel Goodere guilty of the Felony and Murder, whereof he ftands indicted, or not guilty?

Jury. Guilty.

Cl. of Arr. What Goods or Chattels, &c. (as before.)

Jury. None.

Cl. of Arr. Hearken to your Verdict, as the Court hath recorded it. You fay that Matthew Mahony is guilty of the Felony and Murder, whereof he ftands indicted: You fay that Samuel Goodere

is guilty of the Felony and Murder, whereof he ftands indicted; and that they, nor either of them, had any Goods or Chattels, Lands or Tenements, at the Time of the faid Felony and Murder committed, or at any Tince fince, to your Knowledge; and fo you fay all.

Cl. of Ar. Keeper, take Matthew Mahony and Samuel Goodere the Prifoners from the Bar, and look to them; they ftand convicted of wilful Murder.

Then the Court adjourn'd to the fame Place the next Morning Eight o'Clock.

The Trial of Charles White, for the Murder of Sir John Dineley Goodere.

ON Friday the 27th of March 1741, Charles White was brought to the Bar of the Court, to be arraigned for the Murder of Sir John Dineley Goodere, upon an Indictment found by the Grand Jury for the City and County of Bristol on the Day preceding; and the Court proceeded thus:

Clerk of the Arraigns. Charles White, hold up your Hand. [Which he did.]

You ftand indicted by the Name of Charles White, late of the Parifh of St. Stephen, in the City of Bristol and County of the fame City, Labourer, for that you and one Matthew Mahony, late of the fame Parifh, City and County, Labourer, not having the Fear of God, &c. on the nineteenth Day of January, in the fourteenth Year, &c. in and upon one Sir John Dineley Goodere, in the Peace of God, &c. then and there being, feloniously, voluntarily, and of your Malice afore-thought, did make an Assault; and that the faid Matthew Mahony, a certain Cord of the Value, &c. about the Neck of the faid Sir John then and there feloniously, voluntarily, and of his Malice afore-thought, did put and faften: And that the faid Matthew Mahony with the Cord aforefaid, by him fo about the Neck of the faid Sir John put and faftened, then and there, him the faid Sir John feloniously, &c. did choak and ftangle; of which faid choaking and ftangling of him the faid Sir John by the faid Matthew Mahony, in Manner and Form aforefaid done and perpetrated, he the faid Sir John then and there instantly died. And that you the faid Charles White, then and there feloniously, &c. was prefent, aiding, abetting, comforting and maintaining the faid Matthew Mahony in Manner and Form aforefaid, feloniously, &c. the faid Sir John to kill and murder; and fo that you the faid Charles White, in Manner and Form aforefaid, the faid Sir John then and there feloniously, &c. did kill and murder, againft the Peace, &c.

How fay'ft thou Charles White, art thou guilty of the Felony and Murder, whereof thou ftandeft indicted, or not guilty?

Charles White. Not guilty.

Cl. of Arr. Culprit, how wilt thou be tried?

Charles White. By God and my Country.

Cl. of Arr. God fend thee a good Deliverance.

The Court proceeded in like manner as upon the Indictment againft Mr. Goodere and Mahony; and the Names of the Jury fworn, were as follow:

John Nafb. William Williams.

Joseph Wilfon. William Arnold.

Samuel Cave. John Willis.

William Abraham. Cornelius Sandford.

William Jones. John Taylor.

Robert Moody. Thomas Seed.

Then Proclamation for Information was made, and the Jury charged with the Prifoner.

Mr. Vernon. May it please you, Mr. Recorder, and you Gentlemen of the Jury, I am Counfel for the King againft the Prifoner at the Bar, who ftands indicted for the Murder of Sir John Dineley Goodere; and the Indictment charges that one Matthew Mahony (who has already undergone the Juftice of his Country) ftangled the Deceased, and that the Prifoner at the Bar was prefent, aiding and abetting him in the Perpetration of that horrid Fact; and which (if true) will be the fame in confideration of Law, as if the Prifoner had with his own Hands ftangled the Deceased, and actually drawn the fatal Cord which put a period to his Life. Gentlemen, it is with an aking Heart I difcharge this melancholy Task againft the Prifoner, but criminal Juftice muft be adminifter'd as well as civil, and the great Safety of the Innocent is in the Punifhment of the Guilty: And of this the Prifoner may be affured, that as he now ftands at the Bar for his Life and Death, and unaffifted by Counfel in Matter of Fact, I fhall carefully confine my felf to the Letter of my Inftuctions, without any Aggravation of Facts or Circumftances, and endeavour fo to difcharge my Duty on this melancholy Occafion, as that he may have nothing to fear but from Guilt, or to hope but from Innocence. And, Gentlemen, as I am inftucted, Captain Samuel Goodere, late Commander of the Ruby Man of War, and Brother of the late unfortunate Sir John Dineley Goodere, having on Sunday the eighteenth of January laft, with the Affiftance of Mahony and other Rufians, forcibly feized upon Sir John, and hurried him on board the Ruby, (which then lay ftationed in King-road, within the Body of your County) with a defign of murdering Sir John; the Prifoner (a private Mariner belonging to the Ruby) was pitch'd upon by the Captain as a Perfon fit to be concerned with Mahony in the Execution of that bafe and barbarous Defign. And accordingly, on Monday the nineteenth about One in the Morning, the Prifoner was called up by Mahony to attend the Captain in his Cabbin, which he did; and the Captain after plying the Prifoner pretty plentifully with Rum, propos'd to him the murdering of his Brother, in conjunction with Mahony; and no fooner faid but done, Gentlemen: for this infatuated Wretch the Prifoner, influenc'd by the ftrong Delufion of Wickednefs, and Temptation of miftaken Gain; and not content with his honeft Wages, nor confidering that the Wages of Sin are Death, gave at once into the monftrous Propofal for the fake of Plunder. In a word, Gentlemen, he readily followed Mahony into the Purfer's Cabbin, where Sir John lay confined; and as that unhappy Gentleman had from the time of firft feizing him been treated as a Malefactor, fo they executed him as

such; for *Mabony* seiz'd him by the Throat, and then fastening about his Neck a Rope, which they had brought with them for the purpose, strangled him in the Presence and with the Assistance of the Prisoner; and indeed without his Assistance, Sir *John* being strong and of an undaunted Spirit, would probably have been able to have defended himself against the Attack of *Mabony*. Gentlemen, no sooner had they robbed Sir *John* of his Life, but they fell to rifling him of his Watch and Money; they divided the Spoil between them, and then betimes in the Morning the Prisoner with his Accomplice *Mabony* made off from the Ship, and took refuge in this City; a very unfit Sanctuary for Ruffians and Murderers, considering the good Order and Government of the Place, and the constant Care of its worthy Magistrates in the due Execution of the Laws. But Justice pursued, and will, I doubt not, overtake him. He was apprehended, and made an early Confession of his Guilt, and comes now to answer for his Delinquency. Gentlemen, we shall call the Ship's Cooper and his Wife, who heard the Groans and Outcries of the Deceased, and were Spectators of what passed in the Purser's Cabbin immediately after this Tragedy, and saw the Prisoner in the very Act of rifling the Deceased, almost at the instant of his Death. We shall also lay before you the Prisoner's own Confession, on his Examination before the Justices; and then, Gentlemen, we doubt not, but you will be of opinion, that by the Laws of his Country he ought to die for his Transgression, as some Atonement for his own Guilt, and an Example of Justice to others.

(*Edward Jones* sworn.)

Mr. *Vernon*. *Edward Jones*, tell Mr. Recorder and the Jury what you know concerning the Death of Sir *John Dineley Goodere*?

Edward Jones. On the 18th of *January* last, at night, I was in bed with my Wife in the Slop-room, next to the Purser's Cabbin down in the Cockpit in the *Ruby Man* of War, then lying at *King-road*, and Sir *John Dineley* was then confined in the Purser's Cabbin. I heard him pray to God to be his Comforter under his Afflictions; he said that he knew he was to be murdered there; and he prayed that it might come to light by one means or another. But I took no notice of him, because I thought him a crazy Man, as I had heard the Captain say he was. After that, I fell asleep; and, I believe, about two or three of the clock my Wife waked me, and said to me, Don't you hear the Noise that is made by the Gentleman? I believe they are killing him. I then heard Sir *John* kick, and cry out, Here is twenty Guineas, take it, take it; don't murder me; must I die! must I die! Oh my Life! and gave several Kecks with his Throat like a dying Man, and then he was still. I would have got out of bed, but my Wife persuaded me not, for fear I should be killed too. It was dark; but a Light was handed in to the Purser's Cabbin, and then I got up upon my Knees, and I could see a Light glimmering through the Crack of the Boards; I saw *Mabony* with a Candle in his Hand, Sir *John* was lying on his Side. The Prisoner *Charles White* was there, and he pulled Sir *John* to turn him about, and *White* said he could not get the Watch out of his Pocket; and he tumbled him up to come at the Money, and unbuttoned his Breeches. I saw him get hold of the Watch-Chain; and *White* gave *Mabony* the Watch; and *White* put his Hand in one of the Gentleman's Pockets, and cursed that there was nothing but Silver; he put his Hand in another Pocket, and there he found the Gold; he offered it to *Mabony*,

but *Mabony* damned him, and bid him keep it till by and by. *White* pulled out a Piece of Paper from one of Sir *John's* Pockets, and was going to read it; but *Mabony* said, Damn ye, don't stay to read it now.

Mr. *Vernon*. Was Sir *John* dead in appearance when you saw them rifling his Pockets?

Edward Jones. As they were turning him about, one of his Legs was crooked, which made me think he was dead, and that they had killed him in the Dark. The next Morning I saw Sir *John* dead, lying in the Purser's Cabbin, and I believe he was strangled.

Mr. *Recorder*. Prisoner, will you ask this Witness any Questions?

Charles White. Please you, my Lord, I desire you will ask Mr. *Jones*, whether Sir *John* was living or dead when he saw me in the Cabbin first?

Mr. *Recorder*. Mr. *Jones*, the Prisoner asks you whether Sir *John* was living or dead when you first saw him in the Cabbin?

Edward Jones. Sir *John* was dead when *White* turned him about, for they killed him in the dark. I heard two Voices.

Charles White. Whether *Edward Jones* saw any body strangling Sir *John* besides *Mabony*?

Mr. *Recorder*. The Witness does not say that he saw any body strangling Sir *John*, that he says was done in the Dark: but, he says, he heard two Voices in the Cabbin, and as soon as the Light was brought in, he saw you rifling Sir *John's* Pockets.

Mr. *Vernon*. Call *Margaret Jones*.

(*Margaret Jones* sworn.)

Mr. *Vernon*. Mrs. *Jones*, will you give Mr. Recorder and the Jury an Account of what you know in relation to the Death of Sir *John Dineley Goodere*?

Margaret Jones. Yes, Sir. On the 18th of *January* last, at Night, I lay on board the *Ruby Man* of War with my Husband, and in the Purser's Cabbin, next to where we were in bed, Sir *John* was under Confinement; the Captain said he was a Mad-man, and that he brought him there to save him from a Goal. About ten o'clock *Mabony* was left there with Sir *John*; Sir *John* desired him to go, but *Mabony* said he had Orders to stay there to take care of him. About 12 o'clock in the Night I went to sleep; about two o'clock I awaked, and heard the Gentleman talk to *Mabony*, and *Mabony* persuaded the Gentleman to go to sleep; the Gentleman said he could not: they talked together a good while. I heard somebody say to the Gentleman, You must lie still, and not speak a word for your Life; and then I heard a great struggling; who it was, I don't know. The Gentleman cried out, Murder! Help, for God's sake; and made several Kecks in his Throat, as though somebody was stifling him. I shook my Husband, and waked him. I heard two People in the Cabbin whispering; the Gentleman cried out Murder again, Help for God's sake! he said, Here's twenty Guineas in my Pockets, take it, take it; must I die! Oh my Life! And somebody in the out-side offered to go into the Cabbin; but one of them within said, keep out, you Negro; and then a great noise was made, as tho' the Cabbin would have been beat down; and then a Candle was brought in. I got up and look'd through a Crevice: I saw a Man, I believe it was *White*, pulled the Gentleman upright. *Mabony* had the Candle in his Hand. I observed the other put his Hand in the Gentleman's Pockets; one of them said, Damn ye, pull out his Watch: I saw the Person take hold of the Watch-string, and pulled it out, and said to the other, Here thee take it; and then searched another Pocket, and said,

said, Here's nothing but Silver: but then he searched another Pocket, and said, Here it is; and pulled out a Purse. And soon after that I heard the Door unbolted, and then I heard *Mabony* say, Where shall I run? And another said, Follow me, Boy. And they went upon Deck through the Hatch-hold.

Mr. Vernon. Did you know the Voice of either of the two Persons whom you heard speaking to one another?

Margaret Jones. Yes, I knew *Charles White* to be one of the Men by his Voice. I knew his Voice when he said to *Mabony*, Follow me, Boy. I am certain the Prisoner at the Bar was in the Cabbin; I observed his Bulk, but could not look earnestly at him, being very much shocked and surpris'd; but my Husband told me it was *Charles White*.

Mr. Recorder. White, will you ask this Witness any Questions?

Charles White. Please you, my Lord, to ask her, whether she can say that she ever heard my Voice in the Cabbin?

Mr. Recorder. Mrs. *Jones*, the Prisoner asks you, if you heard his Voice in the Cabbin?

Margaret Jones. I could not know his Voice in the Cabbin, for he spoke low; and when a Person whispers, the Voice is not so distinguishable: but as soon as he spoke aloud, I knew it to be his Voice.

Mr. Recorder. Did you see him in the Cabbin, Mrs. *Jones*?

Margaret Jones. My Lord, I did not see his Face, but by his Voice when he went out, I knew him to be the same Man.

Charles White. Please you, my Lord, to ask her, whether she ever heard me say, Follow me Boy, before?

Mr. Recorder. Mrs. *Jones*, you hear the Question, give an answer to it.

Margaret Jones. I never heard him say so before; but I knew his Voice perfectly well, having been acquainted with him for two Years.

Mr. Vernon. We must now desire that the Prisoner's Examination may be read. Cryer, swear *Mr. James Britten*, (second Clerk to the Town-Clerk.)

(*Mr. Britten* sworn.)

Mr. Vernon. *Mr. Britten*, what Paper is that?

Mr. Britten. The Examination of the Prisoner at the Bar taken before *Mr. Mayor*.

Mr. Vernon. Did you see the Prisoner sign it in *Mr. Mayor's* Presence?

Mr. Britten. Yes, I did.

Mr. Vernon. Did you see *Mr. Mayor* sign it?

Mr. Britten. Yes.

Mr. Vernon. Is that his Hand?

Mr. Britten. Yes.

Mr. Frederick, Counsel for the Prisoner. It is opened by *Mr. Vernon*, that this Examination contains the Prisoner's Confession of the Fact. I would ask *Mr. Britten*, Was the Confession voluntarily made or not? for, if it was not voluntarily, it ought not to be read.

Mr. Recorder. That is an improper Question, unless the Prisoner had insisted, and made it part of his Case, that his Confession was extorted by Threats, or drawn from him by Promises; in that Case, indeed, it would have been proper for us to inquire by what means the Confession was procured: But as the Prisoner alleges nothing of that kind, I will not suffer a Question to be ask'd the Clerk, which carries in it a Reflection on the Magistrate before whom the Examination was taken. Let it be read.

Cl. of Arr. Reads:

City and County of }
the City of Bristol. } to wit,

20 January, 1740.

The Examination of *Charles White*, a Sailor belonging to the *Ruby Man of War*, now lying in this Port, born in *Drogheda* in Ireland, aged about thirty-six Years.

THE Examinant voluntarily confesseth, and saith, That he hath been a Sailor on board the said Ship for about seventeen months last past; That about one of the clock in the Night of *Sunday* last, the eighteenth Instant, he was asleep in his Hammock on board the said Ship, and was called out by one *Matthew Mabony*, another Sailor on board the said Ship (and now in Custody) who told him that the Captain (meaning Captain *Samuel Goodere*, Commander of the said Ship) wanted to speak with him in his Cabbin; and accordingly he went to him: and when he came to him, the Captain asked him to sit down, and then gave him a Wine-Glass of Rum, and after that four or five more, and then asked him if he could kill a *Spaniard*? and this Examinant answered him, That he never did. Upon which the Captain told him, he had got a Job for him to do, if he would undertake it: And this Examinant ask'd him what Job it was? And the Captain told him, it was to make away with his Brother, whose Name (as this Examinant is informed) was *Sir John Dineley Goodere*, Bart. who was in the Purser's Cabbin on board the said Ship: and the said *Matthew Mabony* told this Examinant, that he must go with him to help do it. Whereupon the said Captain went out of the Cabbin first, *Mabony* followed him, and this Examinant went next; and when he came to the Purser's Cabbin-door, where *Sir John Dineley* was, the Captain was standing Centinel himself at the Door with a Cutlash in his Hand, and *Mabony* had entered the Cabbin, and this Examinant entered likewise, where *Mabony* was talking with the said *Sir John*, and had a piece of Rope, called three-quarter of an Inch Rope, in his Hand, about six Foot in length, and *Sir John* was lying on the Bed; and particularly *Mabony* ask'd *Sir John* how his Head was, and what he had got about it? and at last told him, it did not signify talking about it any longer, and then fell on him on the Bed, took hold of his Throat with his Hand (his Stock being on) and so strangled him with his Stock, and afterwards put the said Rope about his Neck, (which was prepared for the purpose, with a Noose in it, before it was brought out of the Captain's Cabbin) and then *Mabony* halled the Rope tight about his Neck; and upon this Examinant's asking him what he did that for? he said, For fear he should not be dead enough. And this Examinant took a Knife out of his Pocket, and cut it off his Neck, and threw it over-board. During all which time the Captain stood Centinel at the Door as aforesaid; and as soon as this Examinant had so cut the Rope off, the Captain handed a Candle to *Mabony*, who gave it to him, and *Mabony* took the Watch and Money out of *Sir John's* Pocket; and then the Captain ask'd them, Have ye done? meaning, (as this Examinant apprehended) murdered the said *Sir John*. And then came in himself, and this Examinant went through the Hold, and came upon Deck, where he walk'd for about the space of half a quarter of an Hour, and the Captain and *Mabony* went into the Captain's Cabbin together, and then this Examinant went into the Steridge, and *Mabony* called this Examinant into the Cabbin, where the Captain had undressed himself in order to go to Bed; and there the Captain gave him five Guineas, and this Examinant had received

of the said Captain a six and thirty Shilling Piece of Gold before the said Sir *John* was murdered. And further this Examinant saith, That *Mabony* shewed the Captain the Watch he had taken out of Sir *John's* Pocket, and the Captain gave *Mabony* his own Watch, and kept Sir *John's* himself; and *Mabony* likewise shewed the Captain the Money he had taken out of Sir *John's* Pocket, who bid him keep it; and *Mabony* gave it to this Examinant, who put it in his Pocket, and he and *Mabony* shared the Money on the Fore-castle, and this Examinant had two Pieces to one, in consideration that *Mabony* had the Watch; and this Examinant believes they shared about thirty Pounds between them. And further, this Examinant saith, That the said Captain told him and *Mabony*, that they might go any where for three Weeks, and he would send them their Tickets. And lastly, this Examinant saith, That between four and five of the clock the same Morning the Man of War's Yawl was going to this City, and he and *Mabony* landed at the *Gibb* here.

Charles White.

Mr. Recorder. Well, Prisoner, what have you to offer in your Defence?

Charles White. Please you, my Lord, I was in my Hammock between the Hours of Twelve and One, and this *Mabony* came to me and said, *Charles White, Charles White!* I said, what do you want? He said, Turn out. I asked him what he wanted of me now? He said again, Turn out, turn out. And with that I turn'd out, and went upon Deck to make Water, and while I was doing it, he told me that he wanted me to go with him. I asked him where he was going to bring me? But he led me into the Cabbin where the Captain was. When I came in, the Captain bid me sit down. I begged him to excuse me from taking so great a Freedom as that, in his Company. But at last I sate down, and I drank a Glas of Rum. Then the Captain ask'd me, whether I had ever kill'd a *Spaniard*? I told him, No, I never was engaged with one to kill him. Drink about, *Mabony*, said the Captain. With that we drank about, and finished a Bottle and a half in raw Drams. With that he said, come along with me. I ask'd him where he was going? I went with him, the Captain first, and *Mabony* after him; and they went below, and to what Intent I knew not, being quite in Liquor with drinking so much Rum. Said the Captain to me, when we came down, Tarry here 'till I call you. Soon after, *Mabony* came to me, and told me the Captain wants you. Then I went down into the Cabbin, and sat down in it, and *Mabony* and the Captain were talking together; but what they did I know not, for I never laid a Hand near the Gentleman.

Mr. Recorder. You say you were in the Purser's Cabbin, and do you not know what happen'd there?

Charles White. I cannot tell, Sir, what pass'd.

Mr. Recorder. If this Defence be true, how came you to be so unjust to your self, to make the Confession which has been read?

Charles White. Please you, my Lord, I was in Liquor, and did not know what pass'd between them, for I had not my Senses about me.

Mr. Recorder. Why, 'tis charg'd upon you, by the Cooper, that you examin'd Sir *John's* Pockets, and took out his Watch and Money, and a piece of Paper which *Mabony* perswaded you to throw away, as of no Consequence, or else to put it into your Pocket, and read it at another Time.

Charles White. Please you, my Lord, I know nothing of it; I have several Witnesses to my Character.

Mr. Recorder. Call your Witnesses.

(*Michael Smith* sworn.)

Mr. Recorder. How long have you known the Prisoner?

Smith. From a Child, Sir; we went to School together for eight Years.

Mr. Recorder. What do you know of him?

Smith. Sir, I never heard to the contrary but that he was an honest Man, and bore a good Character.

(*Theodore Court* sworn.)

Court. I never knew any Harm of the Prisoner until this unhappy Affair; but I have been inform'd, that since he hath been under Confinement, he hath told several People who have gone to see him, that if he can get clear of this, he will kill my Mate.

(*Edward Jones.*)

Edward Jones. I have known the Prisoner for three Years, but never knew any Harm by him; I was with him in the *West-Indies*, in the *Kingsole* Man of War, but 'till this Misfortune happened, I never knew any Harm by him.

Mr. Recorder. Are you sure then, that you saw him in the Cabbin, rifling the Deceased's Pockets?

Edward Jones. Yes, my Lord, I am sure of that.

(*William Macguinis* sworn.)

Macguinis. Please you, my Lord, I knew the Prisoner at the Bar ever since he was an Infant, I went to School with him, and never knew any Harm that he did before; I have often both eat and drank with him, and when he is sober, he is as good and civil a Man as need to be.

(*Daniel Wellar*, Carpenter of the Ship, sworn.)

Wellar. I have been about sixteen or seventeen Months with him, and he always behav'd himself well on board, and I never knew any Harm of him before; but his Voice is known from all the Men in the Ship.

Mr. Recorder. To what purpose do you say, that his Voice is known from all the Men in the Ship?

Wellar. Because they talked about his Voice oftentimes.

Mr. Vernon. If I apprehend him right, Sir, he speaks this in Confirmation of Mrs. *Jones's* Evidence, who swore she knew the Prisoner's Voice. Gentlemen, I was in hopes the Prisoner would have stood to his former Confession, instead of endeavouring to retract it, and have given Glory to God by a public Penitence and Sorrow for the Heinousness of his Crime, instead of putting on a Shew of Innocence against Proof so apparent of his Guilt. — Defence, I apprehend, he has made none; he has called indeed some Witnesses to speak to his Character; and Character, it must be admitted, is of weight, by way of balancing the Proofs, where the Fact is doubtful and uncertain; but when the Evidence is strong and pregnant, and Guilt stares the Prisoner in the Face, Character weighs not a single Grain in the Scale of Justice. How far the Prisoner's Character and early Confession of the Fact, with some Ingredients in his Case, may be of Service to him in another Place, is not the present Consideration; he stands now at the Bar for your Justice, not your Pity; and it fully appears in proof, that he was an Accomplice with *Mabony* in this barbarous Murder, as laid in the Indictment; so that Life ought to go for Life, by the Laws of God and Man, and I doubt not in the least, but that you will conscientiously discharge the Duty you owe to God and your Country, by going according to your Evidence, and finding the Prisoner guilty.

Mr. Recorder.

Gentlemen of the Jury, the Prisoner at the Bar stands indicted for the Murder of Sir *John Dineley Goodere*. The Indictment charges, that

that the Deceased was ftrangled by one *Matthew Mabony*, and that the Prifoner was present, aiding and abetting him in the Fact.

To fupport this Charge, the Profecutors have called two Witneffes, *Edward Jones*, and *Margaret* his Wife. *Edward Jones* fays, that he lodged in the Night between the eighteenth and nineteenth of *January* laft, in the *Ruby* Man of War, in the Slop-room, which adjoins to the Purfer's Cabbin; where, he fays, the Deceased was confined. He tells you, that about Two in the Morning he was waked by his Wife, and heard Sir *John* crying out, Here's twenty Guineas, take it, take it; don't murder me; muft I die? He fays Sir *John* gave feveral Kecks with his Throat like a Man expiring, and quickly after was ftill. He tells you, that then a Light being brought into the Cabbin, he got up and look'd through a Crevice in the Partition, and faw the Prifoner at the Bar engaged in rifling Sir *John's* Pockets, *Mabony* ftanding by with a Candle in his hand. He fays, that Sir *John* was dead, as he believes, when the Prifoner was rifling his Pockets; and from what he obferv'd the next Morning, that he was ftrangled.

Margaret Jones is fomething fuller in her Evidence, as to fome Circumftances previous to the Murder; but in the main, agrees with her Husband touching the rifling of Sir *John's* Pockets after he was dead. She is fure *Mabony* held the Candle, and that another Perfon whom ſhe takes to be the Prifoner at the Bar, was rifling his Pockets. She fays, ſhe had not a perfect view of him; but by his Bulk, and from what her Husband then told her, ſhe concluded at the time, that it was the Prifoner at the Bar. She fays further, that when *Mabony* and that other Perfon went out of the Cabbin, ſhe heard *Mabony* ſay, Whither ſhall I run? The other answered, Follow me, my Boy. And then ſhe fays, ſhe knew it was the Prifoner made that Answer, by his Voice. She fays ſhe knows the Prifoner's Voice perfectly well, having been acquainted with him two Years.

The Profecutors then read the Prifoner's Examination, which contains a full Confefſion of the Fact, as laid in the Indictment.

You have heard, Gentlemen, what the Prifoner has ſaid to this Charge. He admits that he went into the Purfer's Cabbin, but ſays, that being much in Liquor, he knows nothing of what paſſ'd there; and denies that he had any Concern in the Murder. He called ſome Witneffes to his Character; and I muſt obſerve to you, that one of his Witneffes, *Daniel Wellar*, ſays, that the Prifoner's Voice is diſtinguiſhable from the Voices of all the Men in the Ship. This will give ſome Weight to *Margaret Jones's* Evidence, That ſhe knew him by his Voice.

And, Gentlemen, upon the whole, if you believe the Evidence for the King, and give Credit to the Prifoner's Confefſion, you muſt find him guilty. Then the Jury withdrew, to conſider of their Verdict; and after a ſhort Space returned again.

Cl. of Arr. Gentlemen, answer to your Names: *John Naſh*.

John Naſh. Here. [And ſo of the reſt.]

Cl. of Arr. Gentlemen, are you all agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who ſhall ſay for you?

Jury. The Foreman.

Cl. of Arr. *Charles White*, hold up thy Hand. You of the Jury look upon the Prifoner; How

ſay you? is *Charles White* guilty of the Felony and Murder whereof he ſtands indicted, or not guilty?

Jury. Guilty.

Cl. of Arr. What Goods or Chattels, Lands or Tenements, had he at the time of the ſaid Felony and Murder committed, or at any time ſince, to your knowledge?

Jury. None.

Cl. of Arr. Hearken to your Verdict, as the Court hath recorded it: You ſay, that *Charles White* is guilty of the Felony and Murder whereof he ſtands indicted, and that he had no Goods or Chattels, Lands or Tenements, at the time of the ſaid Felony and Murder committed, or at any time ſince, to your knowledge; and ſo you ſay all.

Cl. of Arr. Keeper, take *Charles White* the Prifoner from the Bar, and look to him; he ſtands convicted of wilful Murder.

On *Saturday* the 28th of *March* the Prifoners were brought again to the Bar, in order to receive their Sentence; and the Court proceeded thus:

Cl. of Arr. Cryer, open the Court.

Cryer. Oyez, Oyez, Oyez; all manner of Perſons that have any more to do before the King's Maſteſty's Juſtices of Oyer and Terminer, and general Goal-Delivery for this City and County, and were adjourned over to this Time and Place, draw near, and give your Attendance.

Cl. of Arr. Mr. Recorder, will you pleaſe that the Prifoners ſhall be called up to Judgment?

Mr. Recorder. Yes.

Cl. of Arr. Keeper, ſet *Matthew Mabony*, *Samuel Goodere*, and *Charles White* to the Bar; which was done.

Mr. Recorder. Ask them what they can ſay to hinder Judgment?

Cl. of Arr. *Matthew Mabony*, hold up thy Hand. Thou haſt been indicted of Felony and Murder, thou haſt been thereupon arraigned, thou haſt pleaded thereunto not guilty, and for thy Trial, thou haſt put thy ſelf upon God and thy Country, which Country hath found thee guilty; what haſt thou to ſay for thyſelf, why the Court ſhould not proceed to give Judgment of Death upon thee, and award Execution according to the Law?

[He offered nothing, but begg'd for Time to prepare himſelf.]

Cl. of Arr. *Samuel Goodere*, hold up thy Hand. Thou haſt been indicted of Felony and Murder, &c. what haſt thou to ſay? &c.

[He offered nothing, but begged alſo for Time to prepare himſelf.]

Cl. of Arr. *Charles White*, hold up thy Hand. Thou haſt been indicted of Felony and Murder, &c. what haſt thou to ſay? &c.

[He offered nothing, but declared he was drawn into it, and begged for Transportation for Life.]

Cl. of Arr. Cryer, make Proclamation for Silence.

Cryer. Oyez; The King's Maſteſty's Juſtices ſtraitly charge and command all manner of Perſons to keep Silence whiſt Judgment is giving, upon pain of Imprifonment.

[Then Mr. Recorder ſpoke to the Prifoners thus:]

Mr. Recorder. *Samuel Goodere*, *Matthew Mabony*, *Charles White*, and * *Jane Williams*, you have been all convicted, upon very full Evidence, of one of the greateſt Crimes human Nature is capable of; deliberate and wilful Murder. A Crime, which in all Ages, and through all Nations, hath been had in the higheſt Detefation. For however Mankind have differed in other Matters, they have been in one Sentiment concerning this Crime

and

* Convicted at the ſame Sefſions for the Murder of her Baſtard Child.

and the Demerits of it; as if they had been all Witnesses to the Promulgation of the Precept, *Whoever sheddeth Man's Blood, by Man shall his Blood be shed.*

But this Crime, great as it is, is capable of several Aggravations, arising from the Circumstances which attend it.

To lay violent Hands upon a Person who never gave his Murderer the least Offence, whom perhaps he never saw till the Moment he was mark'd out for Execution; and to do this for Hire, shews a Mind lost, I fear, to all the Impressions of Humanity.

But what then is the Case of one, who can procure all this Mischiefe, and involve others in this Guilt; especially if the Person to whom the Violence is offered, is near to him by the Ties of Blood or Friendship?

'Tis true, Murders of this kind are not very frequent; and less so in this Nation than in any other. But in the Case in which three of you are concerned, they all concur.

A Gentleman of Distinction is murdered by Persons, who, in a manner, were Strangers to his Face, and his only Brother aiding and abetting the Murder. I may say thus much, because your Country hath upon full Evidence found it so.

I will carry these Reflections no farther: I choose to leave that Part to your own serious Consideration.

I hope I need not persuade you to employ the Time you have to live, in making your Peace with God: I hope, I say, that a Sense of your own Condition hath already put you upon that Work. And pray don't suffer yourselves to be diverted from it by the Hope or Expectation of Mercy from the Crown. His Majesty's Disposition to Mercy is great; but his Love of Justice, and his Love to his People is still greater. And because I would not mislead you, nor have you deceive yourselves in a Case of this Importance, I think it my Duty to deal freely with you.

I do not see what room any of you have to expect Mercy.

You who have been the immediate Actors in this Affair, what have you pleaded in mitigation of your Crime? One says, he is a poor, press'd Servant; and the other, that he was drunk when the Fact was committed. Neither of those Excuses can avail you. You both undertook the Murder for Hire, rifled the Gentleman's Pockets, and shared the Plunder between you.

You had, perhaps, no Design upon the Gentleman's Life, till near the Time of Execution. This is no Excuse. It shews you were ready to shed innocent Blood at the first Call: That you yielded to the first Temptation. And if Drunkenness could be admitted as an Excuse for Crimes of this nature, this would be no World then of Virtue and Sobriety.

You, Sir, who have been the principal Actor in this Affair, what have you offer'd for your self?

You admit, that you employ'd a Number of People to seize your Brother, here in the Heart of the City, and in the Face of the Sun, and to carry him on board the Ship of which you had then the Command. This is too evident to be denied, and for that Reason only, I fear, 'tis admitted.

To give some Colour to this unparallel'd Outrage, you say, that your Brother was distracted, and that you took him on Board in order to put

him under Confinement. Admitting that your Brother was distracted, was the Place you carried him to, or the Hands into which you committed him, or the Treatment which he met with from them before he was got aboard the Barge, at all proper for his Case, or fit for a Brother to think of?

You called Mrs. *Getbins* to prove, that *Mahony* was to have had five Pounds a Month for looking after him at her House. She remembers nothing of *Mahony*. But, had that been proved, could it at all avail you to say, that for three Weeks before the Murder was committed, you intended to have confined him under the Care of the very Man who now appears to have murdered him?

Indeed, you have denied all Concern in the Murder, or the least Knowledge of it. But it hath been proved by three Witnesses, that you were in the Cock-pit while the Murder was committing, and might have heard the Noise and Struggle in the Cabbin, the Cry of Murder, and your Brother's dying Groans, as well as they did.

Nay, two of them are positive, that you stood Centinel at the Door, with a drawn Cutlash in your Hand, while the Fact was committing. One of them says that you delivered a Candle into the Cabbin, after the Cry of Murder ceased; and that you, soon after, lock'd the Door, and took the Key with you. And it is agreed on all hands, that when the Door was open'd the next Morning, your Brother was found there murdered.

Those Facts, with other Circumstances, are strong and pregnant Proofs of your Concern in the Murder; unless the Credit of the Witnesses could be impeached, which you have not attempted to do.

It was charged as a Circumstance against you, that after the Fact was committed, *Mahony* and *White* were sent ashore by you. This likewise you denied. But it came out of the Mouth of a Witness called by yourself, that they went up in the Yawl by Leave from you.

I have nothing more to do, before I proceed to that which the Duty of my Place obliges me to, than to exhort you all to make your Peace with God by a serious and hearty Repentance. His Mercy is infinite, and to that we must leave you. For the Judgment of this Court is, *That you, Samuel Goodere, Matthew Mahony, Charles White, and Jane Williams, go from hence to the Prison from whence you came; and from thence you shall be led to the Place of Execution, where you shall severally be hanged by the Neck till you shall be dead. And the Lord have Mercy on your Souls.*

Then the Keeper carried away the Prisoners to the Goal, to be reserved till their Execution.

On *Wednesday* the 15th of *April* following, the Prisoners *Matthew Mahony, Samuel Goodere,* and *Charles White,* were executed at *Bristol,* according to the Sentence pronounced against them. They all confessed the Fact. The Body of *Mahony* is hung in Chains near the Place where the horrid Fact was committed.

At the same Court *Charles Bryan, Edward M'Daniel,* and *William Hammon,* were indicted, tried and convicted, for a Misdemeanour, in forcibly assisting and seizing Sir *John* in the Parish of *St. Augustine,* in the said City and County, and carrying him on board the Barge belonging to the *Ruby Man of War;* and were fined 40*s.* each, to be imprisoned for one Year, and then each to give Security for his good Behaviour for one Year more.

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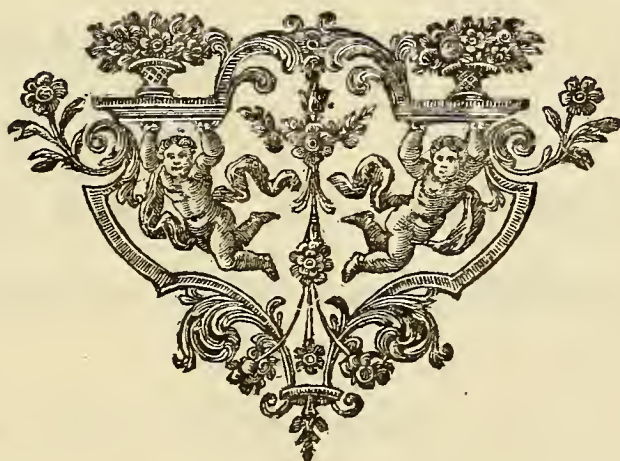
A P P E N D I X,

Containing several

R E C O R D S

Relating to the foregoing

TrialS and Proceedings.



L O N D O N:

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1874

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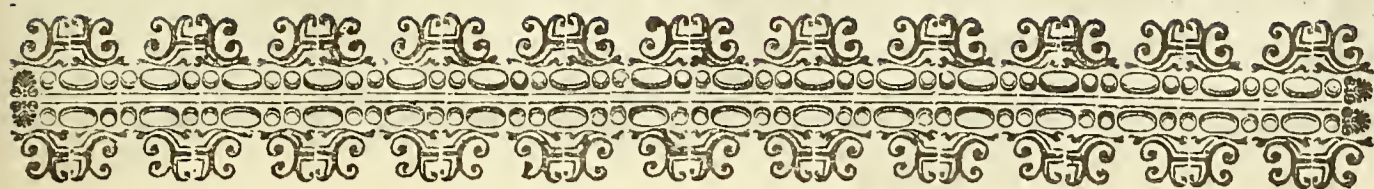
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A. G. W. D. O. W.

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A N A P P E N D I X,

CONTAINING

*Several RECORDS relating to the foregoing TRIALS
and PROCEEDINGS.*

THE Second and Third Trials in this Collection being for *Heresy* (a Crime heretofore very frightful, and punished with great Severity) it may not be amiss to state how the Law formerly stood relating thereto, and, since we have not the Precedents of the Process issued in those particular Instances, to give a Precedent or two in some others of the same Nature.

By the ancient ^a Law, Burning was the Punishment for Heresy; but the Party accused was first to be tried and convicted thereof by the Archbishop and the rest of the Clergy of his Province assembled in Convocation. After Conviction the Offender was delivered over into Lay-Hands, and the Sheriff of the County, by virtue of the Writ *de Hæretico comburendo*, was to cause him to be burnt. *Brit. lib. 1. c. 17. Bro. Abr. tit. Heresy. Fitz. Nat. Brev. 595.*

The first Statute in relation to Heresy is the 5th of *Rich. II. cap. 5.* whereby it is enacted, That the Sheriffs and other Civil Officers should apprehend and imprison Persons suspected of Heresy, in order to their being tried by the Laws of Holy Church; and it being found inconvenient to summon the Convocation for the Trial of every Offender, a Statute was made the 2d of *Hen. IV. cap. 15.* empowering every Diocesan to imprison Persons suspected of Heresy in their respective Diocefes, and try them (so that such Diocesan proceeded judicially and openly against such Persons) and where any Person was convicted, he might be imprisoned at the Discretion of the Ordinary; or, if the Party refus'd to abjure his Errors, or, having abjured them, relaps'd, he was to be left to the Secular Arm; and the Sheriff (whom the Ordinary might call to be present at the Trial) was to cause the Party to be burnt in some high (or open) Place.

The Lord Chief Justice *Brook* (in his Abridgment, *Tit. Heresy*) says, that upon this Statute it

was resolved, That if a Person was convicted of Heresy in the Presence of the Sheriff, the Ordinary might commit him to the same Sheriff, and he was to cause him to be burnt without the Writ *de Hæretico comburendo*; but if the Sheriff was absent, or if the Heretic was to be burnt in another County, in either of these Cases the Writ *de Hæretico comburendo* must be first obtained, before the Sheriff could burn him.

Some Authors have wonder'd, Why the Writ *de Hæretico comburendo* was issued for the burning of *Sawtre*, when by the last mentioned Act the Sheriff was empowered to execute Persons convicted of Heresy without that Writ: But the Wonder ceases, if we consider that the Sheriff could not proceed to execute the Offender by his own Authority, unless he was present at the Conviction; and though the Diocesan might call the Sheriff to attend the Trial, yet he might too convict the Offender in his Absence. And further, *Sawtre* was convicted by the Convocation; and it may be difficult to give one Instance where the Convocation called the Sheriff to assist at the Trial of an Heretic; and, if they had, such a Conviction was not within the Letter of the Act: Therefore, upon this Conviction, the Sheriff was under a Necessity of waiting for the Writ *de Hæretico comburendo*, before he could execute him †.

By the 2d of *Hen. V. cap. 7.* all Civil Officers were to be sworn to assist the Ordinaries in extirpating Heresies; and one convict of Heresy was to forfeit his Goods and Chattels, and Fee-simple Lands.

By the 25th of *Hen. VIII. cap. 14.* the Act of the 2d of *Hen. IV.* is in part repealed; and it is thereby provided, That no Person shall be executed as an Heretic, without the Writ *de Hæretico comburendo* first obtained.

By the 1st of *Eliz. cap. 1.* the abovesaid Statutes, as well as that other Statute of the first and second of *Phil. and Mar. cap. 6.* against Heretics, are repealed.

^a See *Whitlock's* Speech in behalf of *James Naylor*, Vol. II. p. 273. N^o. 53 See also *Hales's* H. P. C. Vol. I. p. 392. Note (b) and p. 394. and Note p. 709.

† The Writ for burning *Sawtre* seems to be a special Act of Parliament made for that purpose for it is tested *Per regem & concilium in parlamento*, which is to be intended of an Act of Parliament. See 8. *Co. Rep.* 19. a. *Prince's* Case. See also *Hale's* Hist. P. C. Vol. I. p. 396.

And by the 29th of *Car. II. cap. 9.* the Writ *de Hæretico comburendo*, with all Proceedings thereon, and all Capital Punishments in pursuance of any Ecclesiastical Censures, are from thence forth utterly abolished.

So that at this day a Person convicted of Heresy is liable only to Excommunication, and such Pains and Disabilities as Persons standing excommunicated for any other Offence.

The Writ de Hæretico comburendo, for burning William Sawtre^b, convicted of Heresy in Convocation^c.

REX, &c. Majori & Vic' London salutem. Cum venerabilis Pater Thomas Archiepiscopus Cantuar' totius Angliæ Primas, & Apostolicæ sedis Legatus, de consensu & assensu, ac consilio Episcoporum, & confratrum suffragan' suorum, necnon totius Cleri provinciæ suæ in consilio suo provinciali congregat', juris ordinibus in hac parte requisit' in omnibus observat', Will' Sawtre, aliquando Capellanum in hæres' damnat', & per ipsum Willielmum præantea in forma juris abjurat', & ipsum Willielmum in hæresin prædict' relaps', per suam sententiam definitivam hæreticum manifestum pronunciat' & declarav', ac degradandum fore decreverit, & ab omni prærogativa & privilegio Clericali ea de causa realit' degradaverit, ipsumq; Will' foro seculari relinquendum esse decreverit, & realiter reliquit, juxta leges & canonicas sanctiones editas in hac parte, & sancta Mater Ecclesia non habet ulterius quod fac' in præmiss': Nos igitur, zelator justitiæ, & fidei catholicæ cultor, volentes Ecclesiam sanctam, ac jura & libertates ejusdem manutenere & defendere, & hujusmodi hæreses & errores de regno nostro Angliæ (quant' in nobis est) radicitus extirpar', ac hæreticos sic convictos animadversione condigna puniri; attendentesq; hujusmodi hæreticos, in forma prædict' convictos & damnatos juxta legem divinam & humanam canonica institutione, & in hac parte consuetudinar', ignis incendio comburi debere, Vobis distinctius quo possimus præcipimus, firmiter injungentes, quod præfat' Will' in custodia vestra existen', in aliquo loco publico & aperto infra libertat' civitatis prædict', causa præmissa, coram populo publice igni committ', ac ipsum in eodem igne realiter comburi fac' in hujus criminis detestationem, aliorumq; Christianorum exemplum manifestum; & hoc sub periculo incumbente nullatenus omittatis. Teste, &c.

The Form of the Warrant to the Lord Chancellor for issuing the Writ de Hæretico comburendo against Bartholomew Legatt, on a Conviction for Heresy before the Ordinary.

JAMES REX.

JAMES, by the Grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c. To our right-trusty and right well-beloved Counsellor, *Thomas Lord Ellesmere*, our Chancellor of England, Greeting. Whereas the Reverend Father in God, *John Bishop of London*, having judicially proceeded in

a Cause of Heresy against *Bartholomew Legatt*, of the City of *London*, in the Diocese of the said Bishop of *London*, concerning divers wicked Errors, Heresies, and blasphemous Opinions, holden, affirmed, and published by the said *Bartholomew Legatt*, and chiefly in these Thirteen blasphemous Positions following, *viz.* That the Creed called the *Nicene Creed*, and *Atbanasius's Creed*, contain not a Profession of the true Christian Faith, or, that he will not profess his Faith according to the same Creeds; That Christ is not God of God begotten, not made, but begotten and made; That there are no Persons in the Godhead; That Christ was not God from everlasting, but began to be God when he took Flesh of the Virgin *Mary*; That the World was not made by Christ; That the Apostles teach Christ to be Man only; That there is no Generation in God, but of Creatures; That this Assertion, God to be made Man, is contrary to the Rule of Faith, and monstrous Blasphemy; That Christ was not before the Fulness of Time, except by Promise; That Christ was not God otherwise than anointed God; That Christ was not in the Form of God equal with God, That is, in Substance of God, but in Righteousness and giving Salvation: That Christ by his Godhead wrought no Miracle; That Christ is not to be pray'd unto: Wherein he the said *Bartholomew Legatt* hath, before the said Reverend Father, maintained his said most dangerous and blasphemous Opinions, as appeareth by many of his Confessions publickly made and acknowledged. For which his damnable and heretical Opinions, he is by definitive Sentence by the said Reverend Father *John Bishop of London*, with the Advice and Consent of other Reverend Bishops, Learned Divines, and others learned in the Laws, assisting him in Judgment, justly adjudged, pronounced, and declared to be an obstinate and incorrigible Heretick, and is left by them under the Sentence of the great Excommunication, and therefore as a corrupt Member to be cut off from the Church of Christ, and Society of the Faithful, and is to be, by our secular Power and Authority, as an Heretick punished, as by the *Significavit* of the said Reverend Father in God the said Bishop of *London*, bearing Date at *London* the third day of *March*, in the Year of our Lord 1611, in the Ninth Year of our Reign, and remaining in our Court of *Chancery*, more at large appeareth. And although the said *Bartholomew Legatt* hath, since the said Sentence pronounced against him, been often very charitably moved and exhorted, as well by the said Bishop, as by many grave and learned Divines, to dissuade, revoke, and remove him from the said blasphemous and heretical Opinions, yet he arrogantly and wilfully persisteth and continueth in the same. We therefore, according to our Regal Function and Office, minding the Execution of Justice in this behalf, and to give Example to others, lest they should attempt the like hereafter, have determined, by the Assent of our Council, to will and require, and do hereby authorize and require you our said Chancellor, immediately upon the Receipt hereof, to award and make out, under our Great Seal of *England*, our Writ of Execution, accord-

^b This Person was executed according to the Writ in the Year 1401, and was the first who was burnt in *England* for Heresy. See an Account of the Proceedings against him, and of his Execution, *Fox's Acts and Mon.* Vol. I. p. 586.

^c See *Fitz. Nat. Brev.* 594.

ing to the Tenor in these Presents ensuing; and these Presents shall be your sufficient Warrant and Discharge for the same.

The Writ de Hæretico comburendo.

REX Vicecomitibus London salutem. Cum Reverendus in Christo Pater Johannes, London Episcopus, nobis significavit, quod cum ipse in quodam hæreticæ pravitate negotio contra quendam Bartholomeum Legatt, subditum nostrum civitatis London, dicti London Episcopi dioces' & jurisdic't', rite & legitime procedens per acta inactitata, deducta, proposita, & per confessiones ipsius Bartholomei Legatt coram præfato Episcopo judicialiter factas & recognitas, comperit & invenit præfatum Bartholomeum Legatt quamplurimos nefandos errores, falsas opiniones, hæreses & blasphemias execrandas, & scelerata dogmata catholicæ & orthodoxæ fidei & religioni, & sacrosancto Dei Verbo expresse contraria & repugnantia, scienter, maliciose, animoq; pertinaci, obdurato, planeque incorrigibili credere, tenere, affirmare, & publicare; idem Reverendus Pater London Episcopus, cum consilio & consensu tam Reverendorum Episcoporum & aliorum Theologorum, quam Juris etiam peritorum in judicio assiden' & assisten', eundem Bartholomeum Legatt, per sententiam suam definitivam, obduratum, contumacem, & incorrigibilem hæreticum pronunciavit, decrevit, & declaravit, eaque occasione tanquam protervum hæreticum, & membrum putridum & contagiosum, ab ecclesia Christi & fidelium communi-one recisum & amputatum fore. Cum igitur sancta mater Ecclesia non habeat quod ulterius facere & exequi valeat in hac parte, idem Reverendus Pater præfatum Bartholomeum Legatt, ut blasphemum hæreticum, brachio nostro seculari reliquit condigna animadversione plectend', prout per Literas Patentes præfati Reverendi in Christo Patris London Episcopi in hac parte superinde confect' nobis in Cancellar' nostram certificat' est. Nos igitur ut zelator justitiæ, & fidei catholicæ defensor, volentesq; Ecclesiam sanctam, ac jura & libertates ejusdem, & fidem catholicam manutenere & defendere, ac hujusmodi hæreses & errores ubiq; (quantum in nobis est) eradicare & extirpare, ac hæreticos sic convictos animadversione condigna puniri, attendentesq; hujusmodi hæreticum in forma prædict' convictum & damnatum juxta leges & consuetudines regni nostri Angliæ in hac parte consuet', ignis incendio comburi debere: Vobis præcipimus, quod dictum Bartholomeum Legatt, in custod' vestra existen', apud West-Smithfield in loco publico & aperto, ex causa præmissa, coram populo publice igni committi, ac ipsum Bartholomeum Legatt in eodem igne realiter comburi fac' in hujusmodi criminis detestationem, aliorumq; Christianorum exemplum manifestum, ne in simile crimen labantur; & hoc sub periculo incumbente nullatenus omitatis. Teste, &c.

Henry Hibirte.

The Writ for burning an Heretic in English.

THE King to the Sheriffs of *London*, Greeting. Whereas the Reverend Father in Christ, *John* Bishop of *London*, hath signified unto us, that when he in a certain Business of heretical Pravity against one *Bartholomew Legatt*, our Subject of the City of *London*, of the said Bishop of *London*'s Diocese and Jurisdiction, rightly and lawfully proceeding by Acts enacted, drawn, proposed, and by the Confessions of the said *Bartholomew Legatt*, before the said Bishop judicially made and acknowledged, hath found the said *Bartholomew Legatt* very many wicked Errors, false Opinions, Heresies, and cursed Blasphemies, and impious Doctrines, expressly contrary and repugnant to the Catholick Faith and Religion, and the holy Word of God, knowingly and maliciously, and with a pertinacious, obdurate, and plainly incorrigible Mind, to believe, hold, affirm, and publish; the same Reverend Father the Bishop of *London*, with the Advice and Consent as well of the Reverend Bishops and other Divines, as also of Men learned in the Law, in Judgment sitting and assisting, the same *Bartholomew Legatt*, by his definitive Sentence, hath pronounced, decreed, and declared to be an obdurate, contumacious, and incorrigible Heretic, and, upon that Occasion, as a stubborn Heretic, and rotten contagious Member, to be cut off from the Church of Christ, and the Communion of the Faithful: Whereas the holy Mother Church hath not further to do and prosecute in this part, the same Reverend Father hath left the aforesaid *Bartholomew Legatt*, as a blasphemous Heretic, to our secular Power, to be punished with condign Punishment, as by the Letters Patents of the said Reverend Father in Christ the Bishop of *London*, in this behalf above made, hath been certified unto us in our Chancery. We therefore, as a Zealot of Justice, and a Defender of the Catholick Faith, and willing to maintain and defend the Holy Church, and Rights and Liberties of the same, and the Catholick Faith, and such Heresies and Errors every where, what in us lieth, to root out and extirpate, and to punish with condign Punishment such Heretics so convicted, and deeming that such an Heretic, in Form aforesaid convicted, and condemned according to the Laws and Customs of this our Kingdom of *England* in this part accustomed, ought to be burned with Fire; we do command you, that the said *Bartholomew Legatt*, being in your Custody, you do commit publickly to the Fire before the People, in a publick and open Place in *West-Smithfield*, for the Cause aforesaid; and that you cause the said *Bartholomew Legatt* to be really burned in the same Fire, in Detestation of the said Crime, for the manifest Example of other Christians, lest they slide into the same Fault; and this that you in no wise omit, under the Peril that shall follow thereon. Witness, &c.

The [forged] *Indictment and Outlawry*^d of Sir John Oldcastle, Lord Cobham, for High-Treason.

Hil. 1 Hen. V. Rot. 7: B. R.

ALIAS coram Gulielmo Roos de Hamlak, Henrico le Scrop, Gulielmo Crowmere Majore civitatis London, Hugone Huls & sociis Justic' Domini Regis, ad inquirend' per sacram' proborum & legal' hominum de civitate Domini Regis London, & suburbiis ejusdem, ac de com' Midd' tam infra libertates, quam extra, de omnibus & singulis prodicionibus & insurrectionibus, per quamplures subditos Domini Regis Lollardos vulgarit' nuncupatos, & alios in civitate, suburbiis, & com' prædictis factis & perpetratis, necnon de omnibus prodicionibus, insurrectionibus, rebellionibus, & felonis in civitate, suburbiis, & com' præd' per quoscunque & qualitercunq; factis, sive perpetratis, & ad easdem prodiciones, insurrectiones, rebelliones, & felonias audiend' & terminand' secundum legem & consuetudinem regni Domini Regis Angliæ, per literas ipsius Domini Regis patentes, assign' apud West' die Mercurii proximo post festum Epiphaniæ Domini, anno regni Regis Henrici quinti post conquestum primo, per sacram' xii. jur' extitit præsentatum, quod Johannes Oldcastle de Coulyng in com' Kanc' chr' & alii Lollardi vulgar' nuncupat', qui contra fidem catholicam diversas opiniones hæreticas, & alios errores manifestos legi catholicæ repugnantes diu temerarie tenuerunt, opiniones & errores prædictos manutenere, at in facto minime perimplere valentes, quandiu regia potestas, & tam status regal' Domini nostri Regis, quam status & officium Prælatiæ dignitatis infra regnum Angl' in prosperitate perseverarent, falso & proditorie machinando, tam statum regni, quam statum & officium prælatorum, necnon ordines religiosorum infra dictum regnum Angl' penitus annullare, ac Dominum nostrum Regem, fratres suos, prælatos & alios magnates ejusdem regni interficere, necnon viros religiosos, relict' cult' divinis & religiosis observanciis ad occupationes mundanas provocare, & tam ecclesias cathedrales, quam alias ecclesias & domos religiosas de reliquis & aliis bonis ecclesiasticis totaliter spoliare, ac funditus ad terram prosternere, & dictum Johannem Oldcastle regentem ejusdem regni constituere, quamplura regimina secundum eorum voluntatem, infra regnum prædictum, quasi gens sine capite, in finalem destructionem, tam fidei catholicæ & cleri, quam status & majestatis dignitatis regal' infra idem regnum ordinare, falso & proditorie ordinaverunt & proposuerunt, quod ipso infimul cum quampluribus rebellibus Domini Regis ignotis, ad numerum viginti millium hominum de diversis partibus regni Angl' modo guer-

rino arrivat', privatim insurgent', & die Mercurii proximo post festum Epiphaniæ Domini, anno regni Regis prædicti prædicto, apud villam & parochiam sancti Ægidii extra Barram veteris Templi London, in quodam magno campo ibidem unanimit' convenirent, & infimul obviarent pro nephando proposito suo in præmissis perimplend'; quo quidem die Mercurii apud villam & parochiam prædicti J. Oldcastle & alii in hujusmodi proposito proditorio perseverantes, prædictum Dominum nostrum Regem, fratres suos (videlicet, Thomam ducem Clarenciæ, Johannem de Lancastre, & Humfredum de Lancastre) necnon prælatos & magnates prædictos interficere, necnon ipsum Dominum nostrum Regem, & hæredes suos, de regno suo prædicto exhæredare, & præmissa omnia & singula, necnon quamplura alia mala & intolerabilia, facere & perimplere falso & proditorie proposuerunt & imaginaverunt, & ibidem versus campum prædictum modo guerrino arrivati' proditorie modo insurrectionis contra ligeancias suas equitaverunt ad debellandum dictum Dominum nostrum Regem, nisi per ipsum manu forti gratiose impediti fuissent. Quod quidem inditament' Dominus Rex nunc, certis de causis, coram eo venire fecit terminandum. Per quod præceptum fuit Vic', quod non omitteret, &c. quin caperet præfatum Johannem Oldcastle, si, &c. & salvo, &c. ita quod haberet corpus ejus coram Domino Rege apud Westmonasterium ad hunc diem, scilicet die Mercurii proximo post octavas sancti Hilarii, isto eodem termino ad respondendum Domino Regi de præmissis, &c. Ad quos diem & locum coram Domino Rege Vic', quod exigere faceret eum de com' in com' quousque utlagetur, si non, &c. & si, &c. tunc eum caperet, & salvo, &c. ita quod haberent corpus ejus coram Domino Rege in octavas sancti Johannis Baptistæ ex tunc proximum sequentem, ubicunque, &c. ad respondendum Domino Regi de prodicionibus & felonis superius sibi impositis. Ad quas octavas sancti Johannis Baptistæ, an' regni R. Henrici quinti post conquestum secundo, Johannes Sutton & Jo' Michell' Vic' Mid', coram Domino Rege returnaverunt, quod ad com' Midd' centum apud Braynford die Jovis proximo ante festum S. Barnabæ Apostoli, an' reg' R. Hen' quint' post conquestum secundo; & ad quatuor com' ex tunc ex proximo præcedentes, prædictus Johannes Oldcastle exactus fuit, & non comparuit; & quia ad nullum eorundem com' comparuit, ideo præsentibus Coronatoribus com' prædicti utlagat' fuit, per quod inquiratur de terra & catallis suis.

Rex versus Dominum Audley^e, for a Rape.

7 Car. I.

Wilts, ff. **J**uratores pro Domino Rege super sacramentum suum præsent', Quod Martinus dominus Audley, nuper de Fountell Gifford in comitatu Wilts, & Ægidius Broadway de Fountell Gifford prædict' in comitatu prædicto ge-

nerosus, timorem Dei præ oculis suis non habentes, sed instigatione diabolica moti & seducti, vicesimo die Junii, anno regni Domini nostri Caroli, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, fidei defensoris, sexto, apud Fountell Gifford prædict' & comitatu prædicto, vi & armis, &c.

^d The Record appears to have several rasures in it. See Trials Vol. I. p. 36. N^o 3. and Fox's Acts and Mon. Vol. I. p. 655.

^e Vol. I. p. 388. N^o 31. and Hut. Rep. 115.

in & super Annam dominam Audley, uxorem præfati domini Martini Audley, in pace Dei & dicti Domini Regis ibidem existent' insult' fecerunt. Et prædictus Ægidius Broadway prædictam Annam dominam Audley, vi & armis, contra voluntatem ipsius Annæ ad tunc & ibidem violenter & felonice rapuit, ac ipsam Annam ad tunc & ibidem contra voluntatem suam violenter & felonice carnaliter cognovit, contra pacem Domini Regis nunc, coronæ, & dignitat' suas, & contra formam statuti in hujusmodi casu edit' & provis'.

Et ultra, juratores prædicti dicunt super sacramentum suum prædict', Quod prædictus Martinus dominus Audley prædicto vicesimo die Junii, ann' sexto supradicto, apud Fountell Gifford prædictam, in comitatu prædicto, felonice fuit præfens, auxilians, & confortans, abettans, procurans, adjuvans, & manutenens prædictum Ægidium Br. ad feloniam prædictam, in forma prædicta felonice faciend' & perpetrand', contra pacem dicti Domini Regis nunc, coronam & dignitatem suas, ac contra formam statuti prædicti.

Rex versus Dominum Audley f, for Sodomy.

7 Car' I.

Wilts, ff. Juratores pro Domino Rege super sacramentum suum præsent', Quod Martinus dominus Audley, nuper de Fountell Gifford in comitatu Wilts', Deum præ oculis non habens, nec naturæ ordinem respiciens, sed instigatione diabolica motus & seductus, primo die Junii, an' regni Domini nostri Caroli, &c. sexto, apud Fountell Gifford prædict' in dicto comitatu Wilts, in domo mansionali ejusdem Martini domini Audley, ibidem vi & armis in quendam Florence Fitz-patrick, yeoman, insult' fecit, & cum eodem Florence F. ad tunc & ibidem nequit',

diabolice, felonice, & contra naturam rem Venerem habuit, ipsumque F. ad tunc & ibidem carnaliter cognovit, peccatumque illud Sodomiticum detestabile & abominandum, Anglice vocat' Buggery (inter Christianos non nominandum) ad tunc & ibidem cum eodem Florence F. nequit' diabolice, felonice, & contra naturam commisit & perpetravit in magnam Dei omnipotentis displicentiam, ac totius humani generis dedecus, ac contra pacem dicti Dom' Reg' nunc, coronam & dignitat' suas, & contra formam statuti in hujusmodi casu edit' & provis'.

Rex versus Johannem Hampden e, in the Case of Ship-Money.

Trin' 13 Car' I. in Scacc'.

Memorand', quod brev' Domini Regis nunc sub sigillo hujus Scaccar' per concess' Baron' hic emanavit in hæc verba:

ff. CAROLUS Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defensor, &c. Vic' Bucks salutem. Cum diversæ & separal' denar' summæ in schedul' huic brevi annex' spec', virtute brevis nostri sub magno sigillo nostro Angliæ geren' dat' quarto die Augusti, anno regni nostri undecimo, assessat' & onerat' fuer' super separal' person' in ead' schedul' nominat', in & versus provision' navis pro guerra, una cum apparat' & al' eid' pertin', in eod' brevi particular' mentionat'; quibus quid' separal' denar' summis sic assessat' & onerat', & non solut' & satisfact' existen', per breve nostrum de certiorar' geren' dat' nono die Martii, anno regni nostri duodecimo, sub magno sigillo nostro præd' emanat', nomina earund' separal' person' una cum separal' denar' summis super ipsos onerat', in cur' Cancellar' nostræ certificat' fuer'. Ac per breve nostrum de Mittimus sub eodem sigillo, geren' dat' quinto die instant' mensis Maii in Scaccar' nostr' miss' fuer' pro ulterior' process' super inde habend', prout per tenorem prædicti brevis geren' dat' quarto die Augusti, anno regni nostri undecimo, ac per prædict' breve de Certiorar' & certificat' super inde fact' in dictum Scaccar' nostrum miss', & ibid' de record' in custodia Rememorat' nostri remanen' plenius apparet, tibi præcipimus, quod non omit' propter aliqu' libertat' quin ea ingr', & per probos & legales homines de bal' tua scir' fac' præfat' separal' person' in dict' schedul' nominat' & spec', quod sint coram Baron' de Scaccar' nostro apud Westm' in octab' sanctæ Trinit'

proxim' futur', ad ostend' & proponend', siquid pro se habeant, vel dicere sciant, quare ipsi de præd' separal' denar' summis super ipsos modo & forma prædict' assessat', & non solut', in schedul' il' spec', onerari & inde satisfacere non deb' & ad ulterius faciend' & recipiend' in præmissis, quod cur' nostra tunc ibidem duxerit ordinand' & habeas ibi tunc hoc breve, & nomina eor' per quos eis sciri feceris. Teste Humfr' Davenport' Mil, apud Westm', vicesimo secundo die Maii, anno regni nostri decimo tertio. *Per rotulum.*

Memorandum de eodem anno Regis in recordor' rotulo termini Paschæ, Tenor schedul' præd' in brevi prædict' mentionat', quoad Johannem Hampden, sequitur in hæc verba: ff Schedul' de nominibus certar' personar' in com' Bucks, & cert' denar' summar' super ipsos assessat' & onerat' in & versus provision' navis de guerra, una cum apparat' & al' eid' pertin', virtute cujusd' brevis sub magno sigillo Angliæ, geren' dat' quarto die Augusti, anno regni Domini Reg' nunc Caroli undecimo, & in cur' Cancellar' Dom' Regis, virtute brevis de Certiorar' sub sigillo præd' eman', geren' dat' nono die Martii, anno regni sui duodecimo, certificat' esse insolut', ac per breve de Mittimus sub eodem sigillo in Scaccar' dict' Dom' Regis nunc missis pro ulterior' process' super inde faciend', prout per tenor' prædict' brevis geren' dat' quarto die Augusti, anno regni dicti Domini Regis nunc undecimo supradict', ac per breve de Certiorar', & certificat' superinde fact' in dictum Scaccar' nostr' miss', & ibidem de record' in custod' Rememorat' Dom' Regis reman' plenius apparet.

f Vol. I. p. 388. N^o 31. and *Hut. Rep.* 115.

e Vol. I. p. 505. N^o 37.

Stoake Mandivile, *ff.* Johann' Hampden Esq; Ad quem diem Anthonius Chester Baronet', Vic' com' prædict', quoad præfat' Johannem Hampden retorn', quod per Nicolaum Aris, Robertum Alexander, Richardum Harrison, & Will'um Heyborne, probos & legales homines de ball' sua, sciri fecit, præfat' Johann' Hampden, inter al', quod sit coram Baron' infra script' ad diem & locum infra content', ad ostendend' & proponend' si quid pro se habeat, vel dicere sciat, quare ipse de prædict' summa super ipsum affessat', & non solut', in schedul' prædict' spec', onerari & inde satisfacere non debeat, prout ulterius sibi præcipitur: Et modo, scilicet a die sanctæ Trinitatis in tres septiman' venit hic præd' Johannes Hampden, in schedul' præd' nominat', in propria persona sua, & petit audit' brevis de Sciri facias præd', retorn' ejusdem, ac præd' schedul' eid' annexat', & ei leguntur; petit etiam audit' præd' brevis, geren' dat' quarto die Augusti, anno regni dicti Domini Regis nunc Caroli undecimo, in brevi de Sciri facias mentionat', & ei legitur in hæc verba:

ff. Carolus Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defensor, &c. Vic' com' nostri Bucks, Ball' & Burgens' burgi & paroch' de Buckingham, Majori, Ball' & Burgens' burgi de Chipping-Wiccombe, alias Wiccombe, ac probis hominibus in eisdem burgis & paroch', & membris eorund', & in villis de Agmondeham, Wendover, & Marlow magna, ac in omnibus aliis burgis, villat', hamlet' & al' locis in dicto com' Bucks, salutem. Quia dat' est nobis intelligi, quod prædones quid', pirati, & mar' graffatores, tam nominis Christiani hostes Mahumetani, quam alii congregati, naves & bona ac mercim' non solum subditor' nostr', verum etiam suditor' amicor' nostr' in mari, quod per gent' Anglican' ab olim defend' consuevit, nefarie diripientes & spoliantes, ad libitum suum deportare, homines in eisdem in captivitate miserima manciantes: Cumque ipsos conspiciamus navigium indies præparantes ad mercatores nostros ulterius molestand', & ad regnum gravand', nisi citius remedium apponatur, eorumque conatui viriliter obvietur: Consideratis etiam periculis, quæ undique his guerrinis temporibus imminet, ita quod nobis & subditis nostris, defension' maris & regni omni festinatione, qua poterimus, accelerare convenit: Nos volentes defension' regni, tuitioni maris, securitati subditor' nostr', salva conductione navium & merchandizar' ad regnum nostrum Angliæ venien', & de eod' regno ad partes externas transeun', auxiliante Deo, providere; maxime cumque nos & progenitores nostri Reges Angliæ domini maris præd' semper hæctenus extiter', & plurimum nos tæderet, si honor iste regius nostris temporibus depereat, aut in aliquo minuatur; cumque onus istud defensionis, quod omnes tangat, per omnes debeat supportari, prout per legem & consuetudinem regni Angliæ fieri consuevit, vobis præfat' Vicecomiti, Ball', Burgens', Majori, probis hominibus, & omnibus aliis quibuscunq; supra mentionat' in burgis, villis, villat', hamlet', & locis supradict', eorumque membris, in fide & ligeantia, quibus nobis tenemini, & sicut nos & honorem nostrum diligitis, necnon sub forisfactur' omnium quæ nobis forisfacere poteritis, firmiter injungend' mandamus, quod unam navem de guerra, portagii quadringint' & quinquagint' dolior', cum hominibus tam magistris peritis, quam marinar'

valentioribus & expertis cent' & octogint' ad minus, ac etiam tormentis tam majoribus quam minoribus, pulvere tormentario, ac hastis & telis, aliisque armaturis necessar' pro guerra sufficien', & cum duplici eskippamento, necnon cum victualibus usque ad primum diem Martii jam proxime sequent', ad tot homines competen', & abinde in vigint' & sex septiman' ad custag' vestra, tam in victualibus, quam in hominum salariis, & al' ad guer' necessar' per tempus illud, super defensionem maris in obsequio nostro in comitiva custodis maris (cui custod' maris ante præd' primum diem Martii commitemus) & prout ipse ex parte nostra dictaverit moratur', parari, & ad portum de Portsmouth citra dictum primum diem Martii duci faciatis, ita quod sint ibid' eod' die ad ultimum, ad proficiend' exinde cum navibus nostris, & navibus alior' fidelium subditor' nostr', pro tuitione maris, defensione nostrum & nostrorum, repulsioneque & debellatione quorumcunq; mercatores nostros, & alios subditos fideles prædict' in dominia nostra ex causa mercaturæ se diversantes, vel abinde ad propria declinantes super mare gravare seu molestare satagentium. Assignavimus autem vos Vic' com, nostr' Bucks, Ball' & Major' burgor' & paroch' prædict', aut aliquos duos vel plures vestrum, quorum te præfat' Vic' com' nostri Bucks unum esse volumus, infra trigint' dies post receptionem hujus brevis, ad assidend' quantum de custag' prædict' super præd' burgos de Buckingham & Chipping-Wiccombe, alias Wiccombe, cum membris eorund', separatim poni aut assideri debeat. Et si hujusmodi assessament' infra prædict' triginta dies per vos duos, vel plures vestrum fieri non contigerint, tunc assignavimus te præfat' Vic' com' nostri Bucks ad assessament' hujusmodi super prædict' burgos & paroch', & membr' eorund', faciend', prout rationabiliter vides faciend'; & volumus, quod de toto facto tu præfat' Vic' Bucks, sub sigillo tuo prædict' Majorem & Ballivos reddas certiores. Assignavimus etiam te præfat' Ball' burgi & paroch' de Buckingham, ad assidend' omnes homines in eodem burgo & paroch', & membris ejusd', & terr' tenentes, in eisdem navem vel partem navis prædict' non habentes, vel in eadem non deservientes, ad contribuend' expensis circa provision' præmissor' necessar'; & super prædict' burgum & paroch', cum membris ejusd' (sicut præfertur) assidend' & ponend', viz. quemlibet eor' juxta statum suum & facultates suas & portiones suas ipsis affessat' per distinctiones, aliosve modos debitos levand' & collectores in hac parte nominand' & constituend', & omnes eos, quos rebelles & contrarios inveneris in præmissis carcere manciant', in eodem moratur' quousque pro eod' deliberatione ulterius duxerimus ordinand'. Assignavimus etiam te præfat' Major' burgi de Chipping-Wiccombe, alias Wiccombe, ad assidend' omnes homines in eod' burgo & membris ejusdem, & ter' tenentes, in eisd' navem vel partem navis præd' non habentes, vel in eadem non deservientes, ad contribuend' expensis circa provision' præmissor' necessar'; & super prædict' burg', cum membris ejusd' (sicut præfertur) assidend' & ponend', viz. quemlibet eorum juxta statum suum & facultates suas, & portiones super ipsos affessat' per distinctiones, aliosve modos debitos levand', & collectores in hac parte nominand' & constituend' & omnes eos, quos rebelles & contrarios inveneris in præmissis in carcere manciant', in eod' moratur', quousque

usque pro eor' deliberatione ulterius duxerimus ordinand'. Et ulterius assignavimus te præfat' Vicecomitem com' nostr' Bucks ad assidend' omnes homines in præd' villis de Agmondesham, Wendover, & Marlow magna, & in membris eorund', & in omnibus aliis villis, villat', burgis, hamlet', & aliis locis in prædict' com' Bucks, & terr' tenentes in eisdem, navem vel partem navis præd' non habentes, vel in eadem non deservientes, ad contribuend' expensis circa provisionem præmissor' necessar', & super prædict' villas, villat', burgos, hamlet' & locos, cum membris eorund' (sicut præfertur) assidend' & ponend', viz. quemlibet eor' juxta statum suum, & facultates suas, & portiones super ipsos assessat' per distinctiones, aliosve modos debitos levand', & collectores in hac parte nominand' & constituend', & omnes quos rebelles & contrarios inveneris in præmissis carcere mancipand', in eod' moratur', quousque pro eor' deliberatione ulterius duxerimus ordinand'. Et ulterius vobis mandamus, quod circa præmissa diligenter intendatis, & ea faciatis, & exequamini cum effectu sub periculo incumbente. Nolumus autem quod colore prædict' mandat' nostr', plus de eisd' hominibus levari faciatis, quam ad præmissor' sufficiet expensas necessar', aut quod quisquam, qui pecuniam de contributionibus ad prædict' custag' faciend' levaverit, eam, vel partem inde aliquam penes se detineat, vel ad al' usus quovis quæsito colore appropriare præsumat, volentes, quod si plus quam sufficiat collect' fuerit, hoc inter solventes pro rata portionis ipsis contingen' exsolvatur. Teste me ipso apud Westm' quarto die Augusti, anno regni nostri undecimo. Petit etiam audit' prædict' brevis geren' dat' nono die Martii, anno regni dicti Domini Regis xii^o, in prædict' brevi de Sciri facias mentionat', & ei similiter legitur.

Carolus Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defensor, &c. Vic' com' nostri Bucks, qui fuer' inter quartum diem Augusti anno regni nostri undecimo, & primum diem Martii tunc proxime sequent', Ball' burg' & paroch' de Buckingham, & Major' & Ball' burg' de Chipping-Wiccombe, alias Wiccombe, in dicto com' Bucks, qui fuer' inter tempus prædict', salutem. Per breve nostrum sub magno sigillo nostro Angliæ confect', geren' dat' prædict' quarto die Augusti, anno undecimo supradict', pro defensione regni, tuitione maris, securitate subditor' nostr', ac salva conductione navium & merchandizarum ad regn' nostr' Angliæ venien', & de eodem ad partes externas transeun', Vic' com' nostri Bucks, Ball' burgi & paroch' de Buckingham, necnon Burgens' ejusd' burgi, Major' & Ball' de Chipping-Wiccombe, alias Wiccombe, necnon Burgens' ejusd' burgi, & probis hominibus in eisdem burgis & paroch', & membris eorund', & in villis de Agmondesham, Wendover, & Marlow magna, ac in omnibus aliis villis, burgis, villat', hamlet', & aliis locis in dicto com' Bucks, mandavimus, quod unam navem de guerra portagii quadringent' & quinquagint' dolior', cum hominibus tam magistris peritis, quam marinar' valentioribus & expertis centum & octogint' ad minus, ac etiam tormentis tam majoribus quam minoribus, pulvere tormentatio, ac hastis & telis, aliisque armaturis necessar' pro guerra sufficien', & cum duplici eskipamento, necnon cum victualibus ad certum diem (in eod' brevi content') ad tot homines competen', & abinde in vigint' & sex septiman', ad custag' homi-

num & terr' tenen' burg', paroch', vill', villat', & al' locor' supra mentionat' in dicto com' Bucks, tam in victualibus, quam in hominum salariis, & al' ad guerr' necessar' per tempus illud, super defensionem maris moratur' parari, & ad portum de Portsmouth citra tempus in eod' brevi limitat' duci faceretis. Cumque etiam per idem breve assignaverimus Vic' com' nostri Bucks præd', Ball' burgi & paroch' de Buckingham præd', & Major' burgi de Chipping-Wiccombe præd', aut aliquos duos vel plures eorum, quor' Vic' dicti com' nostri Bucks unum esse volumus, infra certum terminum proxim' post receptionem brevis illius, ad assidend' quantum de custag' præd' super præd' burg' & paroch' de Buckingham, & super præd' burg' de Chipping-Wiccombe, alias Wiccombe, cum membris eorund', separatim poni seu assideri deberet. Cumque etiam per præd' breve nostrum assignaverimus Ball' burgi & paroch' de Bucking', & Majorem de burgo de Chipping-Wiccombe, alias Wiccombe, separatim & respective, ad assidend' omnes homines in eisd' separal' burg' & paroch', & membr' eorund', & terr' tenentes in eisdem, navem vel partem navis præd' non habentes, vel in eadem non deservientes, ad contribuend' ad expens' circa provisionem præmissor' necessar'; & super præd' burg' & paroch' de Buckingham, & super præd' burg' de Chipping-Wiccombe, alias Wiccombe, cum membris eorund', sicut præfertur, ad tunc separatim & distinctive ponend', viz. quemlibet eorum juxta statum suum & facultates suas, & portiones super ipsos assessat', per distinctiones aliosve modos debitos levand', & collectores in ea parte nominand' & constituend' modo & forma prout in eodem brevi præcept' fuit. Cumque per idem breve nostrum ulterius assignaverimus Vic' dicti com' nostri Bucks ad assidend' omnes homines in præd' villis de Agmondesham, Wendover, Marlow magna, & in membris eorund', ac in omnibus aliis villis, villat', burgis, hamlet', & aliis locis in præd' com' Bucks, & terr' tenentes in eisd', ad contribuend' expensis circa provisionem præmissor' necessar', & ad cætera faciend' & exequend' modo & forma, quibus per breve illud præceptum fuit. Et quia nonnulli homines & terr' tenentes in prædict' com', burg', paroch', vill', villat', hamlet', & aliis locis, per separal' taxationes & denar' summas, per vos super ipsos respective erga contribution' oneris præd', juxta exigen' brevis præd' posit' & assessat', nondum solverint nec satisfecerint, sed eas solvere recusaver', & adhuc contradicunt, prout informamur: Cumq; nos nuper voluimus certiorari, tam de nominibus hominum & terr' tenent', qui ad contribuend' expensis supradict' assess' fuissent, ac denar' sic assess' non solvissent, quam de separal' portionibus vel denar' summis super ipsos imposit', vos tamen nihil in return' ejusdem brevis nostri misistis, in nostrum contemptum: Vobis igitur præfat' nuper Vic' com' nostri Bucks mandamus, sicut al' mandaverimus, quod tam de nominibus hominum & terr' tenen' in com' præd' per vos respective virtute dicti brevis nostri assessat', quas denar' summis super ipsos sic assessat', quam nondum solver' nec satisfec', sed eas solvere recusant, quas de separal' portionibus & denar' summis per vos præfat' nuper Vic' com' nostri Bucks super ipsos assessat', in script' reduct', cum omnibus ill' tangen', nos in cancelar' nostram sub sigillis vestris distincte & aperte, sine delatione, vel ad ultimum ante vicefimum

sextum diem April' proxime futuro, ubicunque tunc fuerit', reddat' certiores, una cum hoc brevi. Ac vobis præfat' nuper Ball' burgi & paroch' de Buckingham, & Major' burg' de Chipping-Wiccombe, al' Wiccombe, mandamus, sicut aliis mandaverimus, quod tam de nominibus præd' hominum & terr' tenen' in burg' & paroch' de Buckingham, & burg' de Chipping-Wiccombe, alias Wiccombe, per vos respective virtute dicti brevis nostri superius primo mentionat' assess', quam de separal' denar' summis super ipsos assess', quas nondum solver' nec satisfecer', sed eas solvere recusant, quam de separal' portionibus & denar' summis per vos super ipsos respective assess' in scriptis fideliter reduct', cum omnibus illis tangen', nos in cancellariam nostr' præd' sub sigillo nostro distincte & aperte, sine delatione, vel ad ultim' ante prædict' vicesimum diem Aprilis proxime futur', ubicunque tunc fuerit', separatim reddatis certiores, una cum hoc brevi. Teste me ipso apud Westm' nono die Martii, anno regni nostri duodecimo. E Y R E.

Ad quem diem Petrus Temple & Heneagius Proby return' brev' præd' dors' sic: *ff.* Executio hujus brevis patet in quibusd' schedul' huic brevi annexat', quarum quidem schedul' tenor, quoad præfat' Johan' Hampden per præfat' Petrum Temple retornat', sequitur in hæc verba: *ff.* Ego Petrus Temple Mil' & Baronet', qui fui Vic' com' Bucks, viz. inter quartum diem Augusti, anno regni Domini nostri Caroli nunc Regis Angliæ, &c. undecimo, & vicesimum secundum diem Februarii tunc proxime sequen', quo die exivi ab officio meo Vic' com' præd', dicto Domino Regi in Cancellar' suam, virtute brevis ejusdem Domini Regis huic schedul' annex', certifico, quod virtute & secundum exigen' brevis ipsius Domini Regis e Cancellar' sua emanat, & ibidem de record' irrotulat', & Vic' dicti com' Bucks inter al' direct', geren' dat' quarto die Augusti, anno undecimo supradict', assessavi, Anglice *have assessed*, super separal' homines & ter' tenentes com' Bucks præd', quorum nomina subscribuntur, separal' portiones & denar' summas ad eor' particular' inferius posit' ad contribuend' expensis circa provisionem navigii in eod' brevi mentionat'; quas quidem portiones & denar' summas, sive aliquam inde parcell', ante exitum ab officio meo Vic' com' prædict', ad manus meas, vel ad manus collector' in ea parte, virtute brevis ult' mentionat' per me constitut', præd' homines & ter' tenentes, aut eor' aliquis, quor' nomina subscribuntur, non solverunt, sed eas solvere recusaver', viz. Stoake Mandivile, *ff.* John Hampden Esq; Et tenor al' schedul' per præfat' Heneag' Proby fidelit' return', & eid' brevi annex', sequitur etiam in hæc verba: viz. *There is to be accounted upon by the Assessors, High Constables, Petty Constables within the said County in general, which cannot be accounted for by Sir Peter Temple, being, as it conceived, short, Four Pounds.*

Ego Heneagius Proby Arm', qui fui Vic' com' Bucks inter vicesimum secundum diem Februar', anno Regni Dom' nostri Caroli nunc Reg' Angliæ, &c. undecimo, & ab eodem die & anno usque primum diem Martii tunc proxime sequen', dicto Domino Regi in Cancellar' suam, virtute brevis ejusdem Domino Reg' huic schedul' annex', certifico, quod homines & ter' tenentes com' Bucks præd', aut eor' aliquis, quor' nomina in quibusd' schedul' huic brevi annex' exprimuntur, qui assess' fuer' per Petrum Temple Mil'

& Baronet' nuper Vic' com' Bucks præd', dum in officio Vic' ejusd' com' steterit, in separal' denar' portionibus, & denar' summis ad eor' separal' nomina superius possit', ad contribuend' expensis circa provisionem navigii, virtute & secundum exigen' brevis ipsius Domini Regis e Cancell' sua emanat', & ibidem de record' irrot', Vic' dicti com' Bucks inter alios direct' geren' dat' quarto die Augusti, anno undecimo supradict', Heneag' Proby existen' Vic' prædict' com' Bucks proxime post exitum dicti Petri Temple Mil' & Baronet' ab officio Vic' ejusd' com', vel ad manus collector' in ea parte virtute brevis ultimo mentionat' constitut', non solver', sed eas solvere recusaverunt. Et ulterius præfat' Johannes Hampden petit similiter audit' præd' brevis de Mittimus, de quo in brevi de Sciri facias præd' fit mentio, & ei legitur in hæc verba.

ff. Carolus Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defensor, &c. Thesour' & Baronibus de Scaccario suo, salutem. Tenore cujusdam brevis nostri sub magno sigillo nostro Angliæ confect', geren' dat' quarto die Augusti, anno regni nostri undecimo, in rotulis Cancellar' nostræ irrotulat', per quod Vic' com' nostri Bucks, Ball' & Burgen' burgi & paroch' de Buckingham, Major', Ball', & Burgens' burgi de Chipping-Wiccombe, alias Wiccombe, ac probis hominibus in eisd' burgis & paroch', & membris eorund', & in villis de Agmondesham, Wenderover, & Marlow magna, & in omnibus aliis burgis, villis, villatis, hamlet', & aliis locis in dicto com' Bucks, mandavimus, quod pro defensione regni, tuitione maris, securitate subditorum nostrorum, ac salva conductione navium & merchandizarum ad regnum nostrum Angliæ venien', & de eod' ad partes externas transeun', pararent unam navem de guerra portagii quadringent' & quinquagint' dolior', cum hominibus tam magistris peritis, quam marinariis valentioribus & expertis centum & octogint' ad minus, ac etiam tormentis tam majoribus quam minoribus, pulvere tormentario, ac hastis & telis, aliisque armaturis necessar' pro guerra sufficien', & cum duplici eskippamento, necnon cum victualibus ad certum diem, in eod' brevi content', ad tot homines competen', & abinde in vigint' & sex septiman', ad custag' hominum & terr' tenen' burgor', vill', villat', hamlet', & al' locor' supra mentionat' in dicto com' Bucks, tam in victualibus, quam in hominum farlar', & al' ad guerram necessar' per tempus illud super defensionem maris in obsequio nostro, in comitiva custod' maris moratur', & ad portum de Portsm', circa tempus in eod' brevi limitat', duci facerent. Quodque respective affiderent omnes homines in præd' burg' & paroch' de Buckingham, & burg' de Chipping-Wiccombe, alias Wiccombe, & cæteris burgis, villis, villat', hamlet' & aliis locis in dicto com' Bucks, & membris eorund', & ter' tenentes in eisd', ad contribuend' expensis circa provisionem præmissor', & ad cætera faciend' & exequend', modo & forma prout per idem breve præcept' fuit; vobis mittimus præsentibus inter claus' breve, pro eo quod salus regni nostri Angliæ, & populi nostri ejusdem periclitabatur, quod e dicta Cancellar' nostra emanari narravimus, inter al' breviam ad hujusmodi provisionem & assessament' faciend' per singulos com', civitat', burg', vill', villat', hamlet', & locos regni nostri Angliæ & Walliæ, & membris eorund', e Cancellar' nostr' præd' nuper emanat', & ibidem similiter irrot'; ac etiam

etiam quod dictum al' breve nostrum ad certifi-
cand' nobis in eand' Cancellar', tam de nomini-
bus hominum & terr' tenen' in præd' burg' &
paroch' de Buckingham, & burg' de Chipping-
Wiccombe, alias Wiccombe, & in cæteris burgis,
villis, villat', hamlet' & locis dicti com' Bucks,
qui de mandato nostro præd' ad contribuend'
erga provision' præmissor' assess' fuerint, ac de
nar' super ipsos sic assess' non solver', quam de
separal' portionibus & denar' summis super homi-
nes & terræ tenen' illos sic onerat' & imposit',
necnon certificationes quasdam in scriptis, virtute
brevis illius reduct', & in dictam Cancellar' no-
stram mis'. Vobis etiam mittimus præsentibus
interclus', mandantes, quod inspectis brevibus
& certificat' præd', ulterius inde pro levatione,
collectione, & receptione omnium & singularum
præd' denar' summar' de præd' contributionibus
adhuc non solut', fieri fac', prout de jure & secun-
dum legem & consuetudinem regni nostr' Angliæ
fuerit faciend'. Teste meipso apud Westm' quinto
die Maii, anno regni nostri tertio decimo. E Y R E.
Sicut in eisdem brevibus, & schedul' eisd' annex',
in Scaccar' dicti Dom' Regis certificat', & ibidem
in custod' Rememorator' ejusd' Dom' Regis de re-
cord' remanen' plenius continetur. Quibus lectis,
auditis, & per ipsum intellectis, idem Johannes
queritur, se colore separal' brev', return' eorund',
& schedul' eisd' annexat', graviter vexat' fore &
inquietat', & hoc minus iuste; quia dicit, quod
præd' separal' brevia superius mentionat', return'
eorund', & schedul' eisdem annexat', materia in
eisd' content', minus sufficien' in lege existunt ad
onerand' ipsum Johannem Hampden de aut cum
solutione præd' summ' vigint' solid' super ipsum
in schedul' præd', modo & forma præd', taxat'
& assessat', aut alicujus inde parcell', ad quæ ipse
necessè non habet, nec per legem terr' tenetur
respondere. Unde ob insufficien' præd' separal'
brevium superius mentionat', return' eorund',
schedul' eisdem annex', ac materiæ in eisdem
brevibus ac schedul' content', ipse idem Johannes
Hampden petit judicium, Si dictus Dominus Rex
nunc ipsum de præd' vigint' solid', aut aliqua in-
de parcell', ulterius impetere, seu onerare debeat
aut velit.

Robert Holborne.

Et Johannes Banks Mil', Attorn' Dom' Regis
nunc general', qui pro eodem Domino Rege se-
quitur, præsens hic in cur' ad eund' diem in pro-
pria persona sua, dicit, quod præd' separal' bre-
via, & return' eorund', ac schedul' præd' eisdem
annex', materiaq; in eisdem content', sufficien' in
lege existunt ad præd' Johan' Hampden de
præd' vigint' solid' super ipsum in forma & ex
causa præd' assessat' onerand'; quam quidem ma-
teriam ipse dictus Attornat' dicti Dom' Regis ge-
neral', pro eodem Dom' Rege paratus est verifi-
care; quamq; materiam præd' Johannes Hamp-
den non didicit, nec ad eam aliquid respondit,
sed verificationem illam admittere omnino recusat:
Pro eodem Dom' Rege idcirco petit judicium, &
quod præd' Johannes Hampden de eisd' vigint'
solid' oneretur, & inde satisfaciatur, &c.

Johannes Banks.

*A Copy of the Judgment, as it is entred upon Record
in pursuance of the said Motion, and according to
the major Votes.*

ET quia Barones hic se advisare volunt de &
super præmissis, priusq' judicium inde red-

dant, dies dat' est præfat' Johanni Hampden eod'
statu quo nunc hic in octab' sancti Michaelis,
ut dicti Barones se interim de iisdem præmissis
advizare possint, ac cum Justiciar' de utroq'
banco inde deliberent, eo quod iidem Barones
hic inde nondum, &c. Et super hoc concordat'
est inter Barones hic, tam ex assensu dict' Attor-
nat' dict' Domini Reg' general', quod dict' At-
tornat' præd' Johannis Hampden, & Consiliarior'
in lege peritor' ejusdem Johannis Hampden, quod
aliqui legis periti, tam de consilio & parte dict' Do-
mini Reg', quam de consilio & parte dict' Johannis
Hampden, de præd' materia in lege, & cæteris
præmissis in camera hujus Scaccarii, vulgariter nun-
cupat' *The Exchequer Chamber*, coram iisd' Baroni-
bus, assidentibus eis Justiciar' de utroque banco, ar-
gumentari interim publice audiantur. Ad quas
quid' octabas sancti Michaelis præd' Johannes
Hampden venit hic ut prius. Et quia Barones hic
ulterius se advisare volunt de & super præmissis,
priusq' judicium inde reddant, dies ulterius dat' est
præfat' Johanni Hampden, eod' statu quo nunc
hic usq' in octab' sancti Hilarii, ut aliqui legis pe-
riti, tam de consilio & parte dict' Domini Reg',
quam de consilio & parte dict' Johannis Hamp-
den, de præd' materia in lege, & cæteris præmis-
sis, in præd' camer' hujus Scaccarii, coram Ba-
ronibus præd', assidentibus eis præd' Justiciar' de
utroque banco, argumentari interim publice au-
diantur; ac iid' Barones, cum iisd' Justiciar' inde
deliberent, eo quod nullus in lege peritus, vel
de consilio ipsius Domini Reg', vel de consi-
lio dict' Johannis Hampden adhuc auditur, &
Barones hic inde non advisantur, &c. Posteaq'
medio tempore in præd' octab' sancti Michaelis,
& præd' octab' sancti Hilarii, tum Attornat' &
Solicitor ipsius Domini Reg', quam duo legis
periti de consilio præd' Johannis Hampden, in
præmissis existen' ex parte ejusd' Johannis Hamp-
den, duodecim separal' diebus in præd' camer'
Scaccarii, coram Baronibus hujus Scaccarii, assi-
dentibus eis tunc ibid' præd' Justiciar' de utroq'
banco, de præd' mater' in lege & cæteris præ-
missis (recitato tunc ibid' record' præd') ad lar-
gum & summat' argumentari quidq' inde ex
utraq' parte dicere potuissent aut voluer', palam
& singulatim audit' fuer'. Et præd' Attornat' &
Solicitor general' diversa & quamplurima re-
cord', brevia, commission', & præceden' tam
hujus Scaccarii, quam cur' Cancellar', cur' de Ban-
co Reg', ac de Commu' Banco, mater' in lege,
& cætera præmissa in separal' brevibus return', &
schedulis præd' content', ex parte dict' Domi-
ni Reg' proban', confirman', & manutenen', ad
tunc & ibid' produxer', ostenser', & exposuer';
& ad præd' octabas sancti Hilari' præd' Johannes
Hampden venit hic ut prius, & quia Barones hic
ulterius se advisare volunt de & super præmissis
priusquam judicium inde reddant, dies ulterius
dat' est præfat' Johanni Hampden, eod' statu quo
nunc hic, usq' a die Paschæ in quindecim dies,
ut dicti Barones interim, cum præfat' Justiciar' de
utroq' Banco ulterius deliberent, eo quod iidem
Barones hic inde nondum, &c. Ad quem diem
præd' Johannes Hampden venit hic ut prius, &
quia Barones hic ulterius se advisare volunt de &
super præmissis priusquam judicium inde reddant,
dies ulterius dat' est eid' Johanni, eod' statu quo
nunc hic, usq' in cro' sanctæ Trin', & dict' Ba-
rones interim cum præfat' Justiciar' de utroq'
banco ulterius inde deliberent, eo quod iidem Ju-
sticiar' hic inde nondum, &c. Ad quem diem
præd'

præd' Johannes Hampden venit hic ut prius, & super hoc visis præmissis, & per Barones hic plene intellectis, habitaque inde matura deliberatione cum præd' Justiciar' de utroque banco, ac post argumenta tam per eosd' Justiciar', quam per præd' Barones singulatim in præd' camer' Scaccarii publice inde fact', videtur inde Baronibus, ex advisamento Justiciar' præd', quod separal' bre-

via præd', & return' eorund', ac schedulæ præd' eisd' annex', ac mater' in eisd' content', sufficien' in lege existunt ad præfat' Johannem Hampden de præd' vigint' solid', super ipsum in forma & ex causa præd' assessat' onerand'. Ideo considerat' est per eosd' Barones, quod præd' Johannes Hampden de eisd' vigint' solid' oneretur, & exinde satisfaciet, &c.

Rex versus Harrison^h, for a Misdemeanour.

Trin' 14 Car' I. B. R.

Middx' ff. **A**lias, scilicet die Jovis prox' post octab' sanctæ Trin' isto eod' termino, coram Domino Rege apud Westm', per sacrament' xii. jur' extitit præsentat', Quod cum cur' Domini Regis de Communi Banco est, & a tempore cujus contrar' memoria hominum non existit, fuit antiqua cur' de recordo dicti Domini Regis nunc, & progenitor' & antecessor' suor' Reg' & Reginar' Angliæ, pro administratione justitiæ subdit' hujus regni Angliæ, & aliis in communibus pl'itis per tot' regnum Angliæ præd' motis & emergentibus. Cumque est contra coron' & dignitat' Regiæ majestatis, necnon contra legem & consuetudinem hujus regni Angliæ, pro aliqua persona, vel aliquibus personis cur' præd', seu aliquos Justiciarios ejusd' cur', ead' cur' aperta existen', & Justiciar' cur' illius in cur' ill' præsentibus, & judicialiter sedentibus, disturbare. Cumq' Ric' Hutton miles est, & per diversos annos jam ult' elapsos fuit, & adhuc est, unus Justiciar' dict' Domini Regis nunc præd' cur' suæ; quidam tamen Thomas Harrison de Creek in com' Northampton Clericus, Deum præ oculis suis non habens, sed instigatione diabolica mot' & seduct', secum malitiose imaginans, atque in animo compassans, quibus modis possit præd' Ricardum Hutton Milit', & adtunc & adhuc un' Justic' Domini Regis nunc de Communi Banco præd' existen', multipliciter defamare & scandalizare, machinansque & malitiose intendens, quantum in ipso fuit, ipsum Ricardum Hutton in scandalum, ignominiam, contempt', & vilipend' inducere, ipsumq' Ricardum Hutton de vita sua, ac de bonis & catallis, terris, & tenementis suis pravitè & malitiose deprivare, necnon ad displacentiam & indignationem dict' Domini Regis nunc erga præfat' Ricard' Hutton incitand' & provocand', ac ipsum Ricardum Hutton pro proditore tam apud dict' Dominum Regem, & magnates hujus regni Angliæ, quam apud omnes ligeros subditos ejusd' Domini Regis haberi & existimari satagens, ac ad præd' cur' dict' Domini Regis nunc de Communi Banco, & Justiciar' dict' Domini Regis ejusd' cur', in cur' ill' præsent' existent', & judicialit' sedentibus, disturband', & administrationem justitiæ in cur' ill' impediend', quarto die Maii, anno regni Domini nostri Caroli, Dei gratia Angliæ, Scotiæ, Franc', & Hibern' Regis, fidei defensoris, &c. decimo quarto, apud civitat' Westm' in com' Midd', viz. in magna aula pl'itorum ibidem, cur' ipsius Domini Regis coram ipso Rege cur' Cancellar', & præd' cur' Communi Banco in præd' magna aula pl'itorum præd' apert', ac Justic' ejusd' Domini Regis in cur' præd' tunc ibidem præsentibus, & judiciali-

ter sedentibus, materias & causas Domini Regis, populi sui, ac regni sui Angliæ assidue attendent' & audient', legesq' regni præd' subdit' ipsius Domini Regis ministrant', præd' Thomas Harrison ad barram præd' cur' dicti Domini Regis de Communi Banco, adtunc & ibidem violenter, vi & armis, &c. accessit præd' cur' de Communi Banco adtunc & ibidem in præd' magna aula, ut præfertur, aperta existen', ac Ricardo Hutton Milit', & aliis Justiciar' dicti Domini Regis cur' de Communi Banco præd', in cur' illa tunc ibidem (ut præfertur) præsentibus, & judicialit' sedentibus, & præd' Thomas Harrison adtunc & ibidem, ex sua mera malitia, malo animo, & malevola intentione, in præsentia & audit' præfat' Justiciar' præd' cur' de Communi Banco, ac diversorum servien' ad legem, multor' viror' venerabilium, & alior' dicti Domini Regis fidelium subditor', falso, nequit', & malitiose præfat' Ricardum Hutton Milit' de alta prodicione accusavit, & adtunc & ibidem falso, nequit', & malitiose hæc scandalosa, venenosa, defamatoria Anglicana verba, palam, publice, & alta voce dixit, *I* (ipsum præfat' Thomam Harrison innuendo) *do accuse Mr. Justice Hutton* (præfat' Ricardum Hutton Milit', un' Justiciar' dicti Domini Regis de Communi Banco præd' innuendo) *of high Treason*, in dicti Domini Regis nunc, coron', dignitat', & Regiæ potestatis suæ læsionem & derogationem, & cur' suæ præd' contempt', & scandalum manifestum jurisque & legum ipsius Domini Regis regni sui præd', ac cur' de Communi Banco præd', & Justiciar' dicti Domini Regis, cur' illius, & administration' justitiæ in ead' cur', in nequissimum exemplum omnium aliorum malefactorum tali casu delinquent', & ad gravissimum scandalum, infamiam, dedecus, & final' destructionem præd' Ricardi Hutton Milit'; & contra pacem dicti Domini Regis nunc, coronam, & dignitates suas, &c. Cum per quod præcept' fuit Vic', quon non omittat, &c. quin venire fac' eum ad respondend', &c. Cum & modo, scilicet die Veneris prox' post octabas sanctæ Trin' isto eod' termino, coram Domino Rege apud Westm' ven' præd' Thomas Harrison Clericus, custod' Henrici Hopkins Arm', guardian' prisonæ dicti Regis de la Fléete, virtute brevis dicti Regis de Habend' corpus ad subjc', &c. ei inde direct', ad barr' hic duct' in propria persona sua, qui committ' præfat' Marr', &c. Et stat' de præmissis eo alloquunt' qualiter se inde acquietari, dicit, quod ipse non est inde culpabil', & de hoc ponit se super patriam. Et Johannes Keeling Ar', Cleric' Coronæ, & Attornat' Domini Regis in cur' ipsius Regis, coram ipso Rege, qui pro eod' Domino Rege in

hac parte sequitur, similiter, &c. Jo' ven' inde jur' coram domino Rege apud Westm' die Lunæ prox' post quindenam sanctæ Trin', & quia nec, &c. ad recogn', &c. quia tam, &c. Idem

dies dat' est tam præfat' Johanni Keeling, qui sequitur, &c. quam præd' Thomæ Harrison Clerico, sub custod' præd' Marr' interim commissio salvo custodiend', quousq', &c.

Rex versus Crook & alios, for not taking the Oaths.

14 Car. II. O. B.

London ff. **J**UR' pro Domino Rege super sacrament' suum præsentant, Quod ad general' quarterial' session' pacis Domini Regis, tent' pro civitat' London apud Guildhald' ejusdem civitat', die Mercurii scil' vicesimo quinto die Junii, anno regni Domini nostri Caroli secundi, Dei gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Regis, fidei defensoris, &c. quarto decimo, coram Johanne Frederick Milite, Majore civitat' London, Thoma Adams Mil' & Baronet', Ricardo Browne Mil' & Baronet', & Thoma Aleyn Milite & Baronet', Aldermannis dictæ civitat', ac al' sociis suis Justic' dicti Dom' Regis, ad pacem in civitat' præd' conservand', necnon ad divers' felon', transgr', & al' malefacta infra eandem civitat' perpetrat', audiend' & terminand' assign'. Sessio ista pacis adjornat' fuit per præfat' Justic' dicti Dom' Regis ibidem usque diem Jovis, scilicet vicesimum sextum diem ejusdem mensis Junii, anno supradicto, ad horam septimam ante merid' ejusdem diei, apud Justice-Hall in le Old Bailey, in paroch' sanct' Sepulchri, in warda de Farringdon extra London præd', tenend' coram præfat' Justic' & al' sociis suis, ad faciend' ulterius prout cur' con', &c. Ac ad eundem diem Jovis, vicesimum sextum diem Junii, anno quarto decimo supradicto, general' quarterial' sessio ista pacis tent' fuit pro civitat' London præd' per adjornament' præd', apud Justice-Hall præd', in paroch' & ward' præd', coram præfat' Johe' Frederick Milite, Majore civitat' London, Thoma Adams Mii' & Baronet', Ricardo Browne Mil' & Baronet', & Thoma Aleyn Mil' & Baronet', Aldermannis dictæ civitat', ac Willielmo Wilde Mil' & Baronet', uno Servien' dicti Dom' Regis ad legem, ac Recordator' civitat' præd', ac al' sociis suis Justic' dicti Dom' Regis ad pacem in civitat' præd' conservand', necnon ad divers' felon', transgr', & al' malefacta infra eandem civitat' perpetrat', audiend' & terminand' assign'. Ac adtunc & ibidem præd' general' quarterial' sessio pacis præd' ulterius adjornat' fuit per præfat' Justic' usque diem Veneris, scilicet vicesimum septimum diem dicti mensis Junii, anno quarto decimo supradicto, ad horam septimam ante merid' ejusd' diei, apud Justice-Hall præd', in parochia & warda præd' tenend', coram præfat' Justic' & al' sociis suis, ad faciend' ulterius prout cur' con'. Ac superinde ad istam eandem general' quarterial' session' pacis, tent' pro civitat' London per adjornament' præd' apud Justice Hall præd', in paroch' & warda præd', dicto die Veneris vicesimo septimo die Junii, anno quarto decimo supradicto, coram præfat' Johanne Frederick Milite, Majore civitat' London, Thoma Adams Mil' & Baronet', Ricardo Brown Mil' & Baronet' Ricardo Chiverton Armigero, & Thoma Aleyn Mil' & Baronet', Aldermannis dictæ civitat', ac Willielmo Wilde Milite & Baronet', uno Servien' dicti Domini Regis ad legem, ac Recordator' ejusdem civitat', ac al' sociis suis Justic' dicti Domini Regis

ad pacem in civitat' præd' conservand', necnon ad divers' felon', transgr', & al' malefacta infra eand' civitat' perpetrat', audiend' & terminand' assign', in aperta general' quarterial' session' præd', præfat' Justiciar' pacis ult' nominat', existentes major pars Justic' pacis ipsius Domini Regis infra dictam civitatem London adtunc, scilicet dicto vicesimo septimo die Junii, anno quarto decimo supradicto, apud dictam paroch' sancti Sepulchri, in warda de Farringdon extra London præd' præsen' existent', obtulerant (Anglice *did tender*) Johanni Crooke nuper de London Generoso, Johanni Bolton nuper de London Aurifabro, & Isaac Gray nuper de London Generoso, & eor' cuilibet separatim per se (ad tunc existen', & cuilibet eor' existen' ultra ætat' octodecim annorum) jurament' content' in quodam actu in parliament' Domini Jacobi nuper Regis Angliæ, tent' per prorogationem apud Westm' in com' Middlesex, quinto die Novembris, anno regni sui Angliæ, Franc', & Hiberniæ tertio, & Scotiæ tricesimo nono, nuper edit' & provis' in his Anglicanis verbis sequen', viz. *I do truly and sincerely acknowledge, profess, testify, and declare, in my Conscience before God and the World, that our Sovereign Lord King Charles the Second is lawful and rightful King of this Realm, and of all other his Majesty's Dominions and Countries; and that the Pope neither of himself, nor by any Authority of the Church or See of Rome, or by any other means with any other, hath any Power or Authority to depose the King, or to dispose of any of his Majesty's Kingdoms or Dominions, or to authorize any foreign Prince to invade or annoy him, or his Countries, or to discharge any of his Subjects of their Allegiance and Obedience to his Majesty, or to give Licence or Leave to any of them to bear Arms, raise Tumults, or to offer any Violence or Hurt to his Majesty's Royal Person, State, or Government, or to any of his Majesty's Subjects within his Majesty's Dominions. Also I do swear from my Heart, that notwithstanding any Declaration, or Sentence of Excommunication, or Deprivation made or granted, or to be made or granted by the Pope or his Successors, or by any Authority derived, or pretended to be derived from him or his See, against the said King, his Heirs or Successors, or any Absolution of the said Subjects from their Obedience, I will bear Faith and true Allegiance to His Majesty, his Heirs and Successors, and him and them will defend to the uttermost of my Power, against all Conspiracies and Attempts whatsoever, which shall be made against his c. their Persons, their Crown and Dignity, by reason or colour of any such Sentence or Declaration, or otherwise; and will do my best Endeavour to disclose and make known unto his Majesty, his Heirs, and Successors, all Treasons and traitorous Conspiracies which I shall know or hear of to be against him, or any of them. And I do further swear, that I do from my heart abhor, detest, and abjure, as impious and heretical, this damnable Doctrine and Position, That Princes which be ex-* communi-

communicated or deprived by the Pope, may be deposed or murdered by their Subjects, or any other whatsoever. *And I do believe, and in my Conscience am resolved, that neither the Pope nor any Person whatsoever, hath Power to absolve me of this Oath, or any part thereof, which I acknowledge by good and full Authority to be lawfully ministered unto me, and do renounce all Pardons and Dispensations to the contrary. And all these things I do plainly and sincerely acknowledge and swear, according to these express Words by me spoken, and according to the plain and common Sense and Understanding of the same Words, without any Equivocation, or mental Evasion, or secret Reservation whatsoever. And I do make this Recognition and Acknowledgment heartily, willingly, and truly, upon the true Faith of a Christian. So help me God.* Ac quod præfat' Justic' pacis ult' nominat' ad tunc,

scil' dicto vicesimo septimo die Junii, anno quarto decimo supradicto apud paroch' & ward' præd', in dicta quarterial' session' pacis præd', eisdem Joh'em Crooke, Joh'em Bolton, & Isaacum Gray, & eor' quemlibet separatim per se requisiver' ad jurament' illud super sacrosancta Dei Evangel' capiend'. Quodq; iidem Joh'es Crooke, Joh'es Bolton, & Isaacus Gray, jurament' præd', sic per præd' nominat' Justic' pacis ejusdem Joh'i Crooke, Joh'i Bolton, & Isaacum Gray, ut præfertur, oblat' & requisit', ad tunc & ibidem obstinate & pertinaciter capere recusaver', & quilibet eor' recusavit, in malum exemplum omnium alior' dicti Domini Regis nunc fidel' subdit' & in contempt' dicti Domini Regis nunc, legumq; suar', contra formam statut' præd', ac contra pacem dicti Domini Regis nunc, coron' & dignitat' suas, &c. *W I L D.*

Rex versus Green, Hillⁱ, and others, for the Murder of Sir Edmondbury Godfrey.

Mich' 30 Car' II. B. R.

Midd^x, ff. Jurator' pro Dom' Rege super sacrament' suum præsentant, Quod Robertus Green nuper de paroch' sanctæ Mariæ le Strond in com' Midd' labor', Laurentius Hill nuper de paroch' prædict' in com' præd' lab', Dom' Kelly nuper de paroch' præd' in com' præd' Cler', & Philbert Vernat nuper de paroch' præd' in com' præd' lab', Deum præ oculis suis non habentes, sed instigat' diabolica mot' & seduct' 12 die Oct', anno regni Domini Caroli secundi, Dei gratia Angl', Scot', Franc' & Hiberniæ Regis, fidei defensor', &c. 30, vi & armis apud paroch' sanctæ Mariæ le Strond præd', in com' præd', in & super quendam Edmundum-bury Godfrey Mil', in pace Dei & dict' Dom' Regis nunc, ad tunc & ibidem existen', felonice, voluntarie, & ex malitia sua præcogitata insult' fecer'. Et quod præd' Robertus Green quoddam sudarium panni lin', Anglice *a Linen Handkerchief*, valor' sex denar', circa collum ipsius E. B. G. ad tunc & ibidem felonice, voluntar', & ex malitia sua præcogitat', plicavit & fixavit,

Anglice *did fold and fasten*. Et quod prædict' R. G. cum prædict' sudario sic per ipsum R. G. plicat' & fixat' circa collum ipsius præd' E. B. G. ad tunc & ibidem ipsum præd' E. B. G. felonice, voluntarie, & ex malitia sua præcogitat', suffocavit & strangulavit, Anglice *did choke and strangle*, de quibus quidem suffocation' & strangulation' ipsius E. B. G. præd' per ipsum præd. R. G. in forma præd' fact' & perpetrat' ipse præd' E. B. G. ad tunc & ibidem instant' obiit. Et quod præd' L. H. D. K. & P. V. ad tunc & ibidem felonice, voluntarie, & ex malitia sua præcogitat' fuer' præsentés, auxiliantes, abettantes, confortantes, assistentes, & manutenentes præfat' R. G. ad præd' E. B. G. in forma præd' felonice, voluntarie, & ex malitia sua præcogitat' interficiend' & murdrand'. Et sic jur' præd' dicunt super sacrament' suum præd', quod præd' R. G. L. H. D. K. & P. V. modo & forma præd' præfat' E. B. G. felonice, voluntarie, & ex malitia sua præcogitata interfecer' & murdraver' contra pacem dict' Dom' Reg' nunc, coron', & dignitat' suas, &c.

Rex versus Tasborough and Price^k, for Subornation of Perjury.

Paschæ 32 Car' II. B. R.

ff. **A**Lias scilicet die, &c. ult' præterit' coram Domino Rege apud Westm', per sacramen' 12 jur' probor' & legalium hominum com' præd', jurat' & onerat' existen' ad inquirend' pro dicto Dom' Rege & corpore com' præd' præsent' existit', Quod cum quidam Tho' White, alias Whitebread, Clericus, Johannes Fenwick Clericus, Willielmus Harcourt, alias Harrison Clericus, Johannes Gavan Clericus, Anthonius Turner Clericus, & Jacobus Corker, falsi proditor' contra serenissimum Dominum nostrum Carolum secundum, Dei gratia Angl', &c. 13 die Junii, anno regni dicti Domini regis nunc 31. ad deliberation' gaol' dicti Domini Regis de *Newgate*, teint' per adjournament' pro com' præd' apud Justice-Hall in le *Old Bailey*, in suburbiis civitatis

London, coram justic' ad gaol' præd' ad tunc & ibidem deliberand' assign', steterunt indictat' pro compassation' (Anglice *the compassing*) mortis & finalis destruction' dicti Domini Regis, & al' altis prodicionibus in eodem indictamento specificat' posteaque ad session' præd' præd' T. W. alias, &c. J. F. W. H. alias, &c. J. G. & A. T. per jurat' patriæ ad tunc & ibidem debito modo inde triat' & convict' fuer', & per judic' cur' ad tunc & ibidem debito modo attinct' fuer', prout patet per record' inde juratoribus præd' in eviden' ostens': Cumque etiam quidam Richardus Langhorn Ar' postea scilicet ad deliberation' gaol' dicti Domini Regis tent' per adjournament' pro civitat' London' apud Justice-Hall præd', coram justiciar' ad gaol' præd' ad tunc & ibidem deliberand' assign', 14. die Junii anno regni dicti Dom' Regis nunc 31.

ⁱ Vol. II. p. 760. N^o. 79.

^k Vol. II. p. 1017. N^o. 91.

suprad', legitimo modo stetit indictat' pro compassatione (Anglice *compassing*) mortis & final' destruction' dicti Domini Regis, & al' altis proditionibus in eodem indictamento specificat'; posteaque superinde ad eandem session' triat' per jur' patriæ, & adtunc & ibidem per judic' cur' attinct' fuit, prout patet per record' inde juratorib' præd' similit' in evidenc' ostens'. Cumque etiam quidam Stephanus Dugdale super separal' triation' indictament' præd' fuit testis product' & jurat' ex parte dicti Domini Regis nunc, & adtunc & ibidem legitimo modo material' evidenc' versus præd' T. W. W. H. J. G. A. T. & R. L. dedit ad proband' ipsos culpabil' de materia in præd' indictamento specificat', quidam Johannes Tasburgh, nuper de, &c. Gen', alias dict' J. Tifburgh de, &c. Gen', & Anna Price de &c. Spinfster, præmissa præd' satis scien' & existen' person' diabolice affectat' erga serenissimum Dom' nostrum Carolum secundum nunc Regem Angl', &c. supremum & naturalem Dominum suum, ac machinant' & tot' virib' suis intenden' pacem & communem tranquillitat' hujus regni Angl' perturbare, impedire, & supprimere (Anglice *to stifte*) ulteriorem divulgationem (Anglice *discovery*) dicat' prodicion', & quantum in ipsis fuit, debitum legis cursum eludere, nec non causare & procurare quod credit' foret, quod person' sic ut præfertur attinct', minus juste attinct' fuissent, præd' J. T. & A. P. ante triation' præd' W. H. scilicet præd' 13 die Junii, anno, &c. nunc 31. suprad', apud paroch' sancti Andreæ Holbourn in com' Midd', falso, illicite, injuste, corrupte, & contra ligeanc' suæ debit', sollicitabant, subornabant, & conat' fuer' persuader', & uterque eor' adtunc & ibidem sollicitabat, subornabat, & conat' fuit persuadere præfat' Stephanum Dugdale, quod ipse præfat' S. D. non foret testis, nec daret evidenc' versus præfat' W. Harcourt, alias, &c. super triation' ipsius W. H. alias, &c. pro proditionibus præd', Et quod præd' J. T. & A. P. post triation' præd', scilicet 14 die Octobr', anno, &c. nunc 31. supradictò, apud præd' paroch' sancti Andreæ Holbourn in com' Midd', falso, illicite, injuste, advifate, contra ligeanc' suæ debit' sollicitabant, subornabant, & conati fuer' persuadere, & uterque eor' adtunc & ibidem, falso, illicite, advifate, corrupte, & contra ligeanc' suæ debitum sollicitabat, subornabat, & conat' fuit persuadere præd' Stephanum Dugdale, quod ipse præd' Stephanus Dugdale retraheret & denegaret totam evidenc', quas ipse præd' S. D. ut præfertur, dedisset contra præd' proditor' eisdem J. T. & A. P. adtunc &

ibidem falso, illicite, injuste, advifate, corrupte promitten' & uterque eor' promitten' præd' S. D. magn' & ingent' denar' fum' & mercedes, si ipse præd' S. D. retraheret & denegaret totam evidenc' per ipsum S. D. versus præd' proditor', ut præfertur, dat', & seipsum S. D. in locis incognit' & transmarin' retraheret & absentaret. Et quod præd' J. T. & A. P. ad nequissimas machination', practication', & intention' suas præd' perimplend' & pro perficiend', postea scilicet 14 die Octobr', anno, &c. 31. suprad', apud paroch' sancti Andreæ Holbourn præd' in dicto com' Midd', falso, illicite, injuste, advifate, & corrupte contra ligeanciar' suar' debit', produxer' & ostender', & uterque adtunc & ibidem produxit & ostendit præfat' S. D. quandam notam in scriptis, tenor cujus quidem notæ sequitur in his Anglican' verbis sequen', videlicet, *Being touched with a true Remorse of Conscience, and hearty Sorry for the great Ill I did, in coming in a Witness against the Catholicks, and there speaking things which in my own Conscience I know to be very far from the Truth, I think my self bound in Duty both to God and Man, and for the Safety of my own Soul, to make a true Declaration how I was drawn into this wicked Action: but being very well satisfied that I shall create my self many powerful Enemies upon this account, I have retired my self to a Place of Safety, where I will with my own hand discover the great Wrong that hath been done the Catholicks, and hope it may gain belief. And likewise I protest before Almighty God, that I have no motive to induce me to this Confession, but a true Repentance for the Mischiefs I have done, and hope almighty God will forgive me.* Quodque præd' J. T. & A. P. postea scilicet dicto 14 die Octob', anno, &c. nunc 31. suprad', ad paroch' sancti Andreæ Holbourn præd' in com' Midd' præd', falso, illicite, injuste, advifate, corrupte, & contra ligeanc' suar' debitum, præfat' Stephanum Dugdale ad præd' notam in script', sic ut præfertur, eidem S. D. product' & ostens' signare & subscribere sollicitabant, & persuadere conat' fuer', & uterque eor' adtunc & ibidem sollicitabat & persuadere conat' fuit, & adtunc & ibidem falso, illicite, injuste, advifate, corrupte promiser', & uterque eor' adtunc & ibidem promisit, quod si ipse præd' S. D. præd' notam in script' signaret & subscriberet, quod tunc ipse præd' S. D. magn' & ingent' denar' fum' haberet & reciperet, in malum & perniciosum exemplum omn' al' in tali casu delinquen', ac contra pacem dicti Domini Regis, coron', & dignitat' suas, &c.

Rex versus Smith¹, for a Libel.

32 Car. II. B. R.

ff. Jurator' pro Domino Rege super sacram' suum præsentant, Quod Franciscus Smith, nuper de in librar', Deum præ oculis suis non habens, sed instigatione diabolica motus & seduct', & falso & maliciose machinans, & intendens serenissimum Dominum nostrum Carolum secundum, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regem, fidei defenforem, & regimen suum, in odium & infamiam inter subditos suos inducere & inferre, & seditionem in-

ter subditos dict' Dom' Regis movere, 24 die Decembris, anno regni dict' Dom' Regis 32, apud in vi & armis, falso, seditiose, & maliciose scripsit & publicavit, & scribi, imprimi, & publicari causavit quendam fict', fals', sedit', & scandalos' libell', intitulat', *A Speech lately made by a noble Peer of the Realm.* In quo quidem libello continent' hæc falsa, ficta, & scandalosa verba sequentia: *My Lords, 'tis a very hard thing to say, that we cannot trust the King; and that we have been already deceived so*

often, that we see plainly the Apprehensions of Discontent in the People is no Argument at Court; and tho' our Prince be in himself an excellent Person, that the People have the greatest Inclination imaginable to love, yet we must say, he is such an one, as no Story affords us a Parallel of. How plain, and how many are the Proofs of the Designs to murder him? How little is he apprehensive of it? Et in altera parte ejusdem libelli continentur hæc falsa, ficta, & scandalosa verba sequentia: ff. My Lords, I hear of a Bargain in the House of Commons, and an Address made to the King; but this I know, and must boldly say it, and plainly, That the Nation is betray'd, if upon any Terms we part with our Money, till we are sure the King is ours. Have what Laws you will, and what Conditions you will, they

will be of no Use, but Waste Paper before Easter, if the Court have Money to set up for Popery and arbitrary Designs in the mean while. On the other hand, give me leave to tell you, my Lords, the King hath no reason to distrust his People. No man can go home and say, That if the King comply with his People, they will do nothing for him but tear all up from him. We want a Government, and we want a Prince that we may trust even with the spending of half our annual Revenues for some time, for the Preservation of these Nations. In malum & perniciosissimum exemplum omnium alior' in tali casu delinquent', contra pacem dict' Dom' Regis, coronam, & dignitat' suas. Unde idem Atornat' petit advisament' cur' in præmissis, & debit' legis processum.

Rex versus Cellier^m, for a Libel.

32 Car^o II. O. B.

ff. JURatores pro Dom' Rege super sacramentum suum præsentant, Quod Eliz' Cellier uxor ----- Cellier, de parochia sanct' Clementis Dacor' in com' Midd' Gen', eadem Eliz' existen' religionis papalis, Deum præ oculis suis non habens, sed instigatione diabolica mot' & seduct', & falso & malitiose machinans & intendens, serenissimum Dominum nostrum Carolum secundum, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regem, & gubernationem suam hujus regni Angliæ, necnon veram religionem protestan', infra hoc regnum Angliæ lege stabilit', in odium, infamiam, & contemptum inducere & inferre, & scandalum & infamiam imponere super quibusdam personis, qui producti fuissent testes, & testimon' dedissent ex parte dicti Dom' Regis contra præd' Eliz' Cellier, & alias personas, de alta proditione indictat' primo die Augusti, anno regni dicti Dom' Regis tricesimo secundo, apud prædict' parochiam sancti Clemen' Dacor', in com' Midd' præd', falso, malitiose, & seditiose scripsit & publicavit, & scribi, imprimi, & publicari causavit, quendam fictum, falsum, & scandalosum libellum, intitulat', *Malice defeated, or a brief Relation of the Accusation and Deliverance of Elizabeth Cellier; wherein her Proceedings both before and during her Confinement are particularly related, and the Mystery of the Meal-Tub fully discovered; together with an Abstract of her Arraignment and Trial, written by herself for the Satisfaction of all lovers of undisguised Truth.* In quo quidem libello continentur hæc falsa, ficta, & scandalosa verba, & figuræ sequentia: ff. I hope it will not seem strange to any honest and loyal Person, of what Way or Religion soever, that I, being born and bred up under Protestant Parents, should now openly profess my self of another Church (Ecclesiam Romanam innuendo) for my Education being in those Times, when my own Parents and Relations, for their constant and faithful Affection to the King and Royal Family, were persecuted, the King himself murdered, the Bishops and Church destroyed, the whole loyal Party, meerly for being so, oppressed and ruined, and all, as was pretended by the Authors of these Villanies, for their being Papists and Idolaters, the constant Character given by them to the King and his Friends; and to make them odious, they assuming to themselves only the Name of Prote-

stants, making that the glorious Title by which they pretended Right to all things. These sort of Proceedings, as I grew in Understanding, produced in me more and more Horror of the Party that committed them, and put me on enquiring into that Religion, to which they pretend the greatest Antipathy, wherein, I thank God, I found my innate Loyalty not only confirmed, but encouraged; and, let Calumny say what it will, I never heard from any Papist, as they call them, Priest or Layman, but that they and I, and all true Catholics, owe our Lives to the Defence of our lawful King, which our present Sovereign Charles the Second is, whom God long and happily preserve so. These sort of Doctrines agreeing to my publick Morals, and no way, as ever I was taught, contradicting my private ones, commending at the same time to me Charity and Devotion, I without any Scruple have hitherto followed, glorying my self to be in Communion with those (Papistas innuendo) who were the humble Instruments of his Majesty's happy Preservation from the fatal Battle at Worcester, and whom, though poor, no Temptation could invite to betray him to those, who by a pretended Protestant Principle sought his innocent Blood. These Truths, I hope, may satisfy any innocent Person in my present Change; nor can they wonder at my Continuance therein, notwithstanding the horrid Crimes of Treason and Murder laid to the Charge of some Persons, considerable for their Quality and Fortunes, in that Party: For when I reflected who were Witnesses, and what unlikely things they deposed, and observed that many of the chiefest Sticklers for the Plot were those, or the Sons of those that acted the principal parts in the last Tragedy, which History told me too had the Prologue of a pretended Popish Plot; I say, these things made me doubtful of the whole; and the more I searched for Truth, the more I doubted that the old Enemies of the Crown were at work again for its Destruction. I being fully confirmed in this, thought it my Duty, through all sorts of Hazards, to relieve the poor imprison'd Catholics, who in great numbers were locked up in Gaols, starving for want of Bread; and this I did some Months before I ever saw the Countess of Powis, or any of those honourable Persons that were accused, or receiving one Penny of their Money, directly or indirectly, till about the latter end of January

(1678) the Prisoners increasing very much. Et in alia parte ejusdem libelli (inter alia) continentur hæc falsa, ficta, & scandalosa verba, ff. About this time I went daily to the Prisons, to perform those Offices of Charity I was obliged to; and on Thursday January 9, (1678) I dined in Newgate, in the Room called the Castle, on the the Master Debtors side; and about Four in the Afternoon I came down into the Lodge, with five Women, of which three were Protestants; and we all heard terrible Groans and Squeeks, which came out of the Dungeon called the Condemned Hole: I asked Harris the Turnkey what doleful Cry it was; he said it was a Woman in Labour; I bid him put us into the Room to her, and we would help her; but he drove us away very rudely, both out of the Lodge, and from the Door. We went behind the Gate, and there listened, and soon found that it was the voice of a strong Man in Torture, and heard, as we thought, between his Groans, the winding up of some Engine. These Cries stopped the Passengers under the Gate; and we six went to the Turner's Shop without the Gate, and stood there, amazed with the Horror and Dread of what we heard; when one of the Officers of the Prison came out in great Haste, seeming to run from the Noise: One of us caught hold of him, saying, Ob! what are they doing in the Prison? Officer. I dare not tell you, Mistress. Cell. It's a Man upon the Rack, I'll lay my Life on't. Offic. It is something like it. Cellier. Who is it, Praunce? Offic. Pray, Madam, do not ask me, for I dare not tell you; but it is that I am not able to bear any longer; pray let me go. With that he ran away towards Holbourn as fast as he could. We heard these Groans perfectly to the End of the Old-Baily: They continued till near Seven of the Clock; and then a Person in the Habit of a Minister, of a middle Stature, grey-haired, accompanied with two other Men, went into the Lodge; the Prisoners were locked up, and the outward Door of the Lodge also, at which I set a Person to stand and observe what she could; and a Prisoner loaded with Irons was brought into the Lodge, and examined a long time; and the Prisoners that came down as low as they could, heard the Person examined, with great Vehemency say often, I know nothing of it; I am innocent; he forced me to bely my self; what would you have me say? will you murder me because I will not bely my self and others? Several other such like Expressions they heard spoken, as by one in great Agony. About four of the Clock the next Morning the Prisoners, that lay in a place about the Hole heard the same Cry again two Hours, and on Saturday Morning again; and about eight of the Clock that Morning, a Person I employed to spy out the Truth of this Affair, did see the Turnkeys carry a Bed into the Hole: she asked who it was for; they told her it was for Praunce, who was gone made, and had torn his Bed in pieces. That Night the Examiners came again, and Praunce was led away to the Press-yard. This, and many things of like nature, made me very inquisitive to know what passed in the Prison. Soon after this Francis Corral a Scotchman, that had been put into Newgate upon suspicion of carrying away Sir Edmund-bury Godfrey's Body, and lay there thirteen Weeks and three Days in great Misery, got out: I went to see him, and found him a sad spectacle, having the Flesh worn away, and great Holes in

both his Legs, by the Weight of his Irons; and having been chained so long double, that he could not stand upright: He told me much of his hard and cruel Usage, as that he had been squeezed and hasped into a thing like a Trough in a Dungeon under Ground, which put him to inexpressible Torment, insomuch that he swooned; and that a Person in the Habit of a Minister stood by all the while; that a Duke beat him, pulled him by the Hair, and set a drawn Sword to his Breast three times, and swore he would run him through; and another great Lord had laid down a heap of Gold, and told him it was Five hundred Pounds; that he should have it all, and be taken into the aforesaid Duke's House, if he would confess what they would have him: And one F. a Vintner, that lives at the Sign of the Half-Moon in Ch——— St———, by whose Contrivance he was accused, took him aside, and bid him name some Person, and say they employed him to take up the dead Body in Somerset-yard, and gave him Money for so doing; That if he would do this, both F. and he should have Money enough. He also told me, that he was kept from Thursday till Sunday without Victuals or Drink, having his Hands every Night chained behind him; and being all this time locked to a Staple, which was driven into the Floor, with a Chain not above a Yard long; that in this great Extremity he was forced to drink his own Water; and that the Gaoler beat his Wife because she brought Victuals, and pray'd he might have it, and threw Milk on the Ground, and bid her be gone, and not look at him. Et in altera parte ejusdem libelli continent' (inter al') hæc falsa, ficta, & scandalosa verba sequentia: ff. My Arraignment, which, in Confidence of my own Innocency, I continually press'd for; not but that I knew the Danger, as to this Life, of encountering the Devil in the worst of his Instruments, which are perjurers encouraged to that degree, as that profligated wretch (quendam Thomam Dangerfield testem product' ex parte Dom' Regis contra præd' Elizabetham Cellier, pro alta prodicione innuendo) was, and has been since his being exposed to the World in his true Colours, both at mine and another's Trial. Et in altera parte ejusdem libelli continentur hæc falsa, ficta, & scandalosa verba sequen': ff. Nor have I since received any thing towards my Losses, or the least Civility from any of them, whilst Dangerfield, (prædict' Thomam Dangerfield iterum innuendo) when made a Prisoner for apparent recorded Rogueries, was visited by and from Persons of considerable Quality, with great Sums of Gold and Silver, to encourage him in the new Villanies he had undertaken, not against me alone, but Persons, in whose Safety all good Men (as well Protestants as others) in the three Kingdoms are concerned. Et in altera parte ejusdem libelli, vocat' A Postscript to the impartial Reader, continent' hæc falsa, ficta, & scandalosa verba sequentia: ff. And whensoever his Majesty pleases to make it as safe and honourable to speak Truth, as it is apparent it hath been gainful and meritorious to do the contrary, there will not want Witnesses to testify the Truth of more than I have written, and Persons that are above being made the Hangman's Hounds for weekly Pensions, or any other Considerations whatsoever. In malum & perniciosissimum exemplum omn' alior' in tali casu delinquin' contra pacem dict' Dom' Regis, coron', & dignitat' suas.

Rex versus Dominum Grey^a & al', for a Misdemeanour in debauching the Lady Henrietta Berkley.

Mick^o 34 Car^o II. Rot. 1. B. R.

ff. **Q**uod Ford Dom' Gray de Wark, R. C. nuper de, &c. Gen', A. C. ux' præd' R. C. D. J. F. J. ux' præd' D. J. & R. I. cum divers' al' male disposit' person', eidem Attorn' dicti Dom' Regis nunc general' adhuc incognit', 20. die Augusti, anno regni Dom' Caroli secundi nunc Regis Angl', &c. 34. & divers' al' dieb' & vicibus, tam antea, quam postea, apud paroch' de Epsom in com' Surri', falso, illicite, injuste, & nequissime, per illicitas & impuras vias & medias, conspiran', machinan', practican', & intenden' final' ruinam & destruction' Dominæ Henriæ Berkley, tunc virgin' innupt' infra ætatem 18 annorum, & un' filiar' prænobilis G. comit' Berkley (eadem Dom' H. B. tunc & ibidem sub custod', regimine, & educat' præfat' prænobil' G. C. B. patris sui existen') præd' Ford Dom' Gray, R. C. &c. & divers' al' person' ignot' ad tunc & ibidem falso, illicite, injuste, & diabolice ad nequissimas, nefandissimas, & diabolicas intention' suas præd' perimplend', perficiend', & ad effectum redigend', præd' Dom' H. B. ad deserend' præfat' prænobilem G. C. B. patrem præd' Dom' H. & ad scortac', fornicat', & adulterium committend', & in scortat', fornicat', & adulter' cum præfat' F. D. G. (eodem F. D. G. ad tunc, & diu antea, & adhuc marito existen'

Dom' Mariæ al' fil' præd' prænobil' G. C. B. & soror' præd' Dominæ H.) contra omnes leges tam divin', quam human', impie, nequit', impure, & scandalose vivere & cohabitare tentaver', incitaver', & sollicitaver', & quilibet eorum tunc & ibidem tentavit, incitavit, & sollicitavit. Et quod præd' F. D. G. R. C. &c. ac al' person' ignot', vi & armis, &c. illicite, injuste, sine licentia, & contra voluntat' præfat' prænobil' G. C. B. in prosecution' nefandissimar' conspirac' suar' præd', præfat' Dom' H. B. ibidem circa horam 12. in nocte præd' 20. diei August', anno suprad', apud præd' paroch' de E. in com' S. præd', e domo mansional' præd' prænobil' G. C. B. ibidem situat' & existen', & e custod' & regimine ejusdem G. C. B. ceper', asportaver', & abduxer'. Et præd' Dom' H. B. a præd' 20. die August', anno suprad', & continue postea, usque diem exhibition' hujus information', apud paroch' de E. præd' in com' præd', & in divers' locis secret' ibidem, cum præfat' F. D. G. illicite, nequit', & scandalose vivere, cohabitare, & remanere procuraver' & causaver', & quilibet eorum procuravit & causavit, in magn' Dei omnipotent' displicent', ad ruinam & destruction' præfat' D. H. B. & amicor' suorum tristitiam & disconsolat', in malum & perniciosum exemplum, &c. Unde, &c.

Rex versus Major' & Commun' & Civ' civitatis Londini^o.

An Information in nature of a Quo Warranto.

Pasc hæ 34 Car^o II. B. R.

London ff. *Memorand', Quod Robertus Sawyer Miles, Attorn' Domini Regis nunc general', qui pro eodem Domino Rege in hac parte sequitur, in propria persona sua ven' hic in curia dicti Domini Regis, coram ipso Rege apud Westm', die Lunæ prox' post quinden' sancti Martini ult' præterit', & pro eodem Domino Rege protulit hic in cur' dicti Domini Regis, coram ipso Rege tunc & ibidem, quand' Information' versus Majorem & Communitat' ac Cives civitat' London; quæ quidem Informatio sequitur in hæc verba: ff.*

London ff. **M**emorandum, Quod Robertus Sawyer Miles, Attorn' Dom' Regis nunc generalis, qui pro eodem Dom' Rege in hac parte sequitur, in propria persona sua ven' hic in cur' dict' Dom' Regis, coram ipso Rege apud Westm', die Lunæ prox' post quinden' S. Martini isto eodem termino, & pro eodem Dom' Rege dat cur' hic intelligi & informari, Quod Major & Communitas ac Cives civitat' London' præd', per spacium unius mensis jam ult' elaps', & amplius, usi fuerunt, & adhuc utuntur, ac clamant habere & uti, absque aliquo warranto, sive regali concessione, infra civitat' London' præd', & libertat' & precinct' ejusdem civitat', diversis libertat', privileg', & franchis' sequen', videl', Fore de seipsis unum corpus corporat' & poli-

ticum in re, facto, & nomine, per nomen Majoris & Communitat' ac Civium civitat' London', ac per idem nomen placitare & implacitari, respondere & responderi, ac etiam habere Vicecomit' civitat' & com' civitat' London', & nominare & eligere ex seipsis duas personas fore Vicecomit' civitat' præd' & com' ejusd' civitat', ac ill' sic nominat' & elect' præficere & constituere Vic' civit' præd' & com' ejusdem civitat', ad execution' & retorn' omnium brevium, billarum, & præceptorum Dom' Regis pro administratione & executione justic' infra civit' præd' & com' ejusdem civit' exequend', faciend', ac ad faciend' & exequend' omnia & singula al' infra civit' præd', & com' ejusdem civit', quæ ad officium Vic' faciend' pertinent; ac etiam habere Vic' com' Middlesex, & nominare, eligere & constituere ex seipsis Vic' com' Middlesex, pro eodem com' ut Vicecomes inde deservitur, ac omnia brevia, billas, & præcepta Dom' Regis infra com' Middlesex præd' pro administratione & executione justic' ibid' exequend', & retorn' inde faciend', absque aliqua commissione, sive aliquibus literis patentibus a Dom' Rege inde obtent', sive obtinend'. Ac etiam quod Major & Aldermanni ejusdem civit' fuerunt Justic' Dom' Regis ad pacem infra civit' præd' conservand', ac ad sessiones pacis & placita coronæ infra eandem civit' tenend', ac ad omnes felon', riot', & conventic' illicit' infra civit' præd' inquirend', audiend', &

terminand' autoritate ipsorum propria, absque aliqua commissione, sive al' autoritate a Dom' Rege in ea parte concess' sive obtent'. De quibus quidem omnibus & singulis libertat', privileg', & franchis' iidem Major & Communitas, ac Cives civit' London præd', per totum tempus supradictum super dictum Dom' Regem nunc usurpaverunt & adhuc usurpant, in dict' Dom' Regis nunc contempt', prærogativæ suæ regiae grave dampnum & præjudicium. Unde idem Attorn' dict' Dom' Regis nunc general', pro eodem Dom' Rege pet' advisament' cur' hic in præmiss', & debet' legis process' versus præfat' Major' & Communitat', ac Cives civit' London præd', in hac parte fieri ad respondend' dict' Dom' Regi, Quo Warranto clamant habere, uti, & gaudere, libertat', privileg', & franchis' supradict', &c. Per quod præceptum fuit Vicecomitibus London, quod venire fac' eos ad respondend', &c.

Et modo, scilicet die Lunæ prox' post crastinum Ascens' Dom', isto eodem termino, coram Dom' Rege apud Westm', ven' prædicti Major & communitas, ac Cives civitatis London', per Benedictum Brown Attornat' suum, & habito auditu information' præd', querunt, se colore ejusdem informationis gravit' fore vexat' & inquietat', & hoc minus juste; quia protestando quod informatio præd', materiaq' in eadem content' min' suffic' in lege exist', ad quam quidem informat' ipsi necesse non habent, nec per legem terræ tenent' aliquo modo respondere: Pro placito tamen, quoad libertat', privileg', & franchis' sequen' (viz.) ipsos Major' & Communitat', ac Cives civit' London fore de se ipsis unum corpus corporat' & politic' in re, facto, & nomine, per nomen Majoris & Communitat' ac Civium civitat' London, ac per idem nomen placitare & implacitari, respondere ac responderi, in informat' præd' superius specificat', iidem Major & Communitas, ac Cives Civit' London dicunt, quod dict' Dom' Rex nunc ipsos occasione inde impetere seu occasionare non debet, quia dicunt, quod præd' civit' London est, & a tempore cujus contrar' memoria homin' non exist', fuit antiqua civitas; quodque Cives ejusdem civit' sunt, & a præd' tempore cujus contrar' memor' homin' non exist', fuerunt un' corpus corporat' & politic' in re, facto, & nomine, per nomen Majoris & Communitat' ac Civium civitat' London, ac per idem nomen per tot' tempus illud placitaver' & implacitaver' fuerunt, responder' & respons' fuerunt, & placitare & implacitari, respondere ac responderi a toto tempore supradicto usi fuerunt & consuever'. Quodque in Magna Charta de libertat' Angl', in Parliament' Domin' Henrici quondam Regis Angl' tertii, apud Westm' in comitat' Midd', anno regni sui nono tent', edit' & provis', continet', quod civitas London habeat omnes libertat' suas antiquas & consuetud' suas; & iidem Major & Communitas, ac Cives civit' London ulterius dicunt, quod Domin' Edwardus quondam Rex Angl' tertius, in parlamento suo apud Westm' in Comit' Midd', anno regni sui primo tent', per quandam chartam suam, de consensu Prælator', Comit', Baron', ac totius Communitat' regni sui in eodem parlamento suo apud Westm' præd' convocat' existen', ac autoritat' ejusdem parlamenti, confirmavit tunc Civibus civit' London præd' libertat' subsequen' (int' alia) habend' sibi & successoribus suis in perpetuum, imprimis recitando, Quod cum in Magna Charta de libertat' Angl' contineat', quod civit' London

habeat omn' libertat' suas antiquas & consuetud' suas; & quod iidem Cives tempore confectio' dictæ chartæ, ac temporibus sancti Edwardi Regis & Confessoris, & Willielmi Conquestoris, & al' progenitor' dict' Regis Edwardi tertii, divers' libertat' & consuetud' tam per chartas ipsor' progenitor' suor', quam sine chartis ex antiqua consuetud' habuissent, voluit & concessit idem Rex Edwardus tertius, pro se & hæredibus suis, per chartam illam, autoritat' præd', quod iidem Cives haberent libertat' suas secund' form' Magn' Chartæ supradict', & quod pro aliqua personali transgr', vel iudicio personali alicujus ministri ejusdem civit', non caperent' libertat' civit' ill' in manus ejusdem Regis Edwardi tertii, vel hæred' suor', sed hujusmodi minister, prout qualitas transgress' requireret, puniret', prout per eandem chartam geren' dat' apud Westm' præd' sexto die Martii, anno regni dict' Regis Edwardi tertii primo supradict', sub magno sigillo suo Angl' sigillat', hic in cur' prolat' (inter alia) plenus apparet. Et iidem Major & Communitas, ac Cives civit' London ulterius dicunt, Quod ad instant' & requisit' Communitat' regni Angl' in parlamento Dom' Richardi nuper Regis Angl' secundo post Conquest', apud Westm' præd' anno regni sui septimo tent', assemblat' pro majore quiete & pace inter ligeos ejusdem nuper Regis fovend', & pro bono publico, omnes consuetud', libertat', privileg', & franch' civit' prædict' tunc Civibus civit' illius, & eor' successor', licet usi non fuerint, vel abusi fuerint eidem, autorit' ejusdem parlamenti ratificat' & confirmat' fuer'. Quodq' Domin' Henricus nuper Rex Angl' sextus, per literas suas patent', sub magno sigillo suo Angl' sigillat', geren' dat' apud Westm' præd' vicesimo sexto die Octobr', anno regni sui vicesimo tertio, quas idem Major & Communitas, & Cives civit' London hic in cur' proferunt pro se, hæredibus & successoribus suis, confirmavit Majori & Communitat', ac Civibus civit' London, & successor' suis, omnes & singulas suas libertat', franch', & liberas consuetud' adeo integras & illæsas, sicut eas unquam aliquo tempore progenitor' ejusdem nuper Regis Henrici sexti melius, quietius, & liber' habuissent & tenuissent, prout per easdem literas patent' (int' alia) plenius apparet. Quodq' Domin' Edwardus nuper Rex Angl' quartus, per literas suas patent' sub magno sigillo suo Angl' sigillat', geren' dat' apud Westm' præd' nono die Novembr', anno regni sui secundo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt pro se & hæredibus suis, confirmavit Majori & Communitat', ac Civibus civit' London, & successoribus suis in perpetuum, omn' & singulas suas libertat', franch', & liberas consuetud' adeo integr' & illæsas, sicut eas unquam aliquo tempore progenitor' ejusdem nuper Reg' Edwardi quarti melius, quietius, & liber' habuissent & tenuissent. Et ulterius idem nuper Rex Edwardus quartus per easdem literas suas patent', concessit eidem Majori & Communitat', ac Civibus, quod licet ipsi, vel prædecessor' sui, aut Major & Alderman' civit' prædict', vel prædecessor' sui præantea, vel successor' sui extunc in poster', aliqua vel aliquibus libertat' quietant' concess' ordinat' articulo' seu liberar' consuetud', aut alior' eisd' literis patent' ejusdem nuper Regis Edwardi quarti, seu al' literis suis aut progenitor' suor' quondam Reg' Angl', eidem Majori & Communitat' concess' content', aliquo casu emergente plene

plene non usi, vel abusi fuerint, noluit tamen idem nuper Rex Edwardus quartus, quod propt' hoc ipsi Major & Communitas, Alderman' & Cives, seu successores sui, forisfactur' aliquor' præmiss' incurrerent; sed quod ipsi, & eor' successor', universis & singulis libertat' quietant' concess', ordinat' articulis, liberis consuetud', & quibuscunque al' in chartis & literis prædict' content', taliter non usis, vel etiam abusis, & eor' quolibet extunc de cætero plene & libere gaudent, & eis uterent' sine impetition' vel impediment' ejusdem nuper Regis, seu hæred' suor', Justic', Eschætor', Vicecom', aut al' Balliv' seu ministr' ipsius nuper Regis, vel al' quorumcunque, prout per easdem literas patent' ejusdem nuper Regis Edwardi quarti hic in cur' prolat' (int' alia) plenius apparet. Quodque Domin' Henricus nuper Rex Angl' septimus, per literas suas patent' sub magno sigillo suo Angl' sigillat', geren' dat' apud Westm' prædict' vicesimo tertio die Julii, anno regni sui vicesimo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt pro se, hæredibus & successoribus suis ratificavit & confirmavit Majori & Communitat', ac Civibus civit' London, & eor' successor', omnia & singula libertat', privileg', quietant' & liberis consuetud', quibus ipsi Major & Communitas, & Cives seu prædecessor' sui habere, exercere, seu gaudere consuevissent, vel usi fuissent, aut debuissent, adeo plene, plan', & integre, ac si ea omnia & singula separatim & verbat' in eisdem literis patent' express' declarat' & manifestat' essent & fuissent, prout per easdem literas patent' (int' alia) plenius apparet. Et iidem Major & Communitas, ac Cives civit' London ulterius dicunt, quod Domin' Jacobus nuper Rex Angl', &c. per literas suas patent' sub magno sigillo suo Angl' sigillat', geren' dat', apud Honorem suum de Hampton Court vicesimo quarto die Septembris, anno regni sui Angl' sexto, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, recitando, quod cum quamplurimi progenitores ipsius nuper Regis, quondam Reges Angl', de gratia sua special', ac pro gratis, laudabil', multiplicib', & contin' servit' per Majorem & Communitat', ac Cives civit' London, & prædecessor' suos temporibus retroact' fact' & impens', necnon pro divers' al' urgent' causis & consideration' eos separatim moven', dedissent, concessissent, & confirmassent Majori & Communitat', ac Civibus civit' London præd', & successor' suis, divers' libertat', privileg', franch', immunitat', autoritat', jurisdiction', ordinat', consuetud', quietant', prout per separal' literas patent' progenitor' & prædecessor' suor' quondam Regum Angl' plenius & manifestius liquebat & apparebat; idem nuper Rex Jacobus pro & in considerat' summæ fidelitat', constant', & prompt' & laudabil' servit' per Major' & Communitat', ac Cives civit' London prædict' eidem nuper Regi, in ipsius regn' sui primis auspiciis, & continue usque tunc manifest', & fidelissim' fact' & impens', omnes & singulas literas patent', chartas, & confirmac' præclariss' progenitor' & antecessor' suor', eisdem Majori & Communitat', ac Civibus civit' London prædict', & prædecessor' suis, per quæcunque nomina incorporat' antea tunc tempora fact', concess', seu confirmat', ac omnes & singulas donac', concess', confirmac', restitut', consuetud', ordinac', explanac', articul', & omnes al' res quascunque, in quibuscunque literis patent'

sive chartis quorumcunque progenitor', prædecess', aut antecessor' suor' Regum Angl', necnon omnia & singula in dict' literis patent', chartis, concess', confirmat', seu eor' aliquibus content' recitat', specific', confirmat', seu explanat', ac omnia & singula jurisdiction', autoritat', privileg', libertat', franch', quietanc', immunitat', liberis consuetud' & hæreditament' quæcunque, quæ præd' Major & Communitas, ac Cives civit' London prædict', vel prædecessor' sui, per nomen Major' & Communitat', ac Civium civit' London, seu per nomen Major' & Aldermann' civit' London, seu per nomen Majoris, Civium, & Communitat' civit' London, seu per nomen Majoris, & Civium civit' London, seu per nomen Majoris & Communitatis civitatis London, seu per nomen Civium civit' London, seu per nomen Baron' London, seu per nomen Baron' civit' London, seu per aliquod al' nomen quodcunque, ratione seu vigore aliquar' literar' patent', chartar', seu confirmac' aliquor' progenitor', prædecessor', aut antecessor' ejusdem nuper Regis Jacobi quondam Regis Angl', aliquo tempore, vel aliquibus temporibus habuissent, seu rationabilit' usi fuissent, aut exercuissent, rata habuit & grata, ac pro se, hæred' & successor' suis acceptavit & approbavit, ac ea omnia & singula præfat' Major' & Communitat', ac Civibus civit' London prædict', & eor' successoribus, per easdem literas suas patent' ratificavit & confirmavit habend', tenend', gaudend' & exercend' omnia & singula præmiss', eisdem Major' & Communitat', ac Civibus civit' London prædict', & successoribus suis in perpetuum, adeo plene, libere, & integre, ac in tam amplis modo & forma, ac si separatim, singulatim, & nominatim in literas patent' ill' express' nominat', declarat', recitat', & manifest' essent & fuissent, prout per easdem literas patent' (inter alia) plenius apparet. Quodque Domin' Carolus primus nuper Rex Angl', &c. per literas suas patent' sub magno sigillo suo Angl' sigillat', geren' dat' apud Westm' prædict' decimo octavo die Octobris, anno regni sui quarto decimo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, omnia & singula privileg', libertat', franch', quietanc', immunitat', & liberis consuetud' quæcunque, quæ prædict' Major & Communitas, ac Cives civit' London præd', vel prædecessor' sui, per nomen Majoris & Communitat', ac Civium civit' London, seu per nomen Majoris & Aldermann' Civium & Communitat' London, seu per nomen Majoris & Civium civit' London, seu per nomen Majoris & Communitat' civit' London, seu per nomen Civium civit' London, seu per nomen Baron' London, seu per nomen Baron' civit' London, seu per aliquod al' nomen quodcunque, ratione seu vigore literar' patent', chartar', seu confirmac', in eisdem literis patent' dicti nuper Regis Caroli primi mentionat', vel usu vel præscriptione, aut alio legal' modo aliquo tempore, vel aliquibus temporibus ante tunc habuissent, seu rationabiliter usi fuissent, aut exercuissent, rata habend' & grata, ac pro se, hæredibus, & successoribus suis acceptavit & approbavit, ac ea omnia & singula præfat' Majori & Communitat', ac Civibus civit' London, & eor' successor', per easdem literas suas patent' ratificavit & confirmavit, prout per literas patent' ill' (int' alia) plenius liquet & apparet. Quodque præd' Domin' Rex nunc per literas suas patent' sub magno sigillo suo Angl' sigillat', geren' dat' apud Westm' præd' vicesimo

viceſimo quarto die Junii, anno regni ſui decimo quinto, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt pro ipſo Rege, hæredibus & ſucceſſoribus ſuis, ratificavit & confirmavit Major' & Communitat', ac Civibus civit' London, & ſucceſſor' ſuis, omnia & ſingula juridiſtion', authoritat', privileg', libertat', franch', quietanc', immunitat', & conſuetud' quæcunque, quæ præfat' Major & Communitas, ac Cives civit' London, vel prædeceſſor' ſui, per nomen Major' & Communitat', ac Civium civit' London, ſeu per nomen Majoris, Aldermannor', Civium & Communitat' London, ſeu per nomen Majoris & Civium civit' London, ſeu per nomen Major' & Communit' civit' London, ſeu per nomen Civium civit' London, ſeu per nomen Baron' London, ſeu per nomen Baron' civitat' London, ſeu per aliquod al' nomen quodcunque, ratione vel vigore literar' patent', chartar', ſeu confirmat' in eiſdem literis patent' dicti Domin' Regis nunc præmentionat', vel alicujus, ſeu aliquor' uſus, vel uſu præſcription' vel præſcriptionum, ſeu al' legali modo quocunque, aliquo tempore, vel aliquibus temporibus ante tunc habuiſſent, ſeu rationabilit' uſi fuiſſent, ſeu exercuiſſent, habend', tenend', gaudend', & exercend' omnia & ſingula præmiſſ' prædict' eiſdem Majori & Communitat', ac Civibus civit' London prædict', & ſucceſſoribus ſuis in perpetuum, adeo plene, libere, & integre, ac in tam amplis modo & forma, prout in eiſdem literis patent' ſuperius mentionat' fore data ſive conceſſa, aut alit' uſu, præſcription', vel al' legali modo, ſeu jure quocunque ante tunc reſpectively habit', obtent', ſive gaviſa fuiſſent, ac ſi ſeparatim, ſingulatim, & nominatim in & per dictas literas patent' ipſius Domin' Regis nunc expreſ' nominat', declarat', conceſ' & manifeſta eſſent & fuiſſent, prout per eaſdem literas patent' (inter alia) plenius apparet. Et eo warranto iidem Major & Communitat', ac Cives civitat' London, per tempus in informatione prædicta ſuperius ſpecific' uſi fuer', & adhuc utunt', ac clamant habere & uti, libertat', privileg', & franch', fore de ſeiſiſ unum corpus corporat' & politic' in re, fact'o, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, reſpondere ac reſponderi, prout eis bene licuit & licet: Abſque hoc, quod iidem Major & Communitas, ac Cives civitat' London, de libertat', privileg' & franch' ill' ſuper dictum Domin' Regem nunc, per tempus præd' in informatione præd' ſuperius ſpecific', uſurpaver' ſeu uſurpant, prout per information' ill' pro dicto Domin' Rege nunc ſuperius ſupponitur. Quæ omnia & ſingula iidem Major ac Communitas, ac Cives civitat' London parat' ſunt verificare; unde petunt judicium, & quod libertat', privileg', & franch' ill' eis & ſucceſſoribus ſuis in perpetuum deinceps allocent' & adjudicent', & quod ipſi, quoad præmiſſ' ill' ab hac cur' dimittant', &c. Et iidem Major & Communitas, ac Cives civit' London, quoad libertat', privileg' & franch' ſequen', viz. ipſos habere Vicecom' civit' & com' civit' London, & Vicecom' Midd', & nominare & eligere ex ſeiſiſ duas perſonas fore Vicecom' civit' prædict', & com' ejuſdem civit' & Vicecom' Midd' ac ill' ſic nominat' & elect' præficere & conſtituere Vicecom' civit' prædict' & com' ejuſdem civit', & Vicecom' Midd', ac ut Vicecom' civit' prædict', & com' ejuſdem civit', ad execut' & re-

torn' omnium brevium, bill', & præcept' Domin' Regis, pro adminiſtratione & execut' Juſtic' infra civit' prædict', & com' ejuſdem civit' exequend', faciend', quæ ad officium Vicecom' faciend' pertinent, ac ad faciend' & exequend' omnia & ſingula alia infra civit' prædict' & com' ejuſdem civit', quæ ad officium Vicecom' faciend' pertinent, ac ut Vicecom' com' Midd' pro eodem com' deſervitur', ac omnia brevia, bill', & præcept' Domin' Regis infra com' Midd' prædict', pro adminiſtratione & executione juſticiæ ibidem exequend', & retorn' inde faciend', quæ ad officium Vicecom' faciend' pertinent; dicunt, quod dictus Dominus Rex nunc ipſos Majorem & Communitat', ac Cives civitat' London, occasione inde impetere ſeu occaſionare non debet, quia dicunt, quod prædict' civit' London eſt, & a tempore cujus contrar' memoria homin' non exiſt', fuit antiqua civitas & antiqu' comit' de ſe, quodque præd' com' Midd' per totum tempus præd' fuit & eſt antiquus comit', quodque cives ejuſdem civit' ſunt, & a præd' tempore cujus contrar' memor' homin' non exiſt', fuer' un' Corpus corporat' & politic', tam per nomen Major' & Communitat' ac Civium civit' London, quam per nomen Civium London; quodque Domin' Johannes quondam Rex Angl', per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud bonam villam ſuper Tokam quinto die Julii, anno regni ſui primo, quas iidem Major & Communitas, & Cives civitat' London hic in cur' proferunt, conceſſit civibus London' præd', Vicecomit' London & de Midd' cum omnibus rebus & conſuetudinibus, quæ pertinebant ad præd' Vicecom' infra civit' & extra, per terras & per aquas, habend' & tenend' eis in perpetuum. Et præterea idem Domin' Rex Johannes, per literas ſuas patent' præd' conceſſit eiſdem civibus London, quod ipſi de ſeiſiſ facerent Vicecom' quocunque voluerint, & amoverent quando voluerint, prout per eaſdem literas patent' (inter alia) plenius apparet. Quodque in Magna Charta de libertatibus Angl', in parliament' Domin' Henrici quondam Regis Angl' tertii, apud Weſtm' in com' Midd' anno regni ſui nono tent', edit', & provis', continet', quod civit' London habeat omnes libertat' ſuas antiquas, & conſuetud' ſuas. Et iidem Major & Communitas, ac Cives civit' London ulterius dicunt, quod idem Domin' Rex Henricus tertius, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' decimo octavo die Februarii, anno regni ſui undecimo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, confirmavit Civibus London Vicecom' London & de Midd' cum omnibus rebus & conſuetudinib', quæ pertineb' ad præd' Vicecom' infra civitat' & extra, per terras & per aquas, prout per eaſdem literas patent' (int' al') plenius apparet. Quodque Domin' Edwardus quondam Rex Angl' tertius, in parliament' ſuo apud Weſtm' in com' Midd', anno regni ſui primo tent', per quandam chartam ſuam de aſſenſu Prælator', Comit', Baron', ac totius Communitat' regni ſui in eodem parlamento ſuo apud Weſtm' præd' convocat' exiſten', ac authoritate ejuſdem parlamenti, confirmavit tunc Civibus civit' London præd' libertat' ſubſequen', int' al', habendi ſibi & ſucceſſoribus ſuis in perpetuum, imprimis recitando, quod cum in magna Charta de libertat' Ang' contineat', quod civitas London habeat omnes libertat' ſuas antiquas & conſuetud' ſuas;

& quod iidem Cives tempore confectioⁿ dictæ chartæ, ac temporibus sancti Edwardi Regis & Confessoris, & Willielmi Conquestorⁱ & alⁱ progenitor^{um} dicti Regis Edwardi tertii, diversas libertat^{es} & consuetud^{es}, tam per chartas ipsor^{um} progenitor^{um} suor^{um}, quam sine chartis ex antiqua consuetud^e habuissent, voluit & concessit idem Rex Edwardus tertius pro se & hæredibus suis per chartam ill^{am}, autoritat^e præd^{icte}, quod iidem Cives haberent libertat^{es} suas secund^{um} formam Magn^e Chartæ supradict^e; & quod pro aliqua personalⁱ transgr^{essione}, vel iudicio personalⁱ alicujus ministri ejusdem civit^{atis}, non caperet^{et} libertas civit^{atis} ill^{ius} in manu ejusd^{em} Reg^{is} Edwardi tertii, vel hæred^{um} suor^{um}, sed hujusmodi minister, prout qualitas transgr^{essione} requireret, puniretur, prout per eandem chartam geren^t dat^{am} apud Westm^{onasterium} præd^{icte} sexto die Martii, anno regni dicti Regis Edwardi tertii primo supradict^e, sub magno sigillo suo Angl^{ie} sigillat^{us}, hic in cur^{ia} prolat^{us} (int^{er} alia) plenius apparet. Et iidem Major & Communitas, ac Cives civit^{atis} London ulterius dicunt, quod ad initant^{ur} & requisition^{em} Communitat^{is} regni Angl^{ie} in parlamento Dominⁱ Richardi nuper Regis Angl^{ie} secundi post Conquestum, apud Westm^{onasterium} præd^{icte} anno regni sui septimo tent^{us}, assemblat^{us} pro majore quiet^e & pace inter ligeos ejusdem nuper Regis fovend^{is}, & pro bono publico, omnes consuetud^{es}, libertat^{es}, privileg^{ia}, & franch^{is} civit^{atis} præd^{icte}, tunc civibus civitat^{is} illius & eor^{um} successoribus, licet usi non fuerint, vel abusi fuerint eisdem, autoritat^e ejusdem parliament^{is} ratificat^{us} & confirmat^{us} fuer^{it}. Quodque Dominus Henricus nuper Rex Angl^{ie} sextus, per literas suas patent^{is} sub magno sigillo suo Angl^{ie} sigillat^{us}, geren^t dat^{am} apud Westm^{onasterium} præd^{icte} vicesimo sexto die Octobris, anno regni sui vicesimo tertio, quas iidem Major & Communitas, ac Cives civit^{atis} London hic in cur^{ia} proferunt pro se, hæredibus & successoribus suis confirmavit Majori & Communitat^{is} ac Civibus civit^{atis} London, & successoribus suis, omnes & singulas suas libertat^{es}, franch^{is} & liberas consuetud^{es} adeo integras & illæsas, sicut eas unquam aliquo tempore progenitor^{um} ejusdem nuper Regis Henrici sexti melius, quietius, & liber^{ius} habuissent & tenuissent, prout per easdem literas patent^{is} (int^{er} alia) plenius apparet. Quodq^{ue} Domin^{us} Edwardus nuper Rex Angl^{ie} quartus, per literas suas patent^{is} sub magno sigillo suo Angl^{ie} sigillat^{us}, geren^t dat^{am} apud Westm^{onasterium} præd^{icte} nono die Novembr^{is}, anno regni sui secundo, quas iidem Major & Communitas ac Cives civit^{atis} London hic in cur^{ia} proferunt pro se, & hæredibus suis, confirmavit Majori & Communitat^{is}, ac Civibus civit^{atis} London, & successoribus suis in perpetuum, omnes & singulas suas libertat^{es}, franch^{is}, & liberas consuetud^{es}, adeo integr^{as} & illæs^{as}, sicut eas unquam aliquo tempore progenitor^{um} ejusdem nuper Regis Edwardi quarti melius, quietius, & liber^{ius} habuissent & tenuissent. Et ulterius idem nuper Rex Edwardus quartus, per easdem literas suas patent^{is} concessit eisdem Majori & Communitat^{is} ac Civibus, quod licet ipsi, vel prædecessores sui, aut Major & Aldermann^{us} civit^{atis} præd^{icte}, vel prædecessor^{um} sui præantea, vel successores sui extunc in posterum, aliqua vel aliquibus libertat^{es} quietant^{ur} concess^{as}, ordination^{em} articular^{um}, seu liberar^{um} consuetudin^{um}, aut alior^{um} in eisdem literis patentibus ejusdem nuper Regis Edwardi quarti, seu al^{ia} literis suis, aut progenitor^{um} suor^{um} quondam Regum Angl^{ie}, eisdem Majori & Communitat^{is} concess^{as} content^{as}, aliquo casu emergente plene non usi vel abusi fuerint. Noluit tamen idem

nuper Rex Edwardus quartus, quod propter hoc ipsi Major & Communitas, Alderman^{us} & Cives, seu successor^{um} sui, forisfactur^{um} aliquor^{um} præmissor^{um} incurrerent, sed quod ipsi & eorum successor^{um} universis & singulis libertat^{es} quietant^{ur} concess^{as}, ordinat^{as} articulis, liberis consuetud^{es}, & quibuscunque al^{ia} in chartis & literis præd^{icte} content^{as}, talit^{er} non usis, vel etiam abusis, & eor^{um} quolibet extunc de cætero plene & libere gauderent, & eis uterent^{ur} sine impetratione vel impediment^o ejusdem nuper Regis, seu hæred^{um} suor^{um}, Justic^{iarum}, Eschætor^{um}, Vicecom^{um}, aut al^{ia} Balliv^{um} seu ministri ipsius nuper Regis, vel alior^{um} quorumcunq^{ue}, prout per easdem literas patent^{is} ejusdem nuper Regis Edwardi quarti hic in cur^{ia} prolat^{us} (int^{er} alia) plenius apparet. Quodque Dom^{inus} Henricus nuper Rex Angl^{ie} septimus per literas suas patent^{is} sub magno sigillo suo Angliæ sigillat^{us}, geren^t dat^{am} apud Westm^{onasterium} præd^{icte} vicesimo tertio die Julii, anno regni sui vicesimo, quas iidem Major & Communitas, ac Cives civit^{atis} London hic in cur^{ia} proferunt pro se, hæredibus & successoribus suis, ratificavit & confirmavit Major^{um} & Communitat^{is}, ac Civibus civit^{atis} London, & eorum successoribus, omnia & singula libertat^{es}, privileg^{ia}, quietant^{ur}, & liberas consuetudines, quibus ipsi Major, Communitas, & Cives seu prædecessor^{um} sui habere, exercere, seu gaudere consuevissent, vel usi fuissent, aut debuissent, adeo plene, plane, & integre, ac si ea omnia & singula separatim & verbatim in eisdem literis patent^{is} expres^s declarat^{ur} & manifestat^{ur} essent & fuissent, prout per easdem literas patent^{is} (inter alia) plenius apparet. Quodque Dom^{inus} Henricus nuper Rex Angl^{ie} octavus per literas suas patent^{is} sub magno sigillo suo Angl^{ie} sigillat^{us}, geren^t dat^{am} apud Westm^{onasterium} præd^{icte} duodecimo die Julii, anno regni sui quinto, quas iidem Major & Communitas, ac Cives civit^{atis} London hic in cur^{ia} proferunt, omnes concessiones, & al^{ia} quæcunque in præd^{icte} literis patent^{is} præd^{icte} Domⁱⁿⁱ Regis Johannis superius specificat^{ur} content^{as}, pro ipso Rege Henrico, octavo, & Hæredibus suis, Majori & Communitat^{is}, ac Civibus civitat^{is} London, & successoribus suis ratificavit & confirmavit, prout per easdem literas patent^{is} ejusdem nuper Regis Henrici octavi (inter alia) plenius apparet. Quodque Dom^{inus} Edwardus nuper Rex Angl^{ie} sextus, per literas suas patent^{is} sub magno sigillo suo Angl^{ie} sigillat^{us}, geren^t dat^{am} apud Westm^{onasterium} præd^{icte} vicesimo primo die Februarii, anno regni sui secundo, quas iidem Major & Communitas, ac Cives civit^{atis} London præd^{icte} hic in cur^{ia} proferunt, omnes concessiones, & al^{ia} quæcunque in præd^{icte} literis patent^{is} dicti Domⁱⁿⁱ Regis Johannis superius specificat^{ur} content^{as}, pro ipso nuper Rege Edwardo sexto, & hæredibus suis, Major^{um} & Communitat^{is}, ac Civibus civit^{atis} London præd^{icte}, & successoribus suis ratificavit & confirmavit, prout per easdem literas patent^{is} ejusdem nuper Regis Edwardi sexti (inter alia) plenius apparet. Quodque Dom^{ina} Maria nuper Regina Angl^{ie}, per literas suas patent^{is} sub magno sigillo suo Angl^{ie} sigillat^{us}, geren^t dat^{am} apud Westm^{onasterium} præd^{icte} primo die Martii, anno regni sui primo, quas iidem Major & Communitas, ac Civibus civitat^{is} London hic in cur^{ia} proferunt pro ipsa nuper Regina, hæred^{um} & successoribus suis, omnes concessiones & al^{ia} quæcunque in præd^{icte} literis patent^{is} dicti Domⁱⁿⁱ Regis Johannis superius specificat^{ur} content^{as}, Majori & Communitat^{is}, ac Civibus civitat^{is} London præd^{icte} & successoribus suis ratificavit & confirmavit, prout per easdem literas patent^{is} ejusdem nuper Reginæ (int^{er} alia) plenius apparet.

apparet. Quodque Domina Elizabetha nuper Regin' Angl', per literas suas patent' sub magno sigillo suo Angl' sigillat', geren' dat' apud Westm' præd' anno die Maii, anno regni sui quarto, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt, pro ipsa nuper Regina Elizabetha, hæred' & successoribus suis omnes concessione, & al' quæcunque in præd' literis patent' dicti Dom' Regis Johann' superius specificat' content', Majori & Communitat', ac Civibus civit' London, & successoribus suis ratificavit & confirmavit, prout per easdem literas patent' ejusdem nuper Reginae Elizabeth' (inter alia) plenius apparet. Et iidem Major & Communitas, ac Cives civitat' London ulterius dicunt, quod Dom' Jacobus nuper Rex Angl', per literas suas patentes sub magno sigillo suo Angl' sigillat', geren' dat' apud Honorem suum de Hampton-Court vicesimo quarto die Septembris, anno regni sui Angl' sexto, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt, recitando, quod cum quamplurim' progenitor' ipsius nuper Regis, quondam Reges Angl', de gratia sua speciali, ac pro gratis, laudabil', multiplicibus, & continuis servitiis per Majorem & Communitat', ac Cives civitat' London, & prædecessores suos temporibus retroactis, fact' & impens', necnon pro diversis al' urgentibus causis & considerationibus eos separatim moventibus, dedissent, concessissent, & confirmassent Majori & Communitati, ac Civibus civitat' London præd', ac successoribus suis, diversa libertat', privileg', franc', immunitat', autoritat', jurisdiction', ordinanc', consuetudin', & quietantias, prout per separal' literas patent' progenitor' & prædecessor' suor' quondam Regum Angl' plenius & manifestius liquebat & apparebat, idem nuper Rex Jacobus pro & in consideratione summæ fidelitat', conitanc', prompt', & laudabil' servitii per Majorem & Communitat', ac Cives civitat' London prædict', eidem nuper Regi in ipsis regni sui primis auspiciis, & continue usque tunc manifestat', & fidelissim' fact' & impens', omnes & singulas literas patentes, chartas, & confirmation' præclarissimor' progenitor' & antecessor' suor', eisdem Majori & Communitat', ac Civibus civitat' London prædict', & prædecessoribus suis per quæcunque nomina incorporat' ant' tunc tempora fact', concess', seu confirmat', ac omnes & singulas donationes, concessiones, confirmation', restitution', consuetudines, ordinationes, & explanationes, articul', & omnes al' res quascunque in quibuscunque literis patentibus, sive chartis quorumcunque progenitor', prædecessor', aut antecessor' suor' Regum Angl', necnon omnia & singula in dictis literis patentibus, chartis, concessionibus, confirmationibus, seu eor' aliquibus content', recitat', specificat', confirmat', seu explanat', ac omnia & singula jurisdictiones, autoritates, privilegia, libertates, & franchis', quietanc', immunitates, liberas consuetudines, & hæreditament' quæcunque, quæ præd' Major & Communitat', ac Cives civitat' London præd' vel prædecessor' sui, per nomen Majoris & Communitat', ac Civium civitat' London, seu per nomen Majoris & Aldermann' civitat' London, seu per nomen Majoris, Civium, & Communitat' civitat' London, seu per nomen Major' & Civium civitat' London, seu per nomen Major' & Communitat' civitat' London, seu per nomen Civium civitat' London, seu per nomen Baron' London, seu per nomen Baron' civitat' London, seu per

aliquod aliud nomen quodcunq', ratione seu vigore aliquar' literar' patent', chartar', seu confirmation' aliquor' progenitor', prædecessor', aut antecessor' ejusdem nuper Regis Jacobi, quondam Regum Angl', aliquo tempore, vel aliquibus temporibus habuissent, seu rationabilit' usi fuissent, aut exercuissent, rata habuit & grata, ac pro se, hæredibus & successoribus suis acceptavit & approbavit, ac ea omnia & singula præfat' Majori & Communitat', ac Civibus civitat' London prædict', & eor' successoribus, per easdem literas suas patent' ratificavit & confirmavit, habend' & tenend', gaudend' & exercend' omnia & singula præmissa eisdem Majori & Communitat', ac Civibus civitat' London prædict', & successoribus suis in perpetuum, adeo plene, libere, & integre, ac in tam amplis modo & forma, ac si separatim, singulatim, & nominatim in literis patentibus ill' express' nominat', declarat', recitat', & manifestat' essent & fuissent, prout per easdem literas patentes (inter alia) plenius apparet. Quodque Dominus Carolus primus nuper Rex Angl', &c. per literas suas patentes sub magno sigillo suo Angl' sigillat', geren' dat' apud Westm' præd' decimo octavo die Octobris, anno regni sui quartodecimo, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt, omnia & singula privilegia, libertat', franch', quietanc', immunitates, & liberas consuetudines quæcunque, quæ præd' Major & Communitas, ac Cives civitat' London præd', vel prædecessor' sui per nomen Majoris & Communitat', ac Civium civitat' London, seu per nomen Majoris & Aldermann', Civium & Communitat' London, seu per nomen Majoris & Civium civitat' London, seu per nomen Majoris & Communitatis civitat' London, seu per nomen Civium civitat' London, seu per nomen Baron' London, seu per nomen Baron' civitat' London, seu per aliquod aliud nomen quodcunque, ratione seu vigore præd' literar' patent' præd' Dom' Regis Johannis, aut aliar' literar' patent', chartarum, seu confirmation' in eisdem literis patentibus dicti nuper Regis Caroli primi mentionat', vel usu, vel præscription', aut alio legali modo aliquo tempore, vel aliquibus temporibus ante tunc habuissent, seu rationabilit' usi fuissent aut exercuissent, rata habens & grata ea pro se, hæredibus & successoribus suis acceptavit & approbavit, ac ea omnia & singula præfat' Majori & Communitati, ac Civibus London, & eor' successoribus, per easdem literas suas patentes ratificavit & confirmavit, prout per literas patent' illas (inter alia) plenius apparet. Quodque prædictus Dominus Rex nunc per literas suas patent' sub magno sigillo suo Angl' sigillat', geren' dat' apud Westm' prædict' vicesimo quarto die Junii anno regni sui decimo quinto, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt pro ipso Rege, hæredibus & successoribus suis ratificavit & confirmavit Majori & Communitati, ac Civibus civitat' London, & successoribus suis, omnia & singula jurisdiction', autoritat', privilegia, libertates, franch', quietanc', immunitates, & consuetudin' quæcunque, quæ præfat' Major & Communitas, ac Cives civitat' London, vel prædecessores sui per nomen Majoris & Communitat', ac Civium civitatis London, seu per nomen Majoris, Aldermannor', Civium & Communitat' London, seu per nomen Majoris & Civium civitatis London, seu per nomen Major' & Communitat' civit' London, seu per nomen Civium civitat' London, seu per nomen Baron' London, seu per nomen Baron' civitat' London, seu per

ſeu per nomen Baron' London, ſeu per nomen Baron' civitat' London, ſeu per aliquod aliud nomen quodcunque, ratione vel vigore præd' literar' patent' præd' Dom' Regis Johannis, aut aliarum literar' patent', chartar', ſeu confirmation' in eiſdem literis patentibus dicti Dom' Regis nunc præmentionat', vel alicujus ſeu aliquor' uſus vel uſuum, præſcription' vel preſcription', ſeu alio legali modo quocunque aliquo tempore, vel aliquibus temporibus ante tunc habuiſſent, ſeu rationabilit' uſi fuiſſent, aut exercuiſſent, habend', tenend', gaudend', & exercend' omnia & ſingula præmiſſa præd' eiſdem Majori & Communitat', ac Civibus civitat' London præd', & ſucceſſoribus ſuis in perpetuum, adeo plene, libere, & integre, ac in tam amplis modo & forma, prout in eiſdem literis patentibus ſuperius mentionat' fore data, ſive conceſſa, aut alit' uſu, præſcription', vel alio legali modo ſeu jure quocunque ante tunc reſpective habit', obtent', ſive gavifa fuiſſent, ac ſi ſeparatim, ſingulatim, & nominatim in & per dictas literas patentibus ipſius Dom' Regis nunc expreſ', nominat', declarat', conceſſa & manifeſta eſſent & fuiſſent, prout per eaſdem literas patent' (inter alia) plenius apparet.

Et iidem Major & Communitas, ac Cives civitat' London ulterius dicunt, quod a tempore confection' præd' literar' patent' præd' quondam Regis Johannis hucusque iidem Major & Communitas, ac Cives civitat' London habuer' Vicecom' civit' & com' civit' London, & Vicecom' comitat' Midd', & quolibet anno nominaverunt & elegerunt ex ſeipſis duas perſonas, cives ejuſdem civitat', fore Vicecom' civitat' præd', & com' ejuſdem civitat', & Vicecom' com' Midd', ac ill' ſic nominat' & elect' præfecerunt & conſtituerunt Vicecom' civitat' præd', & com' ejuſdem civitat', & Vicecom' com' Midd', ac ut Vicecom' civitat' præd', & com' ejuſdem civitat', ad execut' & retorn' omnium brevium, billar', & præceptor' Dom' Regis pro adminiſtratione & executione juſtitiae infra civit' præd', & com' ejuſdem civitat' exequend' & faciend' omnia & ſingula alia infra civitat' præd', & com' ejuſdem civitat', quæ ad offic' Vicecom' faciend' pertinent, ac ut Vicecom' Midd' pro eodem com' deſervitur', ac omnia breviam, billas, & præſcripta Dom' Regis infra com' Midd' præd', pro adminiſtratione & executione juſtitiae ibidem exequend', & retorn' inde faciend', quæ ad officium Vicecom' faciend' pertinent. Et eo warranto iidem Major & Communitas, ac Cives civitat' London, per tempus in informatione prædicta ſuperius ſpecificat', uſi fuer' & adhuc utunt', ac clamant habere & uti libertat', privileg', & franch' habere Vicecom' civit' & com' civit' London, & Vicecom' comitat' Midd', & nominare & eligere ex ſeipſis duas perſon' fore Vicecom' civitat' præd', & com' ejuſdem civit', & Vicecom' Midd', ac ill' ſic nominat' & elect' præficere & conſtituere Vicecom' civit' præd', & com' ejuſdem civitat', & Vicecom' Midd', ac ut Vicecom' civitat' præd', & com' ejuſdem civitat', ad execut' & retorn' omnium brevium, billar', & præceptor' Dom' Regis pro adminiſtratione & executione juſtitiae infra civit' præd', & com' ejuſdem civit', exequend' & faciend', quæ ad officium Vicecom' faciend' pertinent, ac ad faciend' & exequend' omnia & ſingula alia infra civitat' præd', & com' ejuſdem civitat', quæ ad offic' Vicecom' faciend' pertinent, ac ut Vicecom' Midd' pro eodem com' Midd' deſervitur', ac omnia breviam, billas, &

præcepta Dom' Reg' infra com' Midd' præd', pro adminiſtratione & executione juſtitiae ibidem exequend', & retorn' inde faciend', quæ ad officium Vicecom' faciend' pertinent, prout eis bene licuit & licet.

Abſque hoc, quod iidem Major & Communit', ac Cives civitat' London, de libertat', privileg' & franch' ill' ſuper dictum Dom' Regem nunc per tempus præd' in informatione prædicta ſuperius ſpecificat', uſurpaver', ſeu uſurpant', prout per inform' illam pro dicto Dom' Rege nunc ſuperius ſupponitur, quæ omnia & ſingula iidem Major & Communitas, ac Cives civit' London, parati ſunt verificare; unde petunt judicium, & quod libertat', privileg', & franch' ill' eis & ſucceſſoribus ſuis in perpetuum deinceps allocent', & adjudicentur, ac quod ipſi, quoad præmiſſa ill', ab hac cur' dimittantur, &c.

Et iidem Major & Communitas, & Cives civit' London, quoad libertat', privileg', & franch' ſequend', viz. Major dictæ civitat', & hujusmodi Aldermann' ejuſdem civit', qui officium Majoritat' civit' illius ſuſtinuer', ac inde fuer' dimiſſi, ac tres ſenior' Aldermann' civit' prædict', qui diutius in offic' Aldermannat' civit' præd' ſteter', & onus & officium Majorat' civit' præd' non ſuſtinuer', fore Juſtic' Dom' Regis ad pacem infra civitat' præd' conſervand', ac ad ſeſſion' pacis, & placita coron', ſcilicet, talia placit' coronæ, qual' Juſtic' Dom' Regis ad pacem conſervand' assign' legitimum tenere poſſent infra eandem civit' tenend', ac ad omnes felon', riot', rout', & conventicul' illicit' infra civit' præd' inquirend', audiend', & terminand', in informatione præd' ſuperius ſpecificat' dict', quod dict' Dom' Rex nunc ipſos Majorem & Communitat', ac Cives civitat' London, occasione inde impetere, ſeu occaſionare non debet, quia dicunt, quod præd' civit' London eſt, & a tempore cujus contrar' memor homin' non exiſtit, fuit antiqua civitas ac antiquus comitat' de ſe, ac cives ejuſdem civit' ſunt, & a prædicto tempore, cujus contrar' memor' homin' non exiſtit, fuer' unum corpus corporat' & politic' in re, fact'o, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London. Quodque Dom' Carolus primus nuper Rex Angl', per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' decimo octavo die Octobris anno regni ſui quarto decimo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, pro ipſo nuper Rege, hæred' & ſucceſſorib' ſuis, conceſſit Majori & Communitat', ac Civibus civit' London, & eor' ſucceſſoribus, quod Major & Recordat' civit' præd', qui tunc fuer', ac Majores Recordator' civit' præd', qui pro tempore forent, actam ill' Aldermann', qui Major' civitat' illius præantea extitiſſent, quam ill' Aldermann', qui onus & officium Majorat' civitat' prædict' tunc in poſterum ſuſtinerent & gererent, licet a Majorat' ill' ceſſarent, aut inde eſſent dimiſſi, quamdiu Aldermann' ibidem ſtarent, & tres ſeniores Aldermann' civit' pro tempore exiſten', qui diutius in officium Aldermannat' ſteter', & ante tunc onus & officium Majorat' civitat' illius non ſuſtinuer', in perpetuum forent cuſtodes, & quilibet eor' eſſet cuſtos pacis ejuſdem nuper Regis hæred', & ſucceſſor' ſuorum, infra civitat' London præd', & libertat' ejuſdem conſervand' & cuſtodiend', ac eodem Majorem & Recordator', ac Aldermann' præd', ad omnia & ſingula ſtatuta & ordinationes pro bono pacis dicti nuper Regis, hæred'

red' & successorum suorum, ac pro conservatione ejusdem, ac pro quiete, regimine, & gubernatione populi ipsius nuper Regis, hæred' & successor' suorum, edit' & edend' in omnibus suis articulis, tam infra civitatem prædictam, quam libertatem ejusdem, juxta vim, formam, & effectum eorundem custodiend', & custodire faciend', ac ad omnes illos, quos juxta formam & effectum ordination' & statutor' eorundem, & eorum alicujus in civitate prædicta, & libertate ejusdem, delinquentes invenirent, castigand' & puniend', prout secundum formam ordination' & statutor' ill' foret faciend'; & ad omnes illos, qui alicui vel aliquibus de populo ejusdem nuper Regis, hæred', vel successor' suorum de corporibus suis, vel de incendio domorum suarum minas facerent, ad sufficientem securitatem de pace, vel bono gestu suo erga ipsum nuper Regem, hæred' & successores suos, & cunctum populum ejus, hæred', vel successor' suorum, invenirent, & si hujusmodi securitatem invenire recusarent, tunc eos in gaolam ejusdem Domin' Regis de Newgate, vel in aliqua al' prisona hæred' vel successor' suorum in prædicta civitate London, quousque hujusmodi securitatem invenirent, salvo custodiri faciend', Custodes & Justiciarii ipsius nuper Regis, & quemlibet eorum Custodem & Justiciarium ejus hæred' & successor' suorum infra civitatem London prædictam, & libertatem ejusdem, idem nuper Rex Carolus primus, pro se, hæredibus & successoribus suis, constituit, fecit, & ordinavit per literas patentes suas prædictas, ac ad omnia & singula alia exequend' & peragend', quæ Justiciarius & Custod' pacis ejus, hæred' vel successor' suorum, infra aliquem comitatum regni sui Angli' exequi, sive peragere valerent, possent, aut deberent, virtute aliquorum statutor' & ordination' hujus regni sui Angli', aut virtute commissionis ejus, hæred' & successor' suorum, ad pacem in aliquo hujusmodi comitatu conservand'. Voluit etiam idem nuper Rex Carolus primus, ac per easdem literas patentes pro se, hæredibus & successoribus suis, concessit præfatis Majori & Communitati, ac Civibus civitatis London, & eorum successor', quod Major, Recordator civitatis prædictæ pro tempore existens, & hujusmodi, ut præfertur, Aldermann' pro tempore existens, qui officium vel locum Majorat' civitatis illius antea sustinuer' & exercuer', & tres hujusmodi, ut præfertur, seniores Aldermann' pro tempore existens, qui locum Majorat' prædicti non sustinuer', vel quatuor eorundem, Major', Recordator', & Aldermannorum, quorum dict' Major vel Recordator pro tempore existens unum esse voluit, forent Justiciarii ipsius nuper Regis, hæred' & successor' suorum, & ipsos Justiciarios suos, hæred' & successor' suorum, pro se, hæredibus & successor' suis in perpetuum, assignat' ad inquirend', quoties & quando eis melius videret' expedire, per sacramentum proborum & legalium hominum, tam de civitate prædicta, quam de libertate ejusdem, per quos rei veritas melius sciri posset de omnibus murdris, felon', veneficiis, incantation', scortileg', arte magica, transgr', forestallar', regretar', ingrossar', & extortionibus quibuscunque, ac de omnibus & singulis al' malefactis & offensis, de quibus Justiciarius pacis ipsius nuper Regis, hæred' & successor' suorum legitime inquirere possent aut deberent, per quoscunque & qualitercunque infra civitatem prædictam, seu libertatem ejusdem, ante tunc habit' seu perpetrat', vel quæ ex tunc ibidem fieri vel attemptari contingerent, & tam de omnibus ill' qui in civitate prædicta, & libertate ejusdem, in conventiculis, contra pacem ipsius nuper Regis, hæred' & suc-

cessor' suorum, in perturbatione populi sui, hæred' & successor' suorum, seu vi armata irent vel equitarent, seu extunc ire vel equitare præsumerent. Et etiam de hiis quæ ibidem ad gentem dict' Dom' Regis, hæred', vel successor' suorum mahemand', vel interficiend' in insidiis jacerent, vel in posterum jacere præsumerent. Ac etiam de hostellar' & al' omnibus & singulis personis, qui in abusu mensurar' & ponderum, sive in venditione victual' contra formam ordination' & statut', vel eor' alicujus inde pro communi utilitate regni sui Angli', & populi ejusdem nuper Regis, hæred' & successor' suorum ejusdem edit' & edend' delinquerent vel attemptarent in civitate prædicta, & libertate ejusdem, seu extunc in posterum delinquere vel attemptare præsumerent. Ac etiam de quibuscunque Vicecom', Constabular', Custod' gaolæ, & al' offic', qui in execut' officiorum suorum circa præmissa, vel eor' aliqua indebite se habuer', aut in posterum indebite se habere præsumerent, aut tepidi, remiss', vel negligentes fuer', aut extunc tepidi, remiss', vel negligent' fore contingerent infra civitatem prædictam & libertatem ejusdem, ac de omnibus & singulis articulis & circumstant', & al' quibuscunque, per quoscunque & qualitercunque in civitate prædicta & libertate ejusdem fact' sive perpetrat', & quæ extunc ibidem fieri, vel attemptari contingerent qualitercunque præmiss', aut eor' aliqua concernen'. Et ad indictament' quæcunque, quæ coram Majore aut Recordatore civitatis prædictæ pro tempore existens, & hujusmodi, ut præfertur, Aldermann', vel quatuor aut pluribus eorundem, quorum dict' Major vel Recordator pro tempore existens unum esse voluit, tunc in posterum caperent' inspiciend', & ad process' inde versus omnes & singulos sic indictat', vel quos in posterum sic indictat' contingerent, quousque caperent', redderent se, vel utlagarent' faciend' & continuand', & ad omnia & singula murdra, felon', venefic', incantat', scortileg', artes magic', transgress', falsas conspiration', & al' malefact', forestall', regretar', ingrossar', extortion', conventic', indictament' prædicta, cæteraque omnia & singula præmissa secund' leges & statut' regni sui Angli', prout in hujusmodi casu fieri consuevit aut debuit, audiend' & terminand', & ad easdem delinquen', & quamlibet eorum, pro delictis suis per fines, redemption', amerciamen', forisfactur', aut al' modo, prout secundum legem & consuetud' regni sui Angli', ac formam ordination' & statut' eorundem fieri consuevit aut debuit, castigand' & puniend', ac ad omnia al' & singula faciend', exercend', audiend', terminand', & exequend' infra civitatem prædictam, ac libertatem ejusdem, quæ Justiciarius ad pacem per leges vel statut' hujus regni sui Angli' facere, exercere, inquirere, vel exequi possent & valerent, & in tam amplis modo & forma prout aliquis al', aut aliqui al' Justiciarius ad pacem in aliquibus al' comitatibus hujus regni sui Angli' legitime facere, exercere, inquirere, punire, vel quoquo modo exequi possent aut valerent, prout per easdem literas patentes (int' al') plenius apparet. Quodque prædict' Dom' Rex nunc, per literas suas patentes sub magno sigillo suo Angli' figillat', gen' dat' apud Westm' prædictam 24^o die Junii, anno regni sui decimo quinto, quas iidem Major & Communitas, ac Cives civitatis London hic incur' proferunt, omnes concession' & al' quæcunque in prædictis literis patentes, prædict' nuper Regis Caroli primi superius specificat', pro eodem Domin' Regis nunc, hæred' & successor' suis, Majori & Communitati, ac Civibus civitatis London prædictæ,

præd', & suor' successor' in perpetuum, ratificavit & confirmavit, prout per easdem literas patent' ipsius Domin' Regis nunc (inter al') plenius apparet. Et iidem Major & Communitas, ac Cives civit' London ulterius dicunt, quod tempore confectio' præd' literar' patent' præd' nuper Regis Caroli primi, & diu antea, & extrunc hucusque fuer', & adhuc existunt Major & Recordator civit' præd', ac Alderman' ejusdem civit', qui Major dictæ civit' extitissent, & onus Majorat' civit' illius sustin', ac tres & plures al' Alderman' ejusdem civit', qui onus Majorat' civit' ill' non sustinuerunt. Quodque a tempore confectio' earundem literar' patent' præd' nuper Reg' Caroli primi hucusq', Major & Recordator civit' præd' pro tempore existen', ac hujusmodi Alderman' ejusd' civitat' pro tempore existen', qui onus Majorat' civit' ill' sustin', necnon tres senior' Alderman' civit' præd' pro tempore existen', qui diutius in officium Aldermannat' civit' præd' steter', & onus & officium Majorat' civit' ill' non sustin', virtute literar' patent' ill' fuer' Justic' ad pacem infra civit' præd', & libertat' ejusdem conservand', ac virtute literar' patent' ill', & secundum formam & effectum eorund' de tempore in tempus, per tot' tempus ill', tenuer' session' pacis, & placita coron', scilicet, talia placita coron', qual' Justic' Dom' Regis ad pacem conservand' assign' per idem tempus legitime tenuer', vel tenere potuer' infra eandem civitat'.

Et eo warranto iidem Major & Communitas, ac Cives civitat' London, per tempus in informatione præd' superius specificat' usi fuer', & adhuc utuntur, ac clamant habere & uti libertat', privileg', & franch', quod Major dict' civit' & hujusmodi Aldermann' ejusdem civit', qui onus Majorat' civit' ill' sustinuer', ac inde fuerunt dimissi, ac tres seniores Aldermann' ejusdem civit', qui diutius in offic' Aldermannat' civit' præd' steter', & onus & officium Majorat' civit' ill' non sustinuer', fuer' Justic' dicti Dom' Regis ad pacem infra civit' præd' conservand', ac ad session' pacis, & placita coronæ, scilicet, talia placita coron', qual' Justic' Dom' Regis ad pacem conservand' assign' legitime tenere possent, infra eand' civit' tenend', ac ad omnes felon', riot', rout', & conventicul' illicit' infra civit' præd' inquirend', audiend', & terminand', prout eis bene licuit & licet.

Absque hoc, quod iidem Major ac Communitas, ac Cives civit' London, de libertat', privileg', & franchis' ill' super dictum Dom' Regem nunc, per tempus præd' in informatione præd' superius specificat' usurpaver', seu usurpant, prout per inform' illam pro dicto Dom' Rege nunc superius supponit'; quæ omn' & singula iidem Major & Communitas, ac Cives civit' London parati sunt verificare; unde petunt judicium, & quod libertat', privileg', & franch' ill', eis & successoribus suis in perpetuum deinceps allocentur & adjudicentur, ac quod ipsi quoad præmissa illa ab hac curia dimittantur, &c.

Et quoad resid' libertat', privileg', & franch' in informatione prædict' specificat', per ipsos Majorem & Communitat', ac Cives civitat' London superius minime clamat', iidem Major & Communitas, ac Cives civit' London libertat', privileg', & franch' illis nunquam usi fuerunt, seu utuntur, sed de eisdem penitus declamant, &c.

Et præd' Robertus Sawyer Attorn' dicti Dom' Regis nunc General', qui pro eod' Dom' Rege in hac parte sequitur, habito auditu placiti præd'

præfat' Majoris & Communitat', ac Civium civit' præd' petit inde diem loquendi usq; crastinum Sanctæ Trinitat'; & ei conceditur coram Dom' Rege ubicunque, &c. Idem dies dat' est præd' Majori & Communitat', ac Civib' civit' London præd', &c. Ad quod quidem crastinum Sanctæ Trinitat' coram Dom' Rege apud Westm' ven' tam præd' Robertus Sawyer Miles Attorn' Dom' Regis nunc General', qui pro eodem Dom' Rege in hac parte sequitur, quam præd' Major & Communitas, ac Cives civit' præd' per Attorn' suum præd'. Et idem Attorn' dicti Dom' Regis nunc General', quoad libertat', privileg', & franch' præd', per ipsos superius clamat' (viz.) ipsos Majorem & Communitat', ac Cives civitat' London fore de seipsis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, respondere ac responderi, superius placitat' pro eodem Dom' Rege nunc dic' quod per aliqua per præfat' Majorem & Communitat' ac Cives civitat' London præd' superius placitando allegat', eandem libertat', privileg', & franch' eisdem Majori & Communitat' ac Civibus civitat' London præd' allocari, seu adjudicari non debent; nec iidem Major & Communitas, ac Cives de præmiss' in Informac' præd' superius specificat' exonerari debent, quia dic', quod Cives civit' London præd' a tempore cujus contrar' memor' homin' non existit, non fuer' corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat' ac Civium civitat' London, modo & forma prout præfat' Major & Communitas, ac Cives civit' London præd' superius placitando allegaver'. Et hoc idem Attorn' dict' Dom' Regis nunc General' pro eodem Dom' Rege nunc pet', quod inquiretur per patriam. Et præd' Major & Communitas, & Cives civit' London præd' scilicet, &c. Et præd' Attorn' dict' Dom' Regis nunc General', quoad placitum præfat' Majoris & Communitat', ac Civium civit' London præd', quoad libertat', privileg', & franchis' præd' per ipsos superius clamat' (viz.) ipsos Majorem & Communitat' ac Cives civit' London fore de seipsis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, respondere ac responderi superius placitat', ulterius dic' quod per aliqua per præfat' Majorem & Communitat', ac Cives civit' London præd' superius placitando allegat' eandem libertat', privileg', & franchis' eisdem Majori & Communitat', ac Civibus civit' London præd' allocari, seu adjudicari non debent, nec iidem Major & Communitas, ac Cives de præmiss' in Informatione præd' superius specificat', exonerari debent; quia protestando, quod Cives ejusdem civitat', a tempore cujus contrar' memor' homin' non existit, non fuer' corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitatis, ac Civium civit' London, ac per idem nomen per totum tempus illud placitaver', ac implacitat' fuerunt, responder' ac respons' fuer', & placitare & implacitari, respondere ac responderi, a toto tempore supradict' usi fuer' & consuever', prout præd' Major & Communitas, ac Cives civit' London præd' superius placitando allegaverunt: pro placito tamen idem Attorn' dict' Dom' Regis nunc General' pro eodem Dom' Re-

ge nunc ulterius dic', quod præd' Major & Communitas, ac Cives civit' London præd' assu-
 mentes super se fore corpus corporat' & politi-
 cum, ac ratione inde potestatem & auctoritatem,
 habere ad seipfos insimul convocand', & assen-
 bland' ad bona & salubria leges, ordines, & ordi-
 nat', legibus & statutis hujus Regni Angl' mini-
 me repugnan' sive contrar', faciend' & constitu-
 end' pro meliori regim' & gubernat' Civit' præd'
 ac civium & inhabitant' ejusdem civitat', ac pro
 conservat' pacis Dom' Regis infra civit' præd',
 iidem Major & Communitas, ac Cives civit' Lon-
 don præd', sub colore & prætextu inde, eorum
 privatum lucrum & commodum solum respicien',
 contra fiduciam in corpore corporato & politico
 per Dom' Regem & Leges hujus Regni Angl'
 reposit', assumpser' illicitam & injustam potestatem
 & auctoritat', ad denar' de subdit' ac ligeis Dom'
 Regis nunc levand' ad usum ipsorum Majoris &
 Communitat' ac Civium civitat' London præd'
 propr', colore legum sive ordination' per ipsos de
 facto ordinat' & stabilit', absq; aliquo alio jure,
 titulo, sive auctoritate quibuscunq; ac in prose-
 cution' & execution' hujusmodi illegalis & injus-
 tæ potestat' & auctoritat' per ipsos sic usurpat',
 iidem Major & Communitas, ac Cives civitat'
 London præd', die Jovis decimo septimo die
 Septembris, Anno Regni dict' Dom' Regis nunc
 vicefimo sexto, in eorum Communi Concilio ad-
 tunc tent' in Camera Guildhall civit' London
 præd' (viz.) in Paroch' Sancti Michaelis Bassi-
 shaw London insimul assenblat' fuer', condider' &
 publicaver' quandam Legem, per ipsos de facto
 inactitat', pro levatione separalium denar' summar',
 de omnibus subdit' ac Ligeis Dom' Regis nunc,
 tam liberis quam non liberis hominibus Civit'
 præd', & aliis extraneis ad publica Mercata infra
 Civitat' præd' tent' acceden' cum victual' & provi-
 sionibus suis ibidem vendend' (viz.) de qualibet
 persona pro quolibet onere equino (Angl' *Horse-
 load*) provision' in aliquod public' Mercat' infra
 Civit' præd' per ipsum importat' ibidem vendend',
 duorum denar' per diem, & pro qualibet canistra
 (Angl' *Doffer*) provision' in aliquod Mercat' præd'
 ibidem vendend' importat' unius denar' per diem,
 & pro qualibet caretata provision' tract' cum
 non plur' quam tribus equis in aliquod Mercat'
 præd' ibidem vendend' importat', quatuor denar'
 per diem, & pro qualibet caretata provision'
 tract' cum quatuor equis vel plur' in aliquod
 Mercat' præd' ibidem vendend' importat', sex denar'
 per diem, ac diversarum al' denar' sum' de
 quibuslibet personis, quæ aliqua victualia sive provi-
 sion' ad Mercat' infra civit' London præd',
 seu eorum aliqua vel aliquod importarent ibidem
 vendend', ac per eandem legem sic per eos ille-
 galit' fact' iidem Major & Communit' ac Cives ci-
 vit' London præd' de facto ordinauer', quod eæ-
 dem separal' denar' summæ solut' forent ad propr'
 opus & usum præfat' Majoris & Communitat',
 ac Civium civit' London præd', ac quod si aliquis
 in Mercat' præd' existen' cum victual' sive provi-
 sionibus suis ibidem vendend' recusaret, sive dif-
 ferret solvere respectivas ratas præd', tunc talis re-
 cusans sive differens amot' foret a loco suo Mercat'
 præd'. Et ulterius idem Attorn' dict' Dom' Re-
 gis nunc General' pro eodem Dom' Rege nunc
 dic', quod præd' Major & Communitas, ac Cives
 civit' London præd' sub solo colore & prætextu
 legis præd', sic per ipsos pro eorum privato lucro
 & commodo illegalit' fact', & absq; aliquo alio
 jure, titulo, sive auctoritate quibuscunq; diversas
 ingentes denar' Summas, in toto sc. attingen' ad

quinq; mille libras per annum, per spatium sep-
 tem annorum post præd' decimum septimum di-
 em Septembris, Anno vicefimo sexto supradiçto
 prox' sequen', & amplius, apud London præd'
 in Paroch' præd', de omnibus Dom' Regis ligeis
 & subditis ad publica Mercata per totum spatium
 præd' infra Civit' præd' tent', cum victualibus &
 provisionibus ibidem vendend' accedentibus, exe-
 gerunt, levaver', & exigi & levari fecerunt, &
 denarios illos ad eorum proprios usus converte-
 runt & disposuerunt, in subversionem boni regi-
 minis & gubernationis Civitatis præd', & in mag-
 nam oppressionem & depauperation' subditor'
 dic' Dom' Regis nunc ad Mercat' prædiçt' cum
 victualibus & provision' suis acceden' & venien',
 ad grave dampn' & nocument' omnium Ligeo-
 rum & Subdit' dict' Dom' Regis, in augmentac'
 preciorum omnium victual' & provision' in Mer-
 catis præd' vendit', ac in dict' Dom' Regis nunc
 & Coronæ suæ Regiæ exhæredation' manifestam,
 ac contra fiduciam in corpore corporat' & politi-
 co per Dom' Regem ac Leges hujus Regni
 Angl' reposit'. Et ulterius idem Attorn' dicti
 Dom' Regis nunc General' pro eodem Dom'
 Rege nunc dic', quod ubi Sessio Parliamenti Dom'
 Regis nunc per Prorogation' tent' fuit apud
 Westm' in Com' Middlesex super vicefimum
 primum diem Octobris, anno Regni dicti Dom'
 Regis nunc tricesimo secundo, ac ibidem con-
 tinuat' usq; decimum diem Januar' tunc prox'
 sequen', ac super eodem decimo die Januarii,
 anno Regni dict' Dom' Regis nunc tricesimo se-
 cundo supradiçt' apud Westminst' præd' idem
 Parliamentum prorogat' fuit per dict' Dom' Re-
 gem nunc usq; vicefimum diem tunc instantis
 Januar', præd' Major & Communitas, ac Cives ci-
 vitat' London præd' postea scil' die Jovis decimo
 tertio die Januar' anno Regni dict' Dom' Regis
 nunc tricesimo secundo supradiçt', in eorum Com-
 muni Concilio tent' in Camera Guildhall Civit'
 præd', viz. in Paroch' Sancti Michaelis Bassishaw
 London præd' assenblat', illicite, malitiose, advi-
 sate, & seditiose, & absq; aliqua legali auctoritate
 in se assumpser' ad censend' & judicand' dict'
 Dom' Regem nunc, & Prorogation' Parliamenti
 per dict' Dom' Regem nunc sic fact'. Ac adtunc
 & ibidem iidem Major & Communitas ac Cives
 civitat' London, sic in eodem Communi Conci-
 lio assenblat', vota & suffragia sua deder' & or-
 dinaver', quod quædam Petitio sub nomine Ma-
 joris, Aldermannorum & Commun' civit' Lon-
 don in Communi Concil' assenblat', dicto Dom'
 Regi nunc exhibit' foret, in qua quidem Petiti-
 one content' fuit, quod per præd' prorogation'
 Parliamenti præd' prosecutio Justic' publicæ hu-
 jus Regni ac præparatio (Angl' *the making pro-
 vision*) necessar' pro præservation' dicti Dom' Re-
 gis nunc, ac ejus subditorum protestantium rece-
 pissent obstruction' (Angl' *Interruption*) & iidem
 Major & Communitas ac Cives civitat' London,
 præd', in Communi Concilio præd', sicut præ-
 fertur, assenblat', illicite, malitiose, advisate, &
 seditiose, & ea intentione, quod eadem Petitio
 publicat' & dispersa foret inter subditos dict'
 Dom' Regis nunc fideles ad ipsos in opinion'
 inducend', quod idem Dom' Rex nunc per pro-
 rogation' Parliamenti præd' publicam Justic'
 Regni obstruxisset, & ad eosdem Subditos dict'
 Dom' Regis incitand' in odium personæ dict'
 Dom' Regis, & gubernation' in hoc regno sta-
 bilit', & ad perturband' pacem & tranquillit' in
 hoc Regno Angl' adtunc & ibidem ordinauer',
 quod eadem Petitio sic continen' seditiosam &
 scandæ-

scandalosam materiam præd' impress' foret, ac postea scil' die & anno ult' supradict', apud London præd' in Paroch' præd' eandem Petition' ea intentione, quod eadem publicat' & dispers' foret inter subdit' dict' Dom' Regis nunc ad affectiones suas a dict' Dom' Rege nunc & gubernation' sua alienand' & divertend', malitiose, advifate, & seditiose, impresser' & imprimi & publicari fecer' & causaver', in contempt' & scandalum dict' Dom' Regis nunc ac gubernation' suæ hujus Regni Angl', ac in promotion' & excitation' seditionis, & perturbation' pacis & tranquillitat' infra hoc Regnum Angl', & in perniciosum aliorum Dom' Regis nunc Subdit' & Ligeorum exemplum, per quod idem Major & Communitas ac Cives civitat' London præd' libertat', privileg', & franchis', præd' fore de seipsis corpus corporat' & politicum, per nomen Majoris & Communitat' ac Civium civitat' London forisfecer', præd' tamen Major & Communitas ac Cives civitat' London præd' postea, scil' per tempus superius in Informatione præd' specificat', libertat', privileg' & franchis' ill' super dict' Dom' Regem nunc usurpaver' & adhuc usurpant, prout per Information' præd' superius versus eos supponitur. Et hoc idem Attorn' dict' Dom' Regis nunc General' pro eodem Dom' Rege nunc parat' est verificare, unde petit judicium, & quod præd' Major & Communitas ac Cives civitat' London de præmiss' præd' convincantur, ac de libertat', privileg' & franchis' ill' abjudicentur & excludantur, &c. Et quod placitum præfat' Majoris & Communitat' ac Civium civitat' London præd', quoad libertat', privileg' & franchis' præd' per ipsos superius clamat' (viz.) ipsos habere Vicecom' Civit' & Com' civit' London, & Vicecom' Com' Midd', & nominare & eligere ex seipsis duas personas fore Vicecom' Civit' præd', & Com' ejusdem Civit', & Vicecom' Com' Midd', ac illos sic nominat' & elect' præficere & constituere Vic' Civit' præd' & Com' ejusdem Civit', & Vic' Com' Midd', ac ut Vicecom' Civitat' præd' & Com' ejusdem Civitat' ad execution' & return' omnium brevium, billarum & præcept' Dom' Regis pro Administration' & Execution' Justiciæ infra Civit' præd' & Com' ejusdem Civit', exequend' & faciend' quæ ad Officium Vic' faciend' pertinent, ac ad faciend' & exequend' omnia & singula alia infra Civit' præd' & Com' ejusdem Civit', quæ ad Officium Vicecom' faciend' pertinent, ac Vicecom' Com' Middlesex pro eod' Com' deservitur, ac omnia brevia, billas, & præcept' Dom' Regis infra Com' Middlesex præd' pro Administratione & Executione Justiciæ ibidem exequend' & return' inde faciend', quæ ad officium Vic' faciend' pertinent, superius placitat': Necnon quoad placitum præfat' Majoris & Communitat' ac Civium civitat' London præd', quoad libertat', privileg' & franchis' per ipsos superius clamat' (viz.) Major dict' Civitat' & hujusmodi Alderman' ejusdem Civitat', qui Officium Majorat' Civit' illius sustinuer', ac inde fuer' dimissi, ac tres Alderman' fen' Civit' præd', qui diutius in officio Alderman' Civit' præd' steter'; & onus & officium Majorat' Civit' præd' non sustinuer', fore justiciar' Dom' Regis ad pacem infra Civit' præd' conservandam, ac ad Session' pacis & placita Coronæ (scilicet) talia placita Coronæ, qual' Justiciar' Dom' Regis ad pacem conservand' assign' legitime tenere possent, infra eandem Civitat' tenend', ac ad omnia Felon', Riot', Rout' & Conventicul' illicit'

infra Civitat', præd' inquirend', audiend', & terminand' superius placitat', idem Attorn' Dom' Regis nunc General', qui pro eodem Dom' Rege in hac parte sequitur, pet' licenc' inde interloquend' coram Dom' Rege usq; a die Sancti Michaelis in tres septimanas ubicunq; &c. Et ei conceditur, &c. idem dies dat' est præfat' Major' & Communitat' Civibus civit' London præd', &c.

Et præd' Major & Communitas, ac Cives civitat' London, quoad præd' placit' præd' Attorn' dicti Dom' Regis nunc generalis, in assign' forisfactur' libertat', privileg', & franchis' sequen', videlicet, ipsos Majorem & Communitat', ac Cives civitat' London, fore de seipsis unum corpus corporat' & politicum in re, fact'o, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, respondere ac responderi, per ipsos superius clamat', superius replicando placitat' protestando, quod placit' illud, ac materia in eodem content', minus sufficien' in lege existunt ad ipsos Major' & Communitat', ac Cives civitat' London, de libertat', privileg', & franchis' illis abjudicand' sive excludend'; protestando etiam, quod nullus actus vel factum, neque aliqua ordinatio (Angl' *By-Law*) per Commune Concilium, vel per Majorem, Aldermannos, & Commune Concilium civitat' præd' confect', est actus vel factum corporis corporat' & politici præd'; protestandoq; etiam, quod ipsi præd' Major' & Communitas, ac Cives civitat' London, contra fiduciam in eis reposit', nunquam assumpser' super se aliquam illicitam vel injustam potestatem, ad denar' de subditis & ligeis Domini Regis levand' ad privat' lucrum & commodum ipsor' Majoris & Communitat', ac Civium civitat' London, colore legum sive ordinationum per ipsos fact' sive ordinat', prout præd' Attorn' dicti Dom' Regis nunc generalis, pro eodem Dom' Rege superius suppon'; protestandoque ulterius, quod iidem Major & Communitas, ac Cives civitat' London non levaver' seu exeger' tantas denar' summas per annum, de personis ad publica mercata infra civitat' præd' tent', cum victualibus & provisionibus ibidem venden' acceden', quant' dictus Attorn' generalis pro eodem Domino Rege superius allegavit. Pro placito tamen, quoad confectio' & publication' legis pro levatione denarior' de personis ad publica mercata infra civitat' præd' tent', cum victualibus & provisionibus ibidem venden' acceden', ac exactionem & levation' hujusmodi denar' superius fieri supposit', iidem Major & Communitas, ac Cives civitat' London dicunt, quod Civitas London præd' est, & a tempore cujus contrar' memoria hominum non existit, fuit summa & capitalis civitas & metropolis, ac principalis portus hujus regni Angl', & in civibus & inhabitantibus maxime populosa, & in concursu hominum tam ligeor' Dom' Regis, quam extraneor' copiosissima, emporiumque totius Europæ celeberrimum; quodq; habentur & tenentur, & a tempore cujus contrar' memoria hominum non existit, habebantur & tenebantur publica mercata infra civitat' præd' pro victualibus & provisionibus adinde adduct' ibidem vendend'; quodque ipsi præd' Major & Communitas, ac Cives civitat' London præd', decimo septimo die Septembris, anno vicesimo sexto supradicto in replicatione præd' mentionat', necnon continue postea, & a tempore cujus contrar' memoria hominum non existit, seizit' fuer', & adhuc seizit' existunt, de & in publicis mercatis præd' in Dom'

Dom' suo, ut de feodo, ac per totum idem tempus sumptibus suis propriis provider', ac providere consuever' & debuerunt, fora mercatoria, sive loca ubi hujusmodi mercata tent' fuer', quotiescunque necesse fuit, & stallas, stationes, & al' accommodationes pro personis ad eadem mercata venien' cum victualibus & provisionibus ibidem vendend', pro meliori & magis convenien' venditione & expositione eorundem, & supervisores, & alios officarios mercatorum illorum, pro præservatione boni ordinis in eisdem mercatis, & meliori regulatione eorundem, & magni concursus populi adinde confluen', ac emundaverunt, & emundare consueverunt & debuerunt, fora mercatoria prædicta, & pro sustentatione dictorum sumptuum suorum per totum tempus prædictum habuer' & perceper', ac habere & percipere consuever', diversas rationabiles tolnet', ratas, sive denariorum summas de quibuscunque personis ad mercata præd', sicut præfertur, venien', pro stallis, stationibus, & aliis accommodationibus per eas pro venditione, expositione hujusmodi victualium & provisionum in mercatis illis habit'. Et iidem Major & Communitas, ac Cives civitat' London ulterius dicunt, quod cives & liberi homines civitatis præd', prædicto decimo septimo die Septembris, anno vicesimo sexto supradictò, & semper fuer', & adhuc existunt valde numerosi, videlicet, quinquaginta mille homines, & plur'; quodque infra dictam civitat' London, videlicet, apud præd' Parochiam sancti Michaelis Bassishaw, a tempore cujus contrar' memoria hominum non existit, habebatur & fuit Commune Concilium ejusdem civitatis, de tempore in tempus, quoties necesse fuit, in eadem civitate assensu, consistens de Majore & Alderman' dictæ civitatis pro tempore existen', ac de quibusdam Civibus existen' liberis hominibus civitatis illius, non exceden' numerum ducentar' & quinquagintar' personarum, e civibus & liberis hominibus civitat' præd' annuatim elect', fore de Communi Concilio illo, qui quidem Cives sic elect' in hujusmodi Communi Concilio vocantur Communiarii (Angl' *Commons*) civitat' London. Quodque infra civitat' præd', videlicet, apud præd' parochiam sancti Michaelis Bassishaw, habetur & existit, & a tempore cujus contrar' memoria hominum non existit, habebatur & fuit talis consuetudo usitat' & approbat', videlicet, quod Major & Alderman' dict' civit', ac hujusmodi Cives sic elect' fore de Com' Conc' ejusdem civitatis pro tempore existen', in Communi Concilio suo infra civitat' ill' assensu, a toto tempore supradictò, secundum consuetudinem civitat' præd', fecer' & constituer', ac facere & constituere consuever' & possunt, ac potuer', leges & ordinationes pro meliori regulatione & gubernatione publicor' mercator' infra civitat' præd', ac pro appunctuatione convenien' locor' & tempor', quando & ubi infra eandem civitat' mercata illa tent' fuerint, & pro assensu, & in certitudin' reductione rationabilium tolnet', ratar', sive denar' summarum solvend' per personas ad eadem mercata venien', pro stallis, stationibus, & aliis accommodationibus per eas pro venditione, expositione victualium & provisionum in mercatis illis habit', quoties & quando eis videbitur expediri; dum tamen leges & ordinationes hujusmodi Dom' Regi & populo suo sint bonæ fidei, & rationi consonæ, ac legibus & statut' hujus regni Angl' minime contrar'. Quodque in Magna Charta de libertatibus Angl', in parlamento

Dom' Henrici quondam Regis Angl' tertii, apud Westm' in Com' Middlesex, anno regni sui nono tent', edit' & provis', continetur, quod civitas London habeat omnes libertates suas antiquas, & consuetudines suas; & iidem Major & communitas, ac Cives civitat' London ulterius dicunt, quod Dom' Edwardus quondam Rex Angl' tertius, in parlamento suo apud Westm' in com' Midd', anno regni sui primo tent', per quandam chartam suam de assensu Prælator', Comitum, Baronum, ac totius Communitatis regni sui, in eodem parlamento suo apud Westm' præd' convocat' existen', ac autoritate ejusdem parlamenti, confirmavit tunc Civibus civitat' London præd' libertates subsequen' (inter alia) habend' sibi & successoribus suis in perpet', imprimis recitando, quod cum in Magna Charta de libertatibus Angl' contineatur, quod civitas London habeat omnes libertates suas antiquas, & consuetudines suas, & quod iidem Cives tempore confectionis dictæ chartæ, ac temporibus sancti Edwardi Regis & Confessoris, & Will' Conquestoris, & al' progenitor' dicti Regis Edwardi tertii, diversas libertates & consuetudines, tam per chartas ipsor' progenitorum suorum, quam sine chartis ex antiqua consuetudine habuissent, voluit & concessit idem Rex Edwardus tertius pro se, & hæredibus suis per chartam ill', autoritate præd', quod iidem Cives haberent libertates suas secundum formam Magnæ Chartæ supradict', prout per eandem chartam geren' dat' apud Westm' præd' sexto die Martii, anno Regni dicti Regis Edwardi tertii primo supradictò, sub magno sigillo suo Angl' sigillat', hic in cur' prolat' (inter alia) plenius apparet. Et iidem Major & Communitas, ac Cives civitat' London ulterius dicunt, quod ad instant' & requisitionem Communitatis regni Angl' in parlamento Dom' Richardi nuper Regis Angl' secundi post Conquest', apud Westm' præd' anno regni sui septimo tent', assensu, pro majori quiete & pace inter ligeos ejusdem nuper Regis fovend', & pro bono publico, omnes consuetudines, libertates, privileg', & franchis' civitat' præd' tunc Civibus civitat' præd', & eorum successoribus, autoritate ejusdem parlamenti ratificat' & confirmat' fuer'. Quodque prædictus Dominus Rex nunc, per literas suas patentes sub magno sigillo suo Angl' sigillat', geren' dat' apud Westm' præd' vicesimo quarto die Junii, anno regni sui decimo quinto, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt pro ipso Rege, hæred' & successoribus suis, ratificavit & confirmavit Majori & Communitati, ac Civibus civitat' London, & successoribus suis, omnia & singula jurisdictiones, autoritat', privileg', libertates, franchis', quietantias, immunitates, & consuetudines quæcunque, quæ præfat' Major & Communitas, ac Cives civitat' London, vel prædecessores sui, per nomen Majoris & Communitat', ac Civium civitat' London, seu per nomen Majoris, Alderman', Civium & Communitat' London, seu per nomen Majoris & Civium civitat' London, seu per nomen Major' & Communitat' civitat' London, seu per nomen Civium civitat' London, seu per nomen Baron' London, seu per nomen Baron' civitat' London, seu per aliquod aliud nomen quodcunque ratione vel vigore literar' patent', chartar', seu confirmation' in eisdem literis patentibus dicti Dom' Regis nunc præmentionat', vel alicujus seu aliquor' usus vel usuum, præscriptionis vel præscriptionum, seu alio legali modo quocun-

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que, aliquo tempore, vel aliquibus temporibus ante tunc habuissent, seu rationabiliter usi fuissent, aut exercuissent, habend', tenend', gaudend', & exercend' omnia & singula præmiss' præd' eisdem Majori & Communitati, ac Civibus civitat' London præd', & successoribus suis in perpetuum, adeo plene, libere, & integre, ac in tam amplis modo & forma, prout in iisdem literis patentibus superius mentionantur fore data sive concessa, aut aliter usu, præscript', vel alio legali modo, seu jure quocunque ante tunc respective habit', obtent', sive gavisâ fuissent, ac si separatim, singulatim, & nominatim in & per dictas literas patentes ipsius Dom' Regis nunc express', nominat', declarat', concess', & manifesta essent & fuissent, prout per easdem literas patentes (inter alia) plenius apparet. Et iidem Major & Communitas, ac Cives civitat' London ulterius dicunt, quod post magnam illam conflagration' maximæ partis civitat' London præd', quæ fuit in mense Septembris, anno Dom' millesimo sexcentesimo sexagesimo sexto, ac alteration' in civit' & mercat' præd' perinde occasionat', diversæ controversiæ, & quæstiones ortæ fuer' infra eandem civitat' de & concernen' stabilition' publicorum mercator' infra civit' ill', & denar' summar' per ligeos Dom' Regis pro victualibus & provisionibus in mercatis illis venditioni exposit' solubil', ac superinde præd' die Jovis decimo septimo die Septembris, anno regni dicti Dom' Regis nunc vicefimo sexto supradiçto, quidam Will' Hooker Miles, tunc Major civitat' præd' & Alderman', dictæ civitat', ac Communiarii, sive Cives de Comuni Concilio ejusdem civitatis, tunc existen' in Comuni Concilio suo infra eandem civitat' (scil' in præd' camera Guildhall civitatis illius, situat' in præd' parochia sancti Michaelis Bassishaw) ad tunc assemblat' secundum consuetudinem dictæ civitat', ac autoritate ejusdem Communis Concilii, fecer', constituer', & publicaver' quendam actum, sive ordination' pro meliori regulatione & gubernatione publicorum mercator' infra civitat' præd' tent', intitulat', *An Act for the Settlement and well ordering of the severall publick Markets within the City of London*; per quem quidem actum sive ordination' (inter alia) recitando, quod cum pro accommodation' populi mercat' (Angl' of *Market People*) cum stallis, afferibus, tectur' (Angl' *Shelter*) & aliis hujusmodi rebus necessariis, pro eor' stationibus in aliquibus mercat' infra civitat' ill', ac pro emundand', paviment', escurant', & munda custodiend' eadem, ac etiam pro sustinendo (Angl' *defraying*) inciden' onera reparationis & manutentionis dictorum mercator', & similiter ad gratificand' & munerand' curam & attendentiam talium personarum, qual' forent occupat' in eisdem, quædam rationabiles ratæ pro dict' accommodationibus & oneribus semper solut' fuissent; & ad intentionem quod dictæ ratæ forent certe & publice factæ omni populo mercatorio (Angl' *Market People*) per quod personæ, quæ extunc per ordinem illius cur' Com' Concilii occupat' forent, tanquam collectores vel receptores earundem ratar', prævenirentur a demandando, exigendo, seu recipiendo plus quam allocat' fuit per actum sive ordination' ill', ordinat' & inactitat' fuit autoritate ejusdem Com' Concilii (inter alia) quod omnes & quælibet persona & personæ, ad aliquod dict' mercator' accedend' ad commoditates suas vendend' & utterand', extunc solverent tali personæ seu personis, quales fuer' vel forent de tempore

in tempus appunctuat' ad capiend' & recipiend' proficua omnium, vel aliquor' dictor' mercator', ad usum Majoris & Communitat', ac Civium civitat' London, de & ab omni populo mercatorio adinde acceden', pro stallis, stationibus, & aliis accommodationibus suis in separal' mercatis præd', ut præfertur, secundum ratas sequen', & non amplius; videl', pro qualibet stalla sive station' de longitudine octo pedum, & latitudine quatuor pedum, pro venditione carnis aut piscis, duos solid' & sex denar' per septimanam; pro qualibet stalla sive statione de longitudine sex pedum, & latitudine quatuor pedum, duos solid' per septimanam; pro qualibet stalla sive statione de longitudine sex vel octo pedum, & latitudine quatuor pedum, pro aliis commoditatibus, tres denar' per diem; pro quolibet onere equino provision' non super stallas, vel sub publica tectur' (Angl' *Shelter*) duos denar' per diem; pro qualibet canistra (Angl' *Doffer*) consimilis provision', un' denar' per diem; pro qual' caretat' tract' cum non plur' quam tribus equis, quatuor denar' per diem; & pro qualibet caretat' tract' cum quat' equis vel pluribus, sex denar' per diem. Ac ulterius ordinat' & inactitat' fuit dicta autoritate, quod collectores aut receptores appunctuat' vel appunctuand', ut præfertur, haberent potestatem super obstinata denegatione seu dilatione alicujus populi mercatorii, ad solvend' respectivas ratas præd', illos ab eorum respectivis stationibus & locis amovere & dislocare. Et iidem Major & Communitas, ac Cives civitat' London ulterius dicunt, quod eadem ratæ per actum sive ordinationem ill', ut præfertur, solvi ordinat', præd' tempore confectiois ordinationis illius, & extunc hucusque fuerant rationabiles, & adhuc rationabiles existunt; quodque ratæ & denariorum summæ per eundem actum sive ordinationem solvi ordinat', sunt omnes ratæ, tolnet', & denarior' summæ pro victualibus & provisionibus in mercat' præd' vendit', seu venditioni exposit' per aliquas personas a dicto tempore confectiois ejusdem ordinationis hucusque, ad usum Majoris & Communitat', ac Civium civitat' London solubil' & solut', quas quidem ratas sic solvi ordinat', & null' alias, iidem Major & Communitas, ac Cives civitat' London, a tempore actus sive ordinationis illius, ut præfertur, fact', hucusque exeger' & perceper' secundum formam & effectum ejusdem actus sive ordinationis; qui quidem actus sive ordinatio est eadem lex per ipsos Majorem & Communitat', ac Cives civitat' London superius de facto inactitat' & publicat', supposit' in præd' placito præd' Attorn' generalis superius replicando placitat' spec'; absque hoc, quod aliqua lex, actus, sive ordinatio pro levatione denar' præd' de personis ad mercata præd' accedent' cum victualibus & provisionibus ibid' vendend', inactitat' fact', sive publicat' fuit aliter, vel alio modo, quam iidem Major & Communitas, ac Cives civitatis London superius allegaver', prout idem Attorn' generalis pro dicto Dom' Rege nunc superius suppon', & hoc parat' sunt verificare. Et quoad resid' præd' placiti præd' Attornat' generalis in assign' forisfactur', ut præfertur, superius replicando placitat', iidem Major & Communitas, ac Cives civitat' London dicunt, quod vicefimo quarto die Aprilis, anno regni dicti Dom' Regis nunc tricesimo, & per diversos annos tunc ult' elapsos, ac post eundem vicefimum quartum diem Aprilis, infra hoc regnum Angl', & alibi, videlicet, apud London præd',
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in præd' parochia sanct' Michaelis Bassishaw, proditoria & execrabilis conspiratio & conjuratio machinat' & profecut' fuit per Papistas (Angl' *Papists*) ad interficiend' & murdrand' Dom' Regem nunc, & ad alterand', mutand', & subvertend' antiquas gubernation' & leges ejusdem regni, & ad supprimend' veram religionem in eodem stabilit', & ad extirpandum & destruendum professores ejusdem religionis; quæ quidem conspiratio & conjuratio machinat' & profecut' fuer', & diversis locis, & per separal' vias & media, ac per magnum numerum personarum separal' qualitat' & graduum, quæ agebant & se occupaver' in eisdem, ad exequend' & perimplend' prædicta scelerata & proditoria machinationes & proposita; quodque postea, scilicet, vicesimo septimo die Septembris, anno tricesimo supradicto, Edmund-Bury Godfrey, Miles, tunc unus Justiciar' Dom' Regis ad pacem in com' Midd' conservandum assignat', secundum officii & juramenti sui debitum, apud parochiam sancti Martini in campis, in eodem comitat' Midd', cepit examination' & information' de præfat' conspiratione & conjuratione, ac information', quod magna illa conflagratio maximæ partis civitatis London, quæ fuisset in mense Septembris, anno Dom' millesimo sexcentesimo sexagesimo sexto, fact' fuit per Papistas; posteaque per advisamentum, assensum, consilium, instigationem, & procurationem aliquorum dictorum conspiratorum, diversæ personæ in insidiis jacuer' & insecut' fuerunt præfat' Edmund-Bury Godfrey diversis diebus, ea intentione, ad ipsum murdrand', videlicet, apud parochiam sanct' Mariæ le Savoy, in dicto comitat' Midd'; quod quidem murdrum postea, scil', duodecimo die Octobris, anno tricesimo supradicto, apud eandem parochiam, per eos perpetrat' & effectum fuit; ac perpetrat' & effectum fuit ea intentione, ad supprimendum examination' & information', quas ipse, ut præfertur, cepisset, & ad deterrend' & intimidand' magistrat' & al' ab agendo in ulteriori detectione conspirationis & conjurationis præd'; pro quo quidem murdro quidam Robertus Green,

Girald Clericus, Henricus Bury, Laurencius Hill, Dominic Kelley, & Filibertus Vernat, postea (scilicet, termino sanct' Hilarii, annis regni dict' Dom' Regis nunc tricesimo, & tricesimo primo) in curia Dom' Regis coram ipso Rege apud Westm', in dicto com' Midd', per quandam jurat' præd' ejusdem com' Midd', debita juris forma indictat' fuerunt; ad quod quidem indictamentum, postea (scilicet, eodem termino) præd' Robertus Green, Henricus Bury, & Laurencius Hill, separatim placitaver', quod ipsi non fuer' inde culpabiles, & de eo posuer' se super patriam; ac postea, scilicet, eodem termino sanct' Hilarii, in eadem cur' apud Westm' præd', pro dict' feloniam & murdro per jurat' patriæ præd', in debita juris forma triati fuerunt, & inde legitime convicti & attincti, prout per record' inde in eadem curia Dom' Regis coram ipso Rege apud Westm' præd' residen' plenius apparet. Quodque pro altis proditoribus & proditoriis conspirationibus & conjurationibus præd' quidam Edwardus Coleman & Willielmus Ireland, Thomas Pickering & Johannes Grove, ac Thomas White alias Whitebread, Willielmus Harcourt alias Harrison, Johannes Fenwick, Johannes Gavan, & Antonius Turner, ac Richardus Langhorn, Arm', existen' Papistæ, & superstition' Romanam profitentes ante præd' decimum

tertium diem Januarii, anno tricesimo secund^o supradicto, debito modo, & secundum legis hujus regni Angl' formam triat', convicti & attincti fuer' (scil', præd' Edwardus Coleman termino sanct' Michaelis, anno regni Dom' Regis nunc tricesimo, in cur' Dom' Regis coram ipso Rege; eadem cur' apud Westm' in com' Midd' ad tunc & adhuc existen') prout per recordum & processum inde in eadem cur' residen' plenius apparet; ac præd' Willielmus Ireland, Thomas Pickering, & Johannes Grove, ad deliberation' gaolæ Dom' Regis de Newgate, tent' pro dicto com' Midd' apud Justice Hall in le Old Baily, in suburbiis dictæ civitatis London, in mense Decembris, anno tricesimo supradicto, prout per recordum & processum inde in custod' Custodis Rotulorum dict' com' Midd' reman' plenius apparet; ac præd' Thomas White alias Whitebread, Johannes Fenwick, Willielmus Harcourt alias Harrison, Johannes Gavan, & Antonius Turner, ad deliberationem gaolæ Dom' Regis de Newgate, tent' per adjournament' pro com' Midd' præd', apud præd' Justice Hall in le Old Baily, in suburbiis civitatis London, die Veneris decimo tertio die Junii, anno regni dict' Dom' Regis nunc tricesimo primo, prout per recordum & processum inde in custodia dict' Custodis Rotul' ejusdem com' Midd' remanen' plenius apparet; & præd' Rich' Langhorn ad deliberationem gaolæ Dom' Regis de Newgate, tent' per adjournament' pro dict' civit' London apud Justice Hall in le Old Baily, in parochia sanct' Sepulchri, in warda de Farrington extra London, die Sabbati decimo quarto die Junii, anno tricesimo primo supradict', prout per record' & process' inde in custod' Custodis Rotul' dict' civitat' London remanen' plenius apparet: quodque Willielmus comes Powis, Willielmus vicecomes Stafford, Henricus dom' Arundel de Wardor, Willielmus dom' Petre, & Johannes dom' Bellasis, tricesimo die Novembris, anno regni dict' Dom' Regis nunc tricesimo supradict', apud Westm' præd' in præd' com' Midd' de altis proditoribus, & proditoriis conspirationibus & conjurationibus præd' legitime accusati, & super inde prisonæ Dom' Regis, scil', Turri London commiss' fuer', ibidem salvo custodiend', ac in custodia sic existen' idem Williel' comes Powis, Williel' vicecomes Stafford, Henricus dom' Arundel de Wardor, Willielmus dom' Petre, & Johannes dom' Bellasis, ad session' parlamen' dict' Dom' Regis nunc, apud Westm' præd' decimo quinto die Martii, anno regni sui tricesimo primo, per prorogation' tent' per Communes hujus regni Angl' in eodem parlamento assemblat', coram Magnatib' & Procerib' ejusdem regni in parlamento illo convocat' & convent', de eo quod per multos annos tunc ult' præterit' proditoria & execrabilis conspiratio & conjuratio infra hoc regnum Angl', & alibi machinat' & profecut' fuit per Papistas, ad alterand', mutand', & subvertend' antiquas gubernation' & leges hujus regni & nationis, & ad supprimend' veram religionem in eisdem stabilit', & ad extirpand' & destruend' professores inde; quæ quidem conspiratio & conjuratio machinat' & profecut' fuisset in diversis locis, & per separal' vias & media, & per magnum numerum personar' separal' qualitat' & graduum, quæ agebant in eisdem, & intendebant per inde ad exequend' & consummand' præd' scelerat' & proditorias machinationes & proposita. Quodque die Willielmus comes Powis, Willielmus vicecomes

Stafford, Henricus dom' Arundel de Wardor, Willielmus dom' Petre, & Johannes dom' Bellasis, simul cum Phil' Howard, communiter voc' Cardinal de Norf. Thoma White alias Whitebread, com' voc' Provincial' Jesuitar' in Anglia, Rich' Strange nuper voc' Provincial' Jesuitar' in Anglia, Vincent, com' voc' Provincial' Dominicor' in Anglia, Jacobo Cooper com' voc' Præfident' Benedictinor', Johanne Warner alias Clare Baronetto, Williel' Harcourt, Johanne Keins, Nicho' Blundel, Pool, Edwar' Mico, Thoma Bedinfield alias Benefield, Basil' Langworth, Carolo Peters, Rich' Peters, Joan' Conyers, Dom' Georgio Wakeman (Anglice *Sir George Wakeman*) Thoma Fenwick, Dominick Kelly, Fitz-Gerald, Evers, Dom' Thoma Preston (Anglice *Sir Thomas Preston*) Willielm' Lovel, *Jesuitis*, Dom' Baltemore, Johanne Carrel, Johanne Townly, Rich' Langhorn, Willielm' Fogarty, Thoma Penny, Matthæo Medbourne, Edward' Coleman, Willielm' Ireland, Johanne Grove, Thoma Pickering, Johanne Smith, & diversis aliis *Jesuitis*, sacerdotib', fratrib' (Angl' *Friers*) & aliis personis, ut falsi proditores Dom' Regi nunc, & huic Regno infra Tempus ult' præd' proditorie consulissent, machinat' fuissent & egissent, ad & pro consummatione dict' improbar' perniciosar' & proditoriar' machination', & ea de causa nequissime & proditorie agreassent, conspirassent, & determinassent imprisonare, deponere, & murdrare sacram Majestatem Dom' Regis nunc, & ipsum de regali statu, corona, & dignitate suis deprivare, & per maliciosam & advifat' Locutionem, Scriptionem, & alit' declarassent tal' sua proposita & intentiones, ac etiam hoc Regnum & Nationem Papæ & tyrannicæ suæ Gubernationi subdicere, & status & hæreditates Protestant' subdit' Dom' Regis seizare, & int' sese partiri, ac erigere & restituere Abbatias, Monasteria, & al' Convent' & Societates, quæ dudum per Leges hujus Regni pro superstitione & idololatria suis suppress' fuissent, & eis tradere & restituere terras & possessiones in Dom' Rege nunc & subditis suis per Leges & Statuta hujus Regni vestit', ac etiam nova Monasteria & Conventus fundare & erigere & omnes Protestant' Episcopos, & al' personas Ecclesiasticas ab officiis, beneficiis, & promotionib' suis amovere & deprivare, & eodem modo personam Dom' Regis nunc destruere, Protestantem Religionem extirpare, jura, libertates & proprietates omnium probor' subditor' Dom' Regis evertere, legalem gubernationem hujus Regni subvertere, & idem Tyrannidi sedis Romanæ subdicere. Quodq; dic' Conspiratores & eorum participes & confederatores proditorie habuissent & tenuissent separales conventiones, assemblationes, & consultationes, in quibus inter eos machinat' & designat' fuissent, quæ media uterentur, & quæ personæ & Instrumenta impens' forent ad Dom' Regem nunc murdrand', & ad tunc & ibidem determinassent id efficere per venefic', displosionem (Angl' *Shooting*) perforationem (Angl' *Stabbing*) vel aliqua tal' vias & media, & obtulissent munera & promissiones de advantag' separalib' personis ad idem exequend', ac conduxissent & impendissent separales improbas personas ire ad Windfor, & alia loca ubi Dom' Rex residebat, ad ipsum Dom' Regem murdrand' & destruend', quæ quidem personæ, seu earum aliqu' talia munera acceptassent, & perpetracionem inde suscepissent, & actualit' &

dic' loca intentione & proposito ill' ivissent. Quodq; dic' Conspiratores ad melius perimplend' proditorias suas machinationes consulissent ad levand', ac procurassent & levassent homines, monetam, equos, arma & ammunitionem, ac etiam applicationem fecissent ad, & tractassent & correspondissent cum Papa, ejus Cardinalib', Nunciis & Agentib', & aliis forinsecis ministris & personis, ad levand' & obtinend' supplementa (Angl' *Supplies*) homin', monet', armor' & ammunitionis, cum eisdem facere, levare & excitare guerram, rebellionem & tumultus infra hoc Regn' & idem invadere cum virib' forinsecis, & deprehendere (Angl' *to surprize*) sefire & destruere Regiæ Majestatis classem (Angl' *Navy*) fortalitia (Angl' *Fortis*) armamentaria (Angl' *Magazines*) & loca fortia (Angl' *Places of Strength*) infra hoc Regn', super quo calamitates guerræ, murdra innocenc' subditor', viror', mulier' & liberor', conflagrationes, rapinæ, devastaciones & al' tremend' miseræ & exitia inevitabil' insequerentur, in ruinam & destructionem hujus nationis; & quod dic' conspiratores procurassent, & acceptassent, ac deliberassent separal' instrumenta, commissiones, & potestates fact' & concess' per aut subt' Papam vel al' illicitam & usurpat' autoritatem, ad levand' & disponend' homines, monetam, arma, & al' necessaria pro eor' sceleratis & proditoriis machinationibus, ac nominatim Commissionem pro dic' Henrico Dom' Arundel de Wardor fore Dom' Cancellar' Angl', aliam Commission' dic' Willielm' Comit' Powis fore Dom' Thesaurarium Angl', aliam Commission' dic' Johanne Dom' Bellasis fore ducem General' (Angl' *General*) ad exercitus levand', al' Commissionem dic' Willielmo Dom' Petre fore locum tenen' ducis General, (Angl' *Lieutenant General*) dic' exercitus & potestatem Angl' (*a Power*) pro dic' Willielmo Vicecomite Stafford fore Expenditorem (Angl' *Paymaster*) exercitus illius. Quodq; in ordine ad animand' seipso in prosecutione dictar' sceleratar' conjurationum, conspiracy & prodition', & ad celand' & impediend' detectionem earundem, & ad seipso a justitia & punitione securand' Conspiratores præd' participes & confederatores sui usi fuissent multis impiis & diabolicis praxib', videl', causassent sacerdotes suos administrare dic' Conspiratorib' juramentum taciturnitatis (Angl' *of Secrecy*) una cum eor' sacramento, ac etiam causassent dic' Sacerdotes suos super Confessionib' dare absolutiones suas sub conditione, quod ipsi concealarent dic' Conspirationem, ac cum circa mensem Septembris tunc ult' præterit' Edmundbury Godfrey miles Justic' pacis secundum juramenti & officii sui debit' cepisset separal' examinationes & informationes concern' præfat' conspiracy & conjurationem, dic' conspiratores, seu eor' aliqui, per advifamentum, assensum, consil' & instigationem resid' eor' incitassent & procurassent diversas personas in insidiis jacere, & insequi præfat' Edmundbury Godfrey diversis dieb' ea intentione ad ipsum murdrand', quod postea per eos perpetrat' & effectum fuit (pro quib' quidem horridis criminib' & offensis Robertus Green, Henricus Berry, & Laurentius Hill, postea atincti fuissent, ac Dominick Kelley & Gerald, & alii fugam fecissent pro eisdem) post quod quid' murdrum, & antequam cadaver invent' fuit, vel murdrum cognitum aliquibus nisi participibus, in eodem dic' person' false retuler' quod vivus fuit, & privatim maritat', & postquam cadaver invent' fuit

fuit, disperfer' falsam & malitiosam relationem, quod ipse seipsum murdrasset. Quod quidem murdrum commissum fuit ea intentione, ad celand' & supprimend' evidentiam quam ipse cepisset, ac de qua notitiam habuit, & intimidand' & deterrend' Magistrat' & alios ab agendo in ulteriori detectione conspirationis & conjurationis præd', ea etiam intentione dic' Edmundbury Godfrey, dum vivus fuit, per eos ac participes & fautores suos minatus & deterritus fuit in ejus prosecutione inde, quodq' de eor' ulteriori malicia scelerate machinati fuissent perquam plurimas suggestiones impon' imputationem & culpam præd' horridor' & detestabil' criminum super Protestantes, ita quod perinde ipsimet evitarent punitiones, quas juste meruissent, & exponerent Protestantes scandalo magno, & eos subjicerent prosecutioni & oppressioni in omnibus regnis & patriis, ubi Romana Religio recepta & professæ fuit. Quodque omnia ill' proditiones, crimina & offensæ præmentionat' fuer' machinat', commiss', perpetrat', acta & facta per præd' Willielm' Comitem Powis, Willielm' Vicecomitem Stafford, Willielmum Dom' Petre, Henricum Dom' Arundel de Wardor, & Johannem Dom' Bellasis, ac alios conspiratores præd' contr' Dom' Regem nunc, Coronam & Dignitat' suas, ac contr' Leges & Statuta hujus Regni secund' Lege' & consuetudinem Parliament' impetit' fuer' ac inde debite onerat', & in Prifona præd' ea occasione detent', prout per Record' & proces' inde int' Recorda Parliament' remanent' plenius apparet. Et iidem Major & Communitas ac Cives civitat' London ulterius dicunt, quod in Session' præd' Parliamenti dic' Dom' Regis nunc, apud Westm' præd' per prorogation' tent' super prædict' vicessimum primum diem Octobris, Anno Regni dicti Domini Regis nunc tricesimo secundo supradict', in replicatione præd' mentionat' ad inchoation' ejusdem Sessionis Dom' Rex nunc, ex maxima regali cura & sedulitate sua pro præservatione Religionis Protestan' & subditor' a periculis per Papisticas Conspiraciones imminen', per ejus gratiosam oration' ambab' domibus ejusdem Parliamenti adtunc & ibidem fact' & allocut', inter alia recommendavit Dom' & Commun' in Parlamento illo assemblat', ad prosequend' ulteriorem examinationem Conspiration' præd' cum stricta & impartiali inquisitione, & eis tunc dixit, quod ipse non putavit seipsum neque ipsos secur' quousque materia illa plenarie perageretur. Ac ideo quod necessar' foret, quod præd' Dom' in præd' prifona Turris London ad celerem triation' suam adducerentur, quod Justicia fieret. Et iidem Major & Communitas ac Cives civitat' London ulterius dicunt, quod postea in eadem Session' Parliamenti utraque domus Parliamenti illius in prosecution' dic' direction' Dom' Regis strictam & impartialem inquisition' de præd' conspiratione fecer', & super inquisition' ill' declaraver', quod fuisset horribilis conspiratio & conjuratio per Papistas contra personam dic' Dom' Regis & Gubernation' suam, quæ tunc continuabant; ac Commun' in eodem Parlamento assemblat' ulterius declaraverunt, quod conspiratio & conjuratio ill' supportat' & prosecut' fuissent per poten' & irrequiet' molimina & machinationes, præsertim duran' tunc nuperis recessib' Parliamenti, & postea in eadem Sessione Parliamenti Dom' Spirituales & Temporales ac Communes in eodem Parlamento assemblat', eorum humilem Supplicationem (Angl'

Address) eidem Dom' Regi apud Westm' præd' fecer' & exhibuer', in forma sequen', videl', Quod ipsi Subditi Regiæ suæ Majestatis obsequentissimi & fidelissimi Dom' Spirituales & Temporales, ac Communes in tunc præfenti Parlamento illo assemblat', profunde sensibiles existen' de tristi & calamitosa conditione hujus Regni, præcipue per impias & horrendas Conspiraciones Papalis Factionis causat', quæ non solum destructionem Regalis Personæ Regiæ suæ Majestatis, verum etiam totalem subversionem Gubernat' & veræ Religion' in hoc Regno Angl' stabilit' conspiravisset & intendisset, ac invenien' easdem detestabiles machinationes adtunc obstinate per eandem Factionem prosecut', tam fovendo divisiones inter Majestatis suæ fideles Subdit' Protestan', quam per omnes al' nequissimas machinationes, non obstan' quamplurimis detectionibus inde (magna Dei misericordia & mirabili providentia) tunc nuper in lucem prolat', quæ omnia tremenda judicia tunc fuer' super hoc Regnum impenden' pro pluribus & gravibus suis peccatis, quam meritissime ac alit' humana ratione evitari nequibant, quam per benediction' Dei particularem super consultationes & conamina magni Concilii ipsius Dom' Regis tunc in Parlamento assemblat', in omni humilitate Regiæ suæ Majestati supplicaver', quod per Proclamation' suam Regalem dies solempnit' foret dedicat', in quo tam ipsi, quam omnes ipsius Dom' Regis Subdit' per jejun' & preces Deo omnipotenti reconciliationem conarentur. Ac cum cordibus humilibus & penitentibus eum implorarent, per ejus potentiam & bonitatem, ad judicia ill' divertend', & ad impia consilia & machinationes inimicorum suorum frustrand', ad corda fidelium Protestan' Subdit' dict' Dom' Regis uniend', & ad misericordiam suam & Evangelii sui lumen eidem Domino Regi & dictis Subdit' suis, & eor' Posteritat' continuand', ac præcipue ad abundantes benedictiones suas super sacram Majestatem ipsius Dom' Regis & tunc præsen' Parliament' impendend', quod consultationes & conamina eor' honorem, incolumitatem, & prosperitatem Regiæ suæ Majestati ac Populo suo producerent; & superinde dictus Dominus Rex nunc duran' dicta Sessione Parliamenti, scilicet secundo die Decembris anno Regni sui tricesimo secundo supradict', per proclamationem suam Regalem sub magno sigillo suo Angl' sigillat' geren' dat' apud Westm' eisdem die & anno, recitando, quod cum Dom' Spirituales & Temporales ac Communes in Parlamento illo assemblat' per eor' Supplication' (Angl' *Address*) eidem Domino Regi exhibit', notum ei fecissent, quod ipsi profunde sensibiles fuer' de tristi & calamitosa conditione hujus Regni per impias & horrendas Conspiraciones Papalis Factionis causat', quæ non solum destructionem Regalis Personæ Regiæ suæ Majestatis, verum etiam total' subversionem Gubernat' & veræ Religionis apud ipsum Regem & Subditos suos stabilit', conspiravisset & intendisset; quodque eadem detestabiles machinationes adtunc obstinate per eandem Factionem prosecut' fuer', tam fovendo divisiones int' ejus fideles Subdit' Protestan', quam per omnes al' nequissimas machinationes, non obstan' quamplurimis detectionibus inde (magna Dei misericordia & mirabili providentia) tunc nuper in lucem prolat', quæ omnia tremenda judicia tunc fuer' super eundem Dom' Regem & dictos Subdit' suos impendend' pro pluribus & gravibus suis peccatis, quam meritissime ac alit' humana ratione præveni-

niri nequibant, quam per benedictionem Dei particularem super consultationes & conamina magni Concilii ipsius Dom' Regis tunc in Parlamento assemblat', eidem Domino Regi humillime supplicassent, quod dies maxime solempnit' foret dedicat', in quo Rex ipsemet & omnes Subditi sui fideles per jejunium & preces Deo omnipotenti reconciliationem conarentur, ac cum cordibus humilibus & poenitentibus eum implorarent, per ejus potentiam & bonitatem ad judicia illa divertend' & ad impia consilia & machinationes inimicorum ipsius Dom' Regis & dict' Subdit' suor' frustrand', ac corda fidelium Protestan' Subdit' dict' Dom' Regis uniend', & misericordiam suam & Evangelii sui lumen eidem Domino Regi & dictis Subdit' suis & eor' Posteritat' continuand', ac praecipue ad abundantes benedictiones suas super ipsum Dom' Regem & tunc praesen' Parliament' impendend', quod consultationes & conamina eor' honorem, incolumitatem, & prosperitatem dicto Domino Regi ac populo suo producerent, idem Dominus Rex ad illam eor' humilem requisitionem promptissime inclinavit, ac per illam ejus Regalem Proclamation' mandavit generale & publicum Jejunium per totum hoc Regnum observari, in tali modo quali postea per eandem Proclamationem fuit direct' & praescript', ita quod tam idem Dominus Rex, quam populus suus preces & supplicationes suas Deo omnipotenti emitterent ad & pro propositis praed', ac ea intentione, quod tam Religiosum Exercitium ad unum & idem tempus performaretur, dictus Dominus Rex per Proclamation' ill' publicavit & declaravit omnibus Subditis suis amanti- bus, ac stricte praecipit & mandavit, quod die Mercurii existen' vice'simo secundo die Decembris tunc instan' jejunium ill' religiose observat' & celebrat' foret per Regnum suum Angl', Dominium Walliaë, & Villam Berwici super Twedam, & ut idem cum omni decentia & uniformitate performaretur, idem Dominus Rex per advisamentum reverend' Episcopor' suor' componi, imprimi, & publicari direxerat talem formam Divini Servicii, qual' ipse apt' uti censuerat in omnibus Ecclesiis & Locis ad tempus praed', & Episcopis suis dederat in mandatis ad ill' congruent' dispergend'. Quæ omnia idem Dominus Rex per Proclamationem suam praed' reverent' & decent' observari expresse praecipit & mandavit, per omnes subdit' suos amantes, sicut favorem Dei Omnipotentis respexer', ac iram & indignation' ejus contra hanc terram evitarent, & sub poena subeundi tales punitiones, qual' dictus Dominus Rex juste infligere posset super omnes, qui tam religiosum officium contemnerent seu negligenter, prout per irrotulament' ejusdem proclamationis in cur' Cancellar' ipsius Dom' Regis de recordo remanen' plenius apparet. Qui quidem dies jejunii secundum formam & effect' proclamat' praed' debite & solempnit' observat' & celebrat' fuit in & per totum hoc regnum Angl', ac praecipue apud London praed', in parochia sancti Michaelis Bassishaw. Quodque in eadem sessione parliamenti ult' mentionat', Communes hujus regni in eodem parlamento assemblat', resolution' fecerunt procedere ad triationem praed' Dominor' in prisona Turris London tunc existen', sicut praefertur, impetit', & statim incipere cum praefat' Vicecomite Stafford, ac notitiam inde Dominis parliamenti illius tunc deder', & eos requisiver' ad convenien' diem pro triatione ejusdem Vicecomitis Stafford appunctu-

and', & superinde praed' Vicecomes Stafford de altis proditoribus, & proditoriis conspirationibus & conjurationibus praed', unde ipse, ut praefertur, impetit' fuit per Dominos Temporales in eodem parlamento convent' ad prosecution' Commun' hujus regni in parlamento illo assemblat', in eadem sessione parliamenti triat', convict', & debita juris forma attinct' fuit, prout per record' & process' inde inter recorda parliament' remanen' plenius apparet, posteaque in eadem sessione parliamenti Willielmus Scrogs Miles, tunc Capital' Justic' Dom' Regis ad placita coram ipso Rege tenend' assign' per Communes hujus regni Angl' in eodem parlamento assemblat' coram magnatibus & proceribus ejusdem regni in parlamento illo convocat' & convent' secundum legem & consuetudinem parliamenti accusat' & impetit' fuit de alta proditorie, & aliis magnis criminibus & malegesturis (inter alia) quod ipse dictus Willielmus Scrogs tunc existen' Capital' Justic' cur' Domini Regis coram ipso Rege proditorie & nequit' conat' fuisset subvert' leges fundamental' & stabilit' religion' hujus regni Angl', ac loco inde introducere Papismum (Angl' *Poperie*) & arbitrariam & tyrannicam gubernationem contra legem, quod ipse declarasset per diversa proditoria & improba verba, opiniones, judicia, praxes, & facta: Ac etiam quod cum fuisset horribilis & diabolica conspiratio machinat' & prosecut' per Papistas pro murdrando Dominum Regem nunc, subvertendo leges & gubernationem hujus regni, & pro destruendo religionem Protestan' in eodem regno, quæ omnia dictus Willielmus Scrogs bene scivisset, in quantum ipsemet non solum triasset, verum etiam judicium reddidisset contra separal' hujusmodi delinquentium, nihilominus dictus Willielmus Scrogs ad diversa tempora & loca, tam in cur' seden', quam alit', palam defamasset & scandalizasset separal' de testibus, qui probassent dictas proditorie contra diversos de conspiratoribus, & dedissent evidentiam contra diversas alias personas, quæ tunc fuer' minime triat', ac conatus fuisset defamare (Angl' *to disparage*) eor' evidenciam, & adimere credentiam eorum, per quod, quantum in se fuit, proditorie & nequit' suppressisset & suffocasset detectionem dictæ Papalis conspirationis, ac animasset conspiratores (ad procedend' in eadem) in magnum & manifestum periculum sacrae vitæ dicti Domini Regis nunc, & bene stabilit' gubernation' & religionis hujus regni Angl', prout per record' inde inter record' parliament' remanen' plenius apparet. At etiam in eadem sessione parliamenti, Dom' Spiritual' & Temporal', ac Communes in eod' parlamento assemblat', se declaraver' eis manifest' esse, quod ad tunc fuit, & per diversos annos tunc ult' elaps', fuisset horrenda & proditoria conspiratio & conjuratio, machinat' & prosecut' per ill' de Papali religione in regno Hiberniaë pro trucidatione (Angl' *massacring*) Anglor', & subversion' religionis Protestan', & antiquæ stabilit' gubernationis regni illius; de qua quidem horrenda & proditoria conspiratione & conjuratione Richardus Power Comes Tyrone in regno Hiberniaë, ad eandem session' parliamenti per Communes hujus regni Angl' in eodem parlamento assemblat' coram Magnatibus & proceribus ejusdem regni Angl' in parlamento illo convocat' & convent' secundum legem & consuetudinem parliamenti impetit' fuit, ac inde debite onerat' & prisona Dom' Regis de le Gate-house Westm' ea occasione commissus fuit, prout per record'

record' inde inter recorda parliament' remanen' plenius apparet. Quodque tam Domin', quam Communes in dicto parlamento assemblat' in eadem sessione parlamenti fuer' præparantes billas secundum curium parliament' in leges inactitand' pro præservatione Domini Regis nunc, & subditorum suorum Protestan', contra proditorias conspirationes & conjurationes prædicta penden', quibus quidem separalibus impetitionibus versus eundem Richardum Power, & dictum Willielm' Scrogs, ac prædict' Willielm' Comitem Powis, Henricum Dominum Arundel de Wardour, Willielm' Dom' Petre, & Johannem Dom' Bellasis, minime determinat', ac eisdem Willielm' Comite Powis, Henrico Domino Arundel de Wardour, Willielm' Dom' Petre, Johanne Dom' Bellasis, & Richardo Power in prison' Domini Regis ex causis præd', ut præfertur, existen', idem parliament', super præd' decimum diem Januarii, anno regni dicti Dom' Regis nunc tricesimo secundo supradict', prorogat' fuit, prout præd' Attorn' dict' Dom' Regis nunc generalis superius inde allegavit, absq; aliqua triatione dictor' Willielm' Comit' Powis, Henric' Dom' Arundel de Wardour, Willielm' Dom' Petre, Johan' Dom' Bellasis, Willielm' Scrogs, & Richard' Power, seu eorum alicujus, de altis prodition', & al' præmissis (unde ipsi respective, ut præfertur, impetit' fuer', ac qui aliter quam in parliament' inde triari non potuer') fact' sive habit', ac antequam hujusmodi billæ in leges inactitat' fuer': Quæ quidem oratio dicti Dom' Regis, ac declarationes & processus Dom' & Commun' parlamenti illius, duran' dicta sessione ejusdem parliament', ut præfertur, fact', ante eandem prorogationem parlamenti illius publicat' fuer', videl', apud London præd', in prædicta parochia sancti Michaelis Bassishaw, ratione quorum quidem præmissor', cives & inhabitant' præd' civitatis London, fideles subdit' dicti Dom' Regis nunc existen' maxime perterriti, & in animis affecti, ac quam plurimum inquietat' fuer', profundo sensu & apprehensione magnor' periculor' personæ Dom' Regis nunc, & gubernationi suæ hujus regni, ac religioni Protestan', & professoribus ejusdem, occasione conspiration' præd' impenden' & imminen', non aliter (prout per Dom' Spirituales & Temporales, ac Communes in dicto parlamento assemblat', in supplicatione suâ præd', per Dom' Regem in proclamat' præd', ut præfert', publicat' affirmat') humana ration' evitand', quam per benedictionem Dei particularem super consultationes & conamina ejusdem parlamenti, quidam cives & inhabitantes ejusdem civitatis, nomine civium & inhabitantium dict' civitatis, ante petitionem inde in prædicto placito præd' Attorn' general' superius replicando placitat' spec' fact', seu fieri ordinat', scil', præd' decimo tertio die Januarii, anno regni dict' Dom' Regis nunc tricesimo secundo supradict', Patient' Ward Mil', tunc Majori civitatis London, & Alderman' dict' civitatis, ac Communiariis sive Civib' de Com' Concilio ejusdem civitatis, in Communi Concilio adtunc in prædicta camera Guildhall ejusdem civitatis, in parochia sancti Michaelis Bassishaw præd', secundum consuetudinem dictæ civitatis assemblat', exhibuer' quandam petitionem, continen', quod ipsi cives & inhabitant' civitat' London, profunde sensibiles existen' de malis & exitiis super hanc nationem in generali, ac ill' civitatem London in particulari penden', in respect' periculi personæ Dom' Regis nunc, religion' Protestan', & bene stabilit' gu-

bernation' suæ, per continuat', infernales, & diabolicas machinationes Papistar', & alior' adhærentium suor', ac scientes nullam viam (sub Deo) tam effectual' ad præservand' Dom' Regem, ac cives & inhabitant' ill' ab extrema ruina & destructione minat', quam per celerem sessionem tunc præsentis parlamen', cujus inopina prorogatio magnopere addidit & augebat justos timores & suspiciones animor' dictor' petitionarior'; ipsi iidem petitores obsecraver' eidem Com' Concilio, sic ut præfertur assemblat', ad informand' Regiam Majestatem de ill' eor' timoribus & apprehensionibus, ac quod fuit humile & fervens desiderium, tam eor' petitor', quam ipsor' Majoris & Aldermannor', ac Communiar' de Com' Concilio illo, quod Regiæ suæ Majestati placeret, pro totali frustratione impior' & sanguinolentor' propositor' inimicor' suor', ad permittend' ill' tunc præsens parliamentum, quod exitit prorogat' usque vicesimum diem tunc instan' Januarii, adtunc assemblare, & sedend' continuare, quo usque effectualit' securaret hoc regnum contra Papism', ac reformaret (Angl' *redressed*) multiplicia gravamina, sub quibus tunc gemuit, & pro immediata securitate sua, quod iidem Major & Alderman', ac Communiarii de Com' Concilio ill', ordinarent quodcunque aliud, quod necessar' & expedien' eis videretur in illo tempore periculi imminen', pro incolumitate magnæ civitatis illius. Et quia per legem terræ hujus regni Angl' licitum est subdit' Dom' Regis in angustiis & difficultatib' suis ad humilit' supplicand' Dom' Regi pro remedio congruo in ea parte habend', præd' die Jovis decimo tertio die Januarii, anno regni dict' Dom' Regis nunc tricesimo secundo supradict', præd' Patient' Ward Miles, tunc Major præd' civitatis London, & Alderman' ejusdem civitat', scil', Thomas Alleyn Miles & Bar', Johannes Fredericke Miles, Johannes Lawrence Miles, Georgius Waterman Miles, Josephus Sheldon Miles, Jacobus Edwards Miles, Robertus Clayton Miles, Johannes Moore Miles, Gulielmus Pritchard Miles, Henricus Tulse Miles, Jacobus Smith Miles, Robertus Jeffrey Miles, Johannes Shorter Miles, Thomas Gould Miles, Gulielmus Rawsterne Miles, Thomas Beckford Miles, Johannes Chapman Miles, Simon Lewis Miles, Thomas Pilkington Arm', & Henricus Cornish Arm', ac Communiarii seu Cives de Com' Concilio dict' civitatis, in Com' Concilio suo infra eandem civitatem, scil', in præd' camera Guildhall civitatis illius ad tunc secund' consuetudinem dict' civitatis assemblat', vota & suffragia sua, ex animis Dom' Regi perfidelib', & pro satisfaction' civium & inhabitant' ejusdem civitat', qui petitionem eis in forma præd' exhibuissent, pro allevatione timoris & apprehensionis, & inquietudinis illor', ac ea intentione, quantum in se fuit, pro præservatione personæ Dom' Regis nunc, & gubernation' suæ hujus regni Angl', & religionis Protestan', deder', ac nemine contradicente agreaver' & ordinaver', quod quædam petitio sub nomine ipsor' Majoris, Alderman', & Commun' civitatis London in Communi Concilio assemblat', dicto Domino Regi nunc exhibita foret; cujus quidem petitionis tenor sequitur in his Anglicanis verbis, videlicet, *To the King's most Excellent Majesty: The humble Petition of the Lord Mayor, Aldermen, and Commons of the City of London in Common Council assembled, most humbly sheweth, That your Majesty's Great Council in Parliament* having

having in their late Session, in pursuance of your Majesty's Direction, entred upon a strict and impartial Inquiry into the horrid and execrable Popish Plot, which hath been for several Years last past, and still is carried on, for the Destruction of your Majesty's Sacred Person and Government, and Extirpation of the Protestant Religion, and the utter Ruin of your Majesty's Protestant Subjects: And having so far proceeded therein, as justly to attain, upon full Evidence, one of the five Lords impeached for the same, and were in further Prosecution of the remaining four Lords, and other Conspirators therein: And as well the Lords Spiritual and Temporal, as the Commons in your said Parliament assembled, having declared, That they are fully satisfied that there now is, and for divers Years last past, hath been a horrid and treasonable Plot and Conspiracy contrived and carried on by those of the Popish Religion in Ireland, for Massacring the English, and subverting the Protestant Religion, and the antient established Government of that Kingdom: And your said Commons having impeached the Earl of Tyrone, in order to the bringing him to Justice for the same, and having under Examination other Conspirators in the said Irish Plot: And your said Commons having likewise impeached Sir William Scrogs, Chief Justice of your Majesty's Court of King's Bench, for Treason, and other great Crimes and Misdemeanors, in endeavouring to subvert the Laws of this Kingdom by his arbitrary and illegal Proceedings; and having voted Impeachments against several other Judges for the like Misdemeanors, your Petitioners, considering the continual Hazards to which your Sacred Life and the Protestant Religion, and the Peace of the Kingdom are exposed, while the Hopes of a Popish Successor gives Countenance and Encouragement to the Conspirators, in their wicked Designs: And considering also the Disquiet and dreadful Apprehensions of your good Subjects, by Reason of the Miseries and Mischiefs which threaten them on all Parts, as well from Foreign Powers, as from the Conspiracies within your several Kingdoms, against which no sufficient Remedy can be provided but by your Majesty; and your Parliament were extremely surprized at the late Prorogation, whereby the Prosecution of the publick Justice of the Kingdom, and the making the Provisions necessary for the Preservation of your Majesty, and your Protestant Subjects, have received an Interruption. And they are the more affected herewith, by reason of the Experience they have had of the great Progress which the emboldened Conspirators have formerly made in their Designs, during the late frequent Recesses of Parliament; but that which supports them against Despair is, the Hopes they derive from your Majesty's Goodness, that your Intention was and does continue by this Prorogation to make way for your better Concurrence with the Counsels of your Parliament. And your Petitioners humbly hope, that your Majesty will not take Offence that your Subjects are thus zealous, and even impatient of the least delay of the long hoped for Security, whilst they see your precious Life invaded, the true Religion undermined, their Families and innocent Posterity likely to be subjected to Blood, Confusion, and Ruin, and all these Dangers increased by reason of the late Endeavours of your Majesty and your Parliament, which have added Provocation to the Conspirators, but have had little or no effect towards securing against them; and they trust your Majesty will graciously accept of this Discovery, and Desire of their loyal Hearts to preserve your Majesty, and

whatever else is dear to them, and to strengthen your Majesty against all Popish and pernicious Counsels, which any ill affected Persons may presume to offer: They do therefore most humbly pray, that your Majesty will be graciously pleased (as the only means to quiet the Minds, and extinguish the Fears of your Protestant People, and prevent the eminent Dangers which threaten your Majesty's Kingdoms, and particularly this your great City, which hath already so deeply suffered for the same) to permit your said Parliament to sit from the Day to which they are prorogued, until by their Counsels and Endeavours those good Remedies shall be provided, and those just Ends attained, upon which the Safety of your Majesty's Person, the Preservation of the Protestant Religion, the Peace and Settlement of your Kingdoms, and the Welfare of this your ancient City, do so absolutely depend; for the pursuing and obtaining of which good Effects, your Petitioners unanimously do offer their Lives and Estates, and shall ever pray, &c. Ac ad tunc & ibidem ulterius agreever' & ordinaver', quod petitio ill', post præsentation' inde eidem Dom' Regi, impressa foret per talem personam, qual' dictus tunc Major civitat' London præd' appunctuaret; quæ quidem petitio sic fuit imprimi ordinat', ea intentione, quod publicatio falsor' rumor' & relation' de & concernen' præd' petition' dicto Domino Regi exhibit' evitaretur, inimici Domini Regis, & conspiratores præd', a procedendo in conspiratione sua præd' deterrentur, perturbationes, quas boni & fideles subditi dicti Domini Regis nunc in animis suis ex causis prædictis concepissent, alleviarentur, & cives & inhabitant' ejusdem civitat' melius scirent quid factum fuisset in dicto Communi Concilio de materia in petitione præd' eidem Communi Concilio, ut præfertur, exhibit' content'. Quodque præd' petitio dicto Dom' Regi sic præsentari agreeat', postea (scil', præd' decimo tertio die Januarii, anno tricesimo secundo supradicto) eidem Dom' Regi humillime præsentat' fuit, videlicet, apud London præd', in prædicta parochia sancti Michaelis Bassishaw, ac postea (scil', decimo quinto die ejusdem mensis Januarii) per Samuelem Roycroft, quem dictus Patient' Ward tunc Major civitat' London ad inde appunctuavit, impressa fuit juxta ordinem præd' in ea parte fact', videlicet, apud London præd', in parochia prædict'; quæ quidem petitio, & impressio inde in forma prædict', & ea ex causa præd' fact', sunt eadem petitio, & impressio, & publicatio inde in præd' placito præd' Attorn' generalis superius replicando placitat' spec': Absque hoc, quod aliqua petitio de vel concernen' prorogation' parliamenti præd' fact', ordinat', publicat', seu impress' fuit, alit' vel alio modo, quam iidem Major & Communitas, ac Cives civitat' London superius allegaver', prout idem Attorn' generalis pro dicto Domino Rege superius suppon'; & hoc similiter parat' sunt verificare. Unde iidem Major & Communitas, ac Cives civitat' London non intendunt, quod ipsi per aliqua præallegat' præd' libertat', privileg', & franchis' fore de seipsis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, respondere ac responderi, per ipsos superius, ut præfertur, clamit' forisfecer', ac, ut prius, pet' judicium, & quod libertat', privileg', & franchis' ill' cis & successoribus suis in perpetuum deinceps allocentur & adjudicentur, ac quod ipsi, quoad

quoad præmiss' ill', ab hac cur' dimittantur, &c.

Et quoad exit' int' Dom' Regem, & Major' & Communitat', ac Cives civitat' London superius in forma præd' junct', idem Attorn' dict' Dom' Regis nunc general' dicit, quod Major & Communitas, ac Cives civitat' London præd', sunt partes Defendentes, vers' quos idem Attorn' dicti Dom' Regis nunc general' profecut' est information' præd', & ea de causa pet' breve Vicecom' Hertf. (existen' Com' civit' præd' prox' adjacen') dirigend' de Venire fac' coram Dom' Rege duodecim, &c. de vicineto Vill' de Hertf. in Com' præd', quæ quidem Villa de Hertf. in Com' præd' est villa & visn' in Com' Hertf. prox' adjacen' civit' London præd'. Et quia præd' Major & Communitas ac Cives civitat' præd' hoc non dedicunt, ideo præcept' est Vic' com' Hertf. præd', quod Venire fac' coram Dom' Rege a præd' die sancti Michaelis in tres septiman' ubicunq; &c. duodecim, &c. de vicineto præd', per quos, &c. & qui, &c. ad recogn', &c. quia tam, &c. Idem dies dat' est tam præfat' Roberto Sawyer Miles, qui sequitur, &c. quam prædict' Majori & Communitat', ac Civibus civitat' London prædict', &c. Et præd' Attorn' dicti Dom' Regis nunc general', quoad placitum præfat' Major' & Communitat' ac Civium civitat' London præd' superius rejungerendo placitat', pet' inde diem interloquendi coram dicto Dom' Rege, a die sancti Michaelis in tres septiman' ubicunq; &c. & ei conceditur, &c. idem dies dat' est præfat' Majori & Communitat', ac Civibus civit' London præd', &c. ad quas quidem tres septim' sancti Michaelis coram dicto Dom' Rege apud Westm' venit tam præfat' Robertus Sawyer Miles, qui sequitur, &c. quam præd' Major & Communitas, ac Cives civitat' London præd' per Attorn' suum præd'. Et præd' Vic' com' Hertf. non misit inde breve, ideo sicut alias præcept' est Vic' com' Hertf. præd', quod venire fac' coram dicto Dom' Rege in octab' sancti Hilar' ubicunque, &c. duodecim, &c. de vicineto de villa Hertf. præd', &c. per quos, &c. & qui, &c. ad recogn', &c. quia tam, &c. idem dies dat' est tam præfat' Roberto Sawyer Militi, qui sequitur, &c. quam prædict' Majori & Communitat', ac Civibus civitat' London, &c.

Et præd' Attorn' dict' Dom' Regis nunc general', qui, &c. quoad placitum ipsorum Major' & Communitat', ac Civium civitat' præd', quoad confectionem & publicationem legis pro levatione denariorum de personis ad publica mercata infra civitat' præd' tent' cum victualibus & provisionibus ibidem vendend' acceden', ac exactionem & levationem hujusmodi denar' superius fieri supposit' per ipsos Majorem & Communit', ac Cives, superius rejungerendo placitat', pro eodem Dom' Rege nunc dicit, quod per aliqua per ipsos superius inde allegat' libertat', privileg', & franchis' fore de seipsis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, respondere ac responderi per ipsos superius, ut præfertur, clamat', eisdem Majori & Communitat' ac Civibus allocari non debent, quia protestando, quod ipsi præd' Major & Communit', ac Cives civitat' London præd', decimo septimo die Septembris, anno vicesimo sexto suprascripto, in replicatione præd' mentionat', necnon continue

postea, & a tempore cujus contrar' memoria hominum non existit' minime seisit' fuer', seu adhuc seisit' existunt de & in publicis mercatis præd' in dominico suo, ut de feodo, nec per totum idem tempus sumptibus suis propriis providerunt, seu providere consuever' & debuer' fora mercatoria, sive loca ubi hujusmodi mercata tent' fuer' quotiescunq; necesse fuit, stallas, stationes, & alias accommodationes pro personis ad eadem mercata venien' cum victualibus & provisionibus ibidem vendend', pro meliori & magis conveniend' vendition' & exposition' eorundem, prout præd' Major & Communitas, ac Cives superius rejungerendo allegaver'; protestandoq; etiam, quod rat' præd' per actum sive ordination' præd', ut præfertur, solvi ordinat' præd', tempore confectionis ordinationis illius, & extunc hucusq; non fuer' rationabiles, nec adhuc rationabiles existunt, prout iidem Major & Communitas, ac Cives superius similiter allegaverunt. Pro placito tamen idem Attorn' dict' Domin' Regis nunc generalis dicit, quod per quendam actum in parlamento dict' Rom' Regis nunc tent' apud Westmonaster' per separales prorogationes, decimo quarto die Februarii, anno regni dict' Dom' Regis nunc vicesimo secundo (inter alia) inactitat' fuit, ad finem quod apti & commodi loci infra dictam civitat' & libertat' ejusdem, extraposit' & appunctuat' forent pro reædificand' & custodiend' mercata ampliori convenientia quam antea fuer', ita quod principales strætæ non forent impedit' (Angl' *pestred*) & obstruct' perinde, prout antea consuet' fuit, & quod Regale Excambium, Guildhall, le Sessions House in le Old Baily, & commun' gaolæ & prisonæ infra præd' civitat', forent amplificat' & fact' magis commoda pro publicis usu & ornament' Civitatis, & melius securitand' a periculo & casualitate conflagrationis, & quod aliquæ convenien' distantia, intervall' & circuitus fundi forent relict' inter Regal' Excambium, & alias domos ædificand' infra civitat' præd', quod Major, Aldermanni, & Commun' civitat' præd' in Commun' Concilio assemblat' impenderent (Angl' *should and might employ*) & per actum præd' autoritat' fuer' impendere talia loca & portio' fundi infra Civitat' præd' & libertat' ejusdem, prout per & cum dicti Dom' Regis nunc approbation' tunc fuer', vel ante decimum diem Martii, millesimo sexcentesimo sexagesimo nono, forent extraposit' & adjudicat' necessar' & convenien', tam pro publicis mercatis ibidem, quam etiam pro ornamento, amplificatione, & convenien' præd' Regal' Excambii, & aliorum locorum præmentionat', & cujuslibet vel alicujus eorundem respectivo, & ad intention', quod rationabilis satisfactio dat' foret proprietar', & aliis habent' aliquem statum sive interesse in fundis & locis, quæ fuissent vel forent extraposit', capiend' & occupand' pro publicis locis mercatoriiis, præd' Major, Aldermann', & Commun', per ipsos, vel alios in ea parte fore appunctuat' & autorizat', tractarent & agrearent cum proprietar' & al' interessat' in eisdem, & in casu voluntariæ recusationis, sive alicujus talis inhabilitatis, sive impediment' qual' in quodam al' actu parlamenti in eodem actu specificat', pro reædificatione civitat' London, nuper antea fact', mentionat' fuer', seu alius incapacitat' cujuscunq; in proprietar' inde, vel al' interessat' in eisdem, ad tractand' & agreand', præd' Major & cur' Alderman' forent & fuer' per actum præd' autorizat' & requisit' causare jur' fore impannellat' in tal' modo

do & forma, prout per actum præd' direct' & appunctuat' fuit, ita quod null' duo jur' præd' sic fore impannellat' venirent ex una & eadem warda, adjudicare & assidere qual' compensation', & satisfaction' in quibuslibet casibus præd' forent adjudicat', & dat' respectivis proprietar', & aliis interessat' in fundis & locis sic extraposit', capiend' & occupand' pro aliquibus usibus vel propositis, ut præfertur, in prosecutione ejusdem actus, secundum tal' eorum respectivos status & interefs'. Et ulterius inactitat' fuit, quod pro omnimodis carbonibus, quæ ab & post primum diem Maii, millesimo sexcentesimo & septuagesimo, & ante vicesimum nonum diem Septembris, qui foret in anno Dom' millesimo sexcentesimo octogesimo septimo, forent importat' & adduct' in præd' portum civitat' London, seu rivum Thamesis, infra libertat' civitat' præd' super eundem rivum, solut' foret per viam impositionis superinde, secund' ratas postea mentionat' (videl') pro omnibus tal' carbonibus, qual' ibi importat' & induct' forent ab & post primum diem Maii, millesimo sexcentesimo & septuagesimo, & ante vicesimum quartum diem Junii, millesimo sexcentesimo septuagesimo septimo, solut' foret pro qualibet celdar' seu tonna inde duos solidos ultra imposition' duodecim denar' pro celdar' seu tonna per præd' actum pro re-ædificatione civitat' London appunctuat' solvend', & pro omnibus tal' carbonibus, quæ ibidem importat' & induct' forent ab & post prædict' vicesimum quartum diem Junii, millesimo sexcentesimo septuagesimo septimo, & ante præd' vicesimum nonum diem Septembris, millesimo sexcentesimo octogesimo septimo, solut' forent pro qualibet celdar' sive tonna inde tres solidos; & iidem, vigore actus præd', forent collect', levat' & solut' in tali forma & modo, in omni & quolibet respectu, prout in & per præd' priorem actum fuit limitat' & appunctuat' pro collectione & levatione debit' duodecim denar' pro celdar', sive tonna carbonum imposit' per priorem actum præd', & omnes & quilibet potestat', autoritat', directiones, & provision' in vel per præd' priorem actum mentionat', vel provis' pro levatione & collectione inde: Omnesq; quidem denar' sic recipiend', super comput' præd' respectivarum imposition', seu earum ulterius de tempore in tempus forent solut' in receptu Cameræ civitat' London, & abinde forent emanat' & solut' secundum directionem & appunctuation' præd' actus de anno vicesimo secundo supradicto, & non aliter; & præd' Camera civitat' London stare & onerat' foret cum toto resid' denar' præd' ibidem solut', qui non sic emanat' forent & solut'. Et ulterius inactitat' fuit, quod omnes & quælibet summa & summæ monet', quæ levat' foret super reception' separal' & respectivarum imposition' præd', sive per tal' additional' debit' in casu concealament' inde, prout per præd' priorem actum appunctuat' fuit, foret occupat' & disposit' modo & forma sequen' (videl') una quarta pars omnium denarior', quæ ab & post præd' primum diem Maii, millesimo sexcentesimo & septuagesimo, & ante præd' vicesimum quartum diem Junii, millesimo sexcentesimo septuagesimo septimo, forent levat', sive solubil' super reception' præd' imposition' duorum solid' pro qualibet celdar' vel tonna carbonum, seu in casu concealament' inde, ut præfertur, foret occupat' & disposit' pro & erga sa-

tisfaction' pro fundis extraposit' & occupat' pro amplificatione stratarum, confectio' wharfatum & portuum, publicorum mercatorum locorum, & aliorum publicorum usuum, tam in actu ill', quam in actu prærecitat', mentionat', & appunctuat', & quod una medietas omnium denar', qui ab & post vicesimum quartum diem Junii, millesimo sexcentesimo septuagesimo septimo, forent levat' seu solubil' super præd' imposit' trium solid' pro celdar' vel tonna carbonum, de tempore in tempus forent occupat' & disposit' pro satisfactione pro fundo extraposit', & occupat', ut præfertur, & tal' al' publicis usibus & proposit', qual' in actu ill', & in actu prærecitat' fuer' mentionat' & appunctuat', prout per eundem actum de anno vicesimo secundo supradicto (inter al') plenius liquet & apparet. Et præd' Attorn' dict' Dom' Regis nunc general', qui, &c. pro eodem Dom' Rege nunc ulterius dicit, quod virtute actus illius iidem Major & Communitas, ac Cives civitat' London præd', ante confectioem & publicationem legis præd', scilicet, primo die Septembris, anno regni dicti Dom' Regis nunc vicesimo sexto supradicto, apud London præd', in parochia & warda præd', habuer' & receper' pro debito & vectigali præd' de duobus solidis pro qualibet celdar' sive tonna carbonum in civitat' London, sive portum ejusdem importat', ingent' denariorum summam ad proposita præd'. Et ulterius idem Attorn' Dom' Regis nunc general', qui, &c. pro eodem Dom' Rege nunc dicit, quod Major & Communitas, ac Cives civitat' London, absque aliquo jure, titulo, sive autoritat' quibuscumque, præmissis præd' non obstantibus, præd' die Jovis, scilicet, præd' decimo septimo die Septembris, anno regni dicti Dom' Regis nunc vicesimo sexto supradict', in eorum Commun' Concilio adtunc tent' in camera Guildhall civitat' London præd', videlicet, in parochia sancti Michaelis Bassishaw London, insimul assemblat', fecer', condider', & publicaver' præd' legem per ipsos de facto inactitat', pro levatione separal' denar' summar' præd', de omnibus subditis ac ligeis Dom' Regis nunc, tam liberis quam non liberis hominibus civitat' præd', & aliis extraneis ad publica mercat' infra civit' præd' tent' acceden' cum victual' & provisionibus suis ibidem vendend', ac easdem separal' denar' summas, sub solo colore & prætextu legis præd' sic per ipsos, pro eorum privato lucro & comodo, illegaliter fact', & absque aliquo alio jure, titulo, sive autoritat' quibuscumque, per præd' spatium septem annorum post præd' decimum septimum diem Septembris, anno vicesimo sexto supradicto prox' sequen', & amplius, apud London præd', in parochia præd', de omnibus dict' Dom' Regis ligeis & subditis ad præd' publica mercata, per totum tempus præd', infra civitat' præd' tent', cum victual' & provisionibus ibidem vendend' accedentibus, exeger' & levaver', & exigi & levare fecer', & denar' ill' ad eorum proprios usus, converterunt & disposuerunt, in subversion' boni regiminis & gubernation' civitatis præd', & in magnam oppression' & depauperation' omnium dicti Dom' Regis nunc ligeorum, ad mercata præd' cum victualibus & provisionibus suis acceden' & venien', ad grave dampnum & nocumentum omnium ligeorum & subditorum dicti Domini Regis, in augmentation' preciorum omnium victual' & provision' in mercata præd' vendit', ac in dicti Domini Regis nunc & coronæ suæ Regiæ exhæredationem manifestam,

ac contra fiduc' in ipsis, ut corpore corporat' & politic', per Dom' Regem ac leges hujus regni Angl' reposit', prout præd' Attorn' dict' Dom' Regis nunc generalis pro eodem Dom' Rege nunc superius replicando allegavit; absque hoc, quod præd' Major & Communitas, ac Cives civitatis London, a tempore cujus contrar' memoria hominum non exigit, habuer', seu habere consuever' tolner', ratas, sive denar' summas per ipsos Majorem & Communitat' ac Cives civitat' præd', superius supposit' fore per præfat' legem sive ordination' præd' assess', & in certitudinem reduct', prout per placitum ipsorum Majoris & Communitat', ac Civium civitat' London præd' superius rejungerendo supponitur. Et hoc idem Attorn' General' pro eodem Dom' Rege nunc parat' est verificare; unde & ex quo iidem Major & Communitas, ac Cives, libertat', privileg' & franchis' præd', fore de seipsis corpus corporat' & politicum, ex causa præd' forisfecer', idem Attorn' General', ut prius, pro eodem Dom' Rege nunc pet' judicium, & quod præd' Major & Communitas, ac Cives civitat' London præd', de præmissis convincantur, ac de libertat', privileg' & franchis' illi' abjudicentur & excludantur, &c.

Et quoad placitum præfat' Majoris & Communitat', ac Civium civit' London præd' superius rejungerendo placitat', quoad resid' præd' placiti præfat' Attorn' general' in assign' forisfactur', ut præfertur, superius replicando placitat' idem Attorn' dict' Dom' Regis nunc general', protestando, quod præd' prorogatio dicti parliamenti per præfat' Dom' Regem fuit pro diversis necessar' & urgentibus causis, bonum & utilitatem dicti Dom' Regis & regni sui concernen', & secundum veram & indubitat' prærogativam & potestatem dicti Dom' Regis nunc; & per eandem prorogationem prosecutio publicæ justitiæ regni, & præparationis (Angl' *the making Provisions*) necessar' pro præservation' dict' Dom' Regis, & ejus subditorum Protestantium, non recepissent obstructionem (Angl' *Interruption*) prout per petitionem præd' per vota & suffragia præfat' Majoris & Communitat', ac Civium civitat' præd' in dicto Communi Concilio assemblat', sic ut præfertur ordinat', false & malitiose allegatur; pro placito tamen idem Attorn' general' pro eodem Dom' Rege nunc dic', quod placitum præfat' Majoris & Communitat', ac Civium civitat' London præd' superius rejungerendo in ea parte placitat', materiaque in eodem content' minime sufficien' in lege existunt ad ipsos Majorem & Communitat', ac Cives civitat' præd' ad clamand' libertat', privileg', & franchis' præd', fore de seipsis corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civit' London præd', ac per idem nomen placit' & implacit', resp' & responderi, sibi allocand', seu adjudicand' manuten'. Quodq; ipse idem Attorn' gener' ad placitum ill' modo & forma præd' placitat' pro eodem Dom' Reg' nunc necesse non habet, nec per legem terræ tenetur aliquo modo respondere. Et hoc idem Attorn' dict' Dom' Regis nunc general' pro eodem Dom' Rege nunc parat' est verificare. Unde pro defectu sufficien' placiti ipsorum Majoris & Communitat', ac Civium civitat' præd' in hac parte idem Attorn' dicti Dom' Regis nunc general' pro eodem Dom' Rege nunc, ut prius, pet' judicium, & quod præd' Major & Communitas, ac Cives ci-

vitat' London præd' de præmissis convincantur, & de libertat', privileg', & franch' ill' adjudicentur & excludantur, &c.

Et præd' Major & Communitas, ac Cives civit' præd', quoad moration' in lege præfat' Attorn' dic' Dom' Regis nunc generalis, quoad præd' placitum ipsor' Major' & Communitat', ac Civium civitat' London superius rejungerendo placit', quoad præd' resid' præd' placiti dic' Attorn' general' in assign' forisfactur', ut præfertur, superius replicando placitat', ex quo ipsi sufficien' materiam in lege in eod' placito suo ad ipsos Majorem & Communitat', ac Cives civitat' London ad clamand' præd' libertat', privileg', & franchis' fore de seipsis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Major' & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, respondere ac responderi per ipsos superius clamat', eis allocand' & adjudicand', manutenend' superius allegaver', quam ipsi parat' sunt verificare, quam quid' materiam præd' Attorn' dic' Dom' Regis nunc general', pro eodem Dom' Rege non didicit, nec ad eam aliquat' respond', sed verification' ill' admittere omnino recusat, ut prius, pet' judicium. Et quod libertat', privileg', & franchis' ill' eis & successoribus suis deinceps allocentur & adjudicentur, & quod ipsi, quoad præmiss' ill', ab hac cur' dimittantur, &c.

Et quoad præd' placit' præd' Attorn' Dom' Regis nunc general' pro eod' Dom' Rege, quoad confectio' & publication' legis pro levatione denar' de person' ad publica mercata infra civit' præd' tent' cum victual' & provisionibus ibidem vendend' acceden', ac exaction' & levation' hujusmodi denar' superius fieri supposit' superius rejungerend' placitat', iidem Major & Communitas, ac Cives civit' præd' (ut prius) dicunt, quod Major & Communitas, ac Cives civit' London præd', a tempore cujus contrar' memor' hom' non existit, habuer', & habere consuever', rationabil' tolner', ratas, sive denar' summas de omnibus person' ad mercat' præd' cum victual' & provision' ibidem vendend' tenend' pro stallis, stationibus, & al' accommodation' per eas pro vendition', expositione hujusmodi victual' & provision' in mercat' ill' habit', & de hoc pon' se super patriam.

Et præd' Robertus Sawyer Mil', Attorn' dic' Dom' Regis nunc general', qui pro eod' Dom' Rege in hac parte sequitur, dic', quod placitum præd' præfat' Major' & Communitat', ac Civium civit' London præd' superius repellendo placitat', materiaque in eod' content' minus sufficien' in lege existunt ad ipsos Major' & Communitat', ac Cives civit' præd' ad clamand' libertat', privileg', & franchis' præd', fore de seipsis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Major' & Communitat', ac Civium civitat' London præd', ac per idem nomen placitare & implacitari, respondere & responderi sibi allocand' seu adjudicand' manutenend', ad quod quidem placitum modo & forma præd' placitat', idem Attorn' dic' Dom' Regis nunc general' necesse non habet, nec per legem terræ tenetur aliquo modo respondere, pro eo, quod iidem Major & Communitas, ac Cives civit' præd' non ostender' quanta vel qualia tolner', ratas, sive denar' summas, iidem Major & Communitas, ac

Cives civit' London præd', a tempore cujus contrar' memor' hominum non existit', habuer', nec allegaver' quod ipsi unquam habuer' tolner', rat', sive denar' summas per ipsos superius supposit' fore per legem suam præd' fore reduc't' in certitudinem; & hoc idem Attorn' dic' Dom' Regis nunc general' pro eodem Dom' Rege parat' est verificare; unde pro defectu sufficien' placiti præd' in hac parte, idem Attorn' dic' Dom' Regis nunc general' pro eodem Domino Rege, ut prius, pet' judicium, & quod præd' Major' & Communitas, ac Cives civitat' London præd', de præmiss' præd' in placit' præd' convincantur, & de libertat', privileg', & franchis' ult' supradict' penitus excludantur & abjudicentur, &c.

Et præd' Major & Communitas, ac Cives civitat' London præd' petunt licentiam inde interloquend' coram Dom' Rege usque in octab' sancti Hilar', ubicunque, &c. & eis conceditur. Idem dies dat' est præfat' Attorn' dic' Dom' Regis nunc general', &c. Et præd' Attorn' dic' Dom' Regis nunc general', qui pro eod' Dom' Rege in hac parte sequitur, quoad placitum præfat' Majoris & Communitat', ac Civium civitat' London præd', quoad libertat', privileg', & franchis' præd' per ipsos superius clamat', videlicet, ipsos habere Vicecom' civit' & com' civit' London, & Vicecom' com' Midd', & nominare & eligere ex seipsis duas person' fore Vic' civit' præd', & com' ejusdem civit', & Vic' com' Midd', ac ill' sic nominat' & elect' præficere & constituere Vic' civit' præd', & com' ejusdem civit', & Vic' com' Midd', ac ut Vic' civit' præd', & com' ejusdem civit' de execution' & retorn' omnium brevium, billarum, & præceptorum Dom' Regis pro administratione justitiæ infra civit' præd', & com' ejusdem civit' exequend' & faciend' quæ ad officium Vic' faciend' pertinent, & ad faciend' & exequend' omnia & singula alia infra civit' præd', & com' ejusdem civit' quæ ad officium Vic' faciend' pertinent, ac ut Vic' com' Midd' pro eodem com' deservitur', ac omnia brevia, billas, & præcept' Dom' Regis infra com' Midd' præd', pro administratione & executione justitiæ ibidem exequend', & retorn' inde faciend' quæ ad officium Vic' faciend' pertinent superius placitat'; necnon quoad placitum præfat' Major' & Communitat', ac Civium civitat' London præd', quoad libertat', privileg', & franchis' per ipsos superius clamat', videlicet, Major' dic' civitat', & hujusmodi Alderman' ejusdem civitatis, qui officium Majorat' civit' ill' sustinuer', ac inde fuer' dimissi, ac tres Alderman' senior' civit' præd', qui diutius in offic' Alderman' civit' præd' steter', & onus & officium Majorat' civit' præd' non sustinuer', fore Justic' Dom' Regis ad pacem infra civit' præd' conservand', ac ad session' pacis & placita coron', scilicet, tal' placita coron', qual' Justic' Dom' Regis ad pacem conservand' assign' legitime tenere possent infra eand' civitat' tenend', ac ad omnia felon', riot', rout', & conventicul' illicit' infra civit' præd' inquirend', audiend', & terminand' superius placitat', idem Attorn' dic' Dom' Regis nunc general', qui pro eodem Dom' Rege in hac parte sequitur, petit ulterius licenc' inde interloquend' coram Dom' Rege usque octab' sancti Hilarii, & ei conceditur, &c. Idem dies dat' est præfat' Majori & Communitat', ac Civibus civitat' London præd', &c. Et quoad materiam in

lege, unde tam præd' Attorn' dic' Dom' Regis nunc general', quam præd' Major & Communitas, ac Cives civitat' præd' posuer' se in judic' cur'; sed quia cur' dic' Dom' Regis nunc hic de judic' suo de & super præmissis reddend' nondum advisatur, dies inde dat' est tam præfat' Roberto Sawyer Mil', Attorn' dic' Dom' Regis nunc general', qui pro eodem Dom' Rege in hac parte sequitur, quam præd' Major' & Communitat', ac Civibus civitat' London, &c. coram Dom' Rege in præd' octab' sancti Hilar', ubicunque, &c. de judic' suo inde audiend', eo quod cur' Dom' Regis hic nondum, &c.

Ad quam quidem octab' sancti Hilar' coram Dom' Rege apud Westm', ven' tam præfat' Robertus Sawyer Mil', qui sequitur, &c. quam præd' Major & Communitas, ac Cives civitat' London præd', per Attorn' suum præd'. Et præd' Major & Communitas, ac Cives civitat' London præd', ex quo ipsi sufficien' materiam in lege in placito suo præd' superius repellendo placitat' ad ipsos Majorem & Communitat', ac Cives civitat' London ad clamand' libertat', privileg', & franchis', fore de seipsis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, respondere ac responderi per ipsos superius clamat', eis allocand' & adjudicand' manutenend' superius allegaver', quam ipsi parat' sunt verificare; quam quidem materiam præd' Attorn' dic' Dom' Regis nunc general' pro eodem Dom' Rege non dedic', nec ad eam aliqualit' respond', sed verification' ill' admittere omnino recusat, ut prius, pet' judic', & quod libertat', privileg', & franchis' ill' eis & successoribus suis in perpetuum deinceps allocentur & adjudicentur, & quod ipsi, quoad præmiss' ill', ab hac cur' dimittantur, &c. Et præd' Attorn' dic' Dom' Regis nunc general', qui pro eodem Dom' Rege in hac parte sequitur, quoad exit' præd' int' præd' Dom' Regem & præfat' Major' & Communitat', ac Cives civitat' London per patriam triand' superius junct', & quoad libertat', privileg', & franchis' præd' per ipsos superius clamat', videlicet, ipsos habere Vic' civit' & com' civit' London, & Vic' com' Midd', & nominare & eligere ex seipsis duas person' fore Vic' civit' præd', & Com' ejusdem civit', ac Vic' com' Midd', ac illas sic nominat' & elect' præficere & constituere Vic' civit' præd' & com' ejusdem civitat', & Vic' com' Midd' ac ut Vic' civit' præd' & Com' ejusdem civit' & execution' & retorn' omnium brevium, billarum, & præceptor' Dom' Regis pro administratione justitiæ infra civit' præd', & com' ejusdem civit' exequend', & faciend' quæ ad officium Vic' faciend' pertinent, ac ad faciend' & exequend' omnia & singula al' infra civit' præd' & com' ejusdem civit', quæ ad officium Vic' faciend' pertinent, ac ut Vic' com' Midd' pro eodem com' deservitur', ac omnia brevia, billas, & præcept' Dom' Regis infra com' Midd' præd' pro administratione & executione justitiæ ibidem exequend', & retorn' inde faciend' quæ ad officium Vic' faciend' pertinent superius placitat', necnon quod libertat', privileg', & franchis' per ipsos superius clamat', videlicet, Majorem dic' civitat', & hujusmodi Alderman' ejusdem civitat', qui officium Majorat' civitat' illius sustinuer', ac inde fuer' dimissi, ac tres Alderman' sen' civitat' præd', qui diutius in officio Alderman'

Alderman' civit' præd' steter', & onus & officium Majorat' civit' præd' non sustinuer', fore Justiciat' Dom' Regis ad pacem infra civit' præd' conservand', ac ad session' pacis & placita coron', scilicet, tal' placita coron', qual' Justic' Dom' Regis ad pacem conservand' assign' legitime tenere possent infra eandem civit' tenend', ac ad omnia felon', riot', rout', & conventicul' illicit' infra civit' præd' inquirend', audiend', & terminand' superius placitat' dic', quod ipse pro eodem Dom' Rege in ea parte ulterius profequi non vult versus præfat' Majorem & Communitat', ac Cives civitat' London præd'.

Ideo cons' quod præfat' Major & Communitas, ac Cives civitat' London præd', quoad exit' int' præd' Dom' Regem, & præfat' Majorem & Communitat', ac Cives civitat' London præd', per patriam triand' superius junct', & quoad libertat', privileg', & franchis' præd' per ipsos superius clamat', videlicet, ipsos habere Vicecom' civit' & com' civit' London, & Vic' com' Midd', & nominare & eligere ex seipsis duas personas fore Vic' civit' præd' & com' ejusdem civit', & Vic' com' Midd', ac ill' sic nominat' & elect' præficere & constituere Vic' civit' præd' & com' ejusdem civit', & Vic' com' Midd', ac, ut Vic' com' civit' præd' & com' ejusdem, ad execution' & return' omnium brevium, billarum, & præceptor' Dom' Regis pro administratione justitiæ infra civit' præd' & com' ejusdem civit', exequend' & faciend' quæ ad officium Vic' faciend' pertinent, ac ad faciend' & exequend' omnia & singula al' infra civit' præd', & com' ejusdem civitat', quæ ad officium Vic' faciend' pertinent, ac ut Vic' com' Midd' pro eodem com' deservitur', ac omnia brevia, billas, & præcepta Dom' Regis infra com' Midd' præd', pro administratione & executione justitiæ ibidem exequend', & return' inde faciend', quæ ad officium Vic' faciend' pertinent superius placitat', necnon quoad libertat', privileg', & franchis' per ipsos superius clamat', videlicet, Majorem dic' civit', & hujusmodi Alderman' ejusdem civitat', qui officium Majorat' civit' ill' sustinuer', ac inde fuer' dimissi, ac tres Alderman' sen' civit' præd', qui diutius in offic' Alderman' civitat' præd' steter', & onus & officium Majorat' civit' præd' non sustinuer', fore Justiciar' Dom' Regis ad pacem infra civit' præd' conservand', ac ad session' pacis & placita coron', scilicet, talia placita coron', qual' Justic' Dom' Regis ad pacem conservand' assign' legitime tenere possint infra eandem civit' tenend' ac ad omnia felon', riot', rout', & conventicul' illicit' infra civit' præd' inquirend', audiend', & terminand' superius placitat', eant inde sine die, salvo jure Dom' Regis, si al', &c. Et quoad dic' separal' materias in lege, unde tam præd' Attorn' dic' Dom' Regis nunc general', quam præd', Major & Communitas, ac Cives civitat' præd', posuer' se in judic' cur', sed quia cur' dic' Dom' Regis nunc hic de judic' suo de & super præmiss' reddend' nondum advisatur, dies inde dat' est tam præfat' Roberto Sawyer Mil', Attorn' dic' Domini Regis nunc general', qui pro eodem Domino Rege in hac parte sequitur, quam præd'

Major' & Communitat', ac Civibus civitat' London, &c. coram Domino Rege a die Paschæ in quindecim dies, ubicunque, &c. de judicio suo inde audiend', eo quod cur' dic' Domini Regis hic nondum, &c. Ad quem quid' quinden' Paschæ coram Domino Rege apud Westm' ven' tam præfat' Robertus Sawyer Mil', Attorn' dic' Domini Regis nunc general', qui pro eodem Dom' Rege in hac parte sequitur, quam præfat' Major & Communitas, ac Civit' London præd' per Attorn' suum præd', sed quia cur' dic' Domini Regis nunc hic de judicio suo de & super præmiss' reddend' nondum advisatur, dies inde ulterior dat' est tam præfat' Roberto Sawyer Mil', qui sequitur, &c. quam præfat' Majori & Communitat', ac Civib' civitat' London præd' coram Domino Rege in crastin' Sanctæ Trinitat', ubicunque, &c. de judicio suo superinde audiend', &c. eo quod cur' Domini Regis hic nondum, &c. Ad quod quidem crastin' Sanctæ Trinitat' coram Domino Rege apud Westm' ven' tam præfat' Robertus Sawyer Mil', Attorn' Domini Regis nunc general', qui pro eodem Domino Rege in hac parte sequitur, quam præd' Major & Communitas, ac Cives civit' London præd' per Attorn' suum præd'; & idem Attorn' dic' Domini Regis pro eodem Domino Rege per' judic' versus præd' Major' & Communitat', ac Cives civit' London præd' in præmiss' reddend', quod dic' libertat', privileg', & franchis' fore de seipsis unum corpus corporat' & politicum in re, fact'o, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, respondere & responderi per ipsos superius clamat', capiantur in manus Domini Regis nunc, sup' quo, pro eo quod videtur cur' hic, quod præfat' Major & Communitas, ac Cives civit' præd', forisfecer' Domino Regi nunc libertat', privileg', & franchis' præd', ob causas in replicatione præfat' Attorn' general' superius specificat'; quodque placita præfat' Majoris & Communitat', ac Civium civitat' London præd' superius rejungendo & repellendo in ea parte placitat', materiaque in eisdem content', minus sufficien' & invalida in lege existunt ad præcludend' dict' Dom' Regem a forisfactur' præd', aut ad ipsos Majorem & Communitat', ac Cives civit' præd', ad clamand' libertat', privileg', & franchis' præd', sibi allocand' & adjudicand', manutenend', maturaque deliberatione superinde prius habit'.

Cons' est, quod libertat', privileg', & franchis' præd' fore de seipsis unum corpus corporat' & politicum in re, fact'o, & nomine, per nomen Majoris & Communitat', ac Civium civit' London, ac per idem nomen placitare & implacitari, respondere ac responderi, per eosdem Majorem & Communitat', ac Cives civit' London præd' superius clamat', capiantur & seisiuntur in manus Domini Regis, & quod præfat' Major & Communitas, ac Cives civit' London præd', capiantur ad satisfaciend' dic' Domino Regi de fine suo pro usurpatione libertat', privileg', & franchis' præd'.

Rex versus Pilkington ^a, & al' for a Riot.

Trin. 34. & Hil. 34 & 35. Car. II. B. R.

London ff. **Q**Uod 24 die Junii, anno regni Domini Caroli secundi nunc Regis Angl', &c. 34. apud Guildhall civit' London quædam Cur' assemblation' civium & liberor' homin' civit' London (communit' vocat' a *Common Hall*) per Johannem Moore, Mil', adtunc & adhuc Majorem civit' London, summonit' & convocat' coram eodem J. Moore Mil', Majore civit' præd', legitimo modo tent' fuit tam pro debet' election' Vic' civit' præd' pro execution' Offic' Vic' civit' præd' pro uno anno integro prox' sequen' post vigil' festi sancti Michaelis Arch' adtunc & adhuc prox' futur', quam pro election' diverfor' al' officiar' civit' præd', quodq; adtunc & ibidem in Cur' præd' incept' fuit numerare capita (*Anglice to take the Poll*) de electorib' tunc & ibidem præsentib' pro manifestatione electionis personar' deservitur' in offic' Vic' civit' præd' pro anno suprad', quodq; præd' J. Moore Mil', Major' civit' prædict', postea eodem 24 die Junii anno regni dicti Dom' Regis nunc 24 suprad' apud Guildhall civit' London' præd' in paroch' sancti Michaelis Bassishaw London præd' legitimo modo fecit & fieri causavit proclamation' pro adjornation' Cur' præd', sic ut præfertur' tent', & adtunc & ibidem præd' J. Moore Mil', Major' civit' præd' Cur' præd', legitimo modo usque diem Martis tunc prox' futur', adjornavit apud Guildhall civit' London præd' tenend', & adtunc & ibidem post adjornament' præd', sic ut præfertur, fact' præd', J. Moore Mil', Major civit' London præd' fecit & fieri causavit proclamation' publicam pro decession' omnium personar' ibidem ex occasione præd' assemblat'. Et ulterius idem Attorn' dicti Domini Regis nunc general' pro eodem Domino Rege dat Cur' hic intelligi & informari, quod Thomas Pilkington nuper de London Ar' & Samuel Shute nuper de London Ar' (tunc Vic' civit' London' præd') Et Henr' Cornish nuper de London Ar', Ford Dominus Grey de Warke, Thomas Gold nuper de London Mil', Johannes Shorter nuper de London Mil', Thomas Player nuper de London Mil', Willielmus Gulston nuper de London Mil', Slingsby Bethel nuper de London Ar', Nelthrope nuper de London Ar', Johannes Ayliffe nuper de London Ar', Johannes Ellis nuper de London Ar', Franciscus Jenks nuper de London Lintear', Robertus Barker nuper de London Gen', Johannes Deagle nuper de London Panuar', Richardus Freeman nuper de London Casarius, Benjamin Smith nuper de London Gen', Richardus Goodenough nuper de London Gen', R. Kay nuper de London Mercator, Lucy Knightley nuper de London Gen', Johannes Wickham nuper de London Gen', Samuel Swynnock nuper de London Mercator, Joshua Brooks nuper de London Gen', Jo' Jekyll nuper de London Gen', Dorman Newman nuper de London Gen', T. Rawlinson nuper de London Gen', T. Carpenter nuper de London Gen', T. Charlton nuper de London Gen', Johannes Jekyll jun.

nuper de London Gen', Benj' Alsop nuper de London Gen', M. Meriton nuper de London Gen', Car' Bateman nuper de London Gen', Johannes Trenchard nuper de London Ar', Sim' Miller nuper de London Gen', Jervas Byfield nuper de London Gen', W. Peachy nuper de London Gen', & Richardus Farrington nuper de London Ar', præmifs' præd' satis scien', sed existen' person' male disposit', & machinan' & intenden' pacem dicti Domini Regis nunc & communem tranquillitat' hujus regni Angl' inquietare, molestare, & perturbare, ipsi præd', T. Pilkington & S. Shute, sub colore officii Vic' civit' London præd', & præd' H. Cornish, Ford Dominus Grey, T. Gold Mil', J. Shorter Mil', &c. postea, & post adjornament' præd', scil' dicto 24 die Junii anno regni dicti Domini Regis nunc 34 suprad', apud paroch' sancti Michaelis B. London præd', in Guildhall præd' ibidem vi & armis, &c. riotose, routose, illicite, & seditiose, sese cum plur' al' person' male disposit', & pacis dicti Domini Regis nunc perturbatorib', ad numer' mille personar' eidem Attorn' dicti Domini Regis nunc general' adhuc incognit', assemblaver', congregaver' & coadunaver' ad pacem dicti Domini Regis nunc perturband'; & sic assemblat', congregat', & coadunat' existen', adtunc & ibidem vi & armis, &c. riotose, routose, & illicite, in & super præd' J. Moore Mil', Major' civit' præd' in pace Dei & dicti Dom' Regis adtunc & ibid' existen', insult' & afraciam fecer', & ipsum Johannem Moore Mil' adtunc & ibid' verberaver', vulneraver', & malectraver', ita quod de vita ejus maxime desperabatur: Et post adjornament' præd', & proclamation' præd', sic ut præfertur, per præfat' J. Moore Mil' Major' civit' præd' fact', ipsi præd' T. Pilkington & Samuel Shute, adtunc & ibidem, colore officii sui Vic' civit' London' præd', & præd' Henr' Cornish, Ford Dominus Grey, T. Gold Mil', J. Shorter Mil', &c. cum divers al' person' eidem Attorn' dicti Domini Regis nunc general' adhuc incognit', præfat' T. P. & S. Shute illicite & seditiose auxilian' & assisten' vi & armis, &c. riotose, routose, & illicite, ibidem continuaver' ad capita numerand' (*Anglice to take the Poll*) de person' sic adtunc & ibidem illicite assemblat', tanquam & quasi eadem person' licite assemblat' fuissent pro electione Vic' civit' præd': Et quod præd' T. P. S. Shute, H. Cornish, Ford Dominus Grey, T. Gold Mil', J. Shorter Mil', &c. tunc & ibidem illicite, tumultuose, & seditiose affirmaver', & quilibet eor' affirmavit, dixit, & alta voce præd' male disposit' personis affirmavit, quod præd' Johannes Moore Mil', Major civit' London præd', illicite & injuste assumpsisset super se libertat' ad adjornand' Cur', quæ sibi præd' J. Moore non pertinebat; quodque præd' T. Pilkington, S. Shute, H. Cornish, Ford Dominus Grey, T. Gold Mil', J. Shorter Mil', & al' tunc & ibidem præd' illicite & male disposit' person', sic ut præfertur assemblat' & congregat' vi & armis, &c. riotose, routose, illicite, & seditiose, per spatium

spatium trium horar' ad pacem dicti Domini Regis nunc perturband', & rior' præd' committend', excitaver', mover', persuaver', procuraver', & adtunc & ibidem, per totum tempus prædicum, in paroch' & warda prædicta Guildhall London præd', magnos rumores, clamores, vociferationes terribiles, & insolitos stridores, vi & armis, &c. riotose, routose, & illicite, tumultuose, & seditiose fecer', & fieri causaver' & excitaver', in contempt' dicti Domini Regis nunc, legumq; suar', pacisque suæ perturbation', & violation' manifest', ad magn' pericul' incitand' & movend' tumult' & effusion' quamplurimum sanguinis ibidem, ad magn' terror', inquietud', & timor' omn' ligoer' subdit' dicti Domini Regis, in malum exemplum omn' al' in tali casu delinquent', & contra pacem dicti Domini Regis, nunc, coron' & dignitat' suas, &c. Unde idem Attorn' dicti Domini Regis nunc general' pro eodem Domino Rege per' advisament' Cur' hic in præmiss', & debet' legis process' versus præfat' T. Pilkington, S. Shute, H. Cornish, Ford Dominum Grey, T. Gold Mil', J. Shorter Mil', &c. in hac parte fieri ad respondend' dicto Dom' Regi de & in præmiss', &c. per quod præcept' fuit Vic' civit' London præd', quod venire fac' eos ad respond', &c. Et modo, scil', die Mercur' prox' post tres septiman' sanctæ Trin', coram Dom' Rege apud Westm', ven' præd' T. Pilkington, S. Shute, & Richardus Goodenough, per Benedict' Brown Attornatum suum, & habito auditu information' præd', separatim dicunt, quod ipsi non sunt inde culp', & de hoc pon' se separatim super patriam: Et præd' R. Sawyer Mil', Attorn' Dom' Regis nunc general', qui pro eodem Domino Rege in hac parte sequitur similiter, &c. Et super hoc idem Attorn' dicti Dom' Regis nunc general', pro eodem Domino Rege dicit, & Cur' hic ostendit, quod Thomas Pilkington & S. Shute Ar', duo defend' superius nominat', Vicecom' civit' London præd' ad præfens existunt, tamen ipse idem Attorn' dicti Domini Regis nunc general' pro eodem Domino Rege per' breve Domini Regis præfat' Vic' London dirigend', de venire fac' coram Domino Rege duodecim, &c. ad triand' exit' præfat' int' dictum Dominum Regem & partes præd' superius in forma præd' junct': Et quia præd' defend' hoc non dedic', ideo præcept' est præfat' Vic' civit' London, quod venire fac' coram Dom' Rege, a die sancti Michaelis in tres septiman' ubicunque, &c. duodecim, &c. per quos, &c. & qui, &c. ad recogn' &c. quia tam, &c. idem dies dat' est tam præfat' R. Sawyer Mil', qui sequitur, &c. quam præd' T. P. S. S. & R. G. &c. Ad quas quid' tres septiman' sancti Michaelis coram dicto Domino Rege ven' tam præd' R. Sawyer Mil', qui sequitur, &c. quam præd' T. P. S. S. & R. G. per Attorn' suu' præd': Et Vic' civit' London non miser' inde breve, ideo sicut al' ven' inde Jur' coram dicto Dom' Rege in octab' sancti Hilar' ubicunque, &c. per quos, &c. & qui, &c. ad recog', &c. quia tam, &c. idem dies dat' est tam præfat' R. Sawyer Mil', qui sequitur, &c. quam præd' T. P. S. S. & R. G. &c. ad quas quidem Octab' sancti Hilar' coram dicto Domino Rege apud Westm' ven' tam præfat' R. S. Mil', qui sequitur, &c. quam præd' T. P. S. S. & R. G. per Attorn' suum præd', & Ford Dominus Grey, H. Cornish, T. Gold Mil', J. Shorter Mil', T. Player Mil', &c. per præfat' B. B. Attorn' suu' similiter ven', & habito auditu information' præd', se-

paratim dicunt, quod ipsi non sunt inde culp' & de hoc similiter separatim pon' se super patriam. Et præd' R. Sawyer Mil', Attorn' Domini Regis, nunc general', qui pro eodem Domino Rege in hac parte sequitur, similiter, &c. ideo, sicutal' ven' inde jur' coram dicto Domino Rege in octab' Pur' beatæ Mariæ Virginis, ubicunque, &c. per quos, &c. Et qui nec, &c. ad recogn', &c. qui tam, &c. idem dies dat' est tam præfat' R. Sawyer Mil', qui sequitur, &c. quam præd' T. P. S. S. R. G. Ford Domino Grey, &c. ad quas quidem octab' Pur' beatæ Mariæ Virginis, coram Domino Rege apud Westm', ven' tam præfat' R. Sawyer Mil', qui sequitur, &c. quam præd' T. P. S. S. R. G. Ford Dominus Grey, H. C. T. G. Mil', &c. per Attorn' suum præd': Et Vic' civit' London præd' retorn' nomina duodecim jur', quor' nul', &c. ideo præcept' est Vic' præd', quod distring' eos per omnes terr', &c. & quod de exit', &c. & quod habeant corpora eor' coram dicto Domino Rege a die Pasch' in quindecim septiman', ubicunque, &c. vel coram dilect' & fidel' Domini Regis Edwardo Saunders Mil', Capital' Justic' Domini Regis ad placita coram iplo Rege tenend' assign', si prius die Martis prox' post mensem Paschæ, apud Guildhall civit' London, per formam statut', &c. ven' pro defectu jur', &c. ideo Vic' habeant corpora, &c. ad recogn' in forma præd', &c. Idem dies dat' est tam præfat' R. Sawyer Mil', qui, &c. quam præd' T. P. S. S. R. G. Ford Domino Grey, H. O. T. G. Mil', &c. ad quas quidem quinque septiman' Paschæ, isto eodem termino, cor' Domino Rege apud Westm', ven' tam præfat' R. S. Mil', qui sequitur, &c. quam præd' T. P. S. S. R. G. Ford Dominus Grey, H. C. &c. per Attorn' suum præd', & præfat' Capital' Justic', coram quo, &c. mis' hic record' suum coram eo habit', in hæc verba: Postea, die & loco infra content', coram infra nominat' Edwardo Saunders Mil', Capital' Justic' dicti Domini Regis infra script', associat' sibi Edwardo Watts Gen', per formam statut', &c. ven' tam infra nominat' R. Sawyer Mil', Attorn' Domini Regis nunc general', qui sequitur, &c. quam præd' T. P. S. S. R. G. Ford Dominus Grey, H. C. &c. per Attorn' suum infra script': Et jur' jurat', unde infra fit mentio, exact' ven' & in jur' ill' jurat' existunt, & super hoc publica proclamatio pro Domino Rege fact', prout mos est, quod si aliquis sit, qui præfat' Capital' Justic', aut Servien' dicti Domini Regis ad legem, aut Attornatum dicti Domini Regis generalis, aut jur' præd', de infra content' informare vellet, veniret, & audiretur; & super hoc Georgius Jeffereys Mil' & Bar', ex parte dicti Domini Regis ad hoc faciend' se obtulit, super quo process' est per cur' hic ad caption' jur' præd' pro jur' præd' modo comparen', qui ad veritat' de infra content', elect', triat', & jurat' super sacramentum præd' dicunt, quod præd' T. Gold Mil', J. Brooks, W. Miller, T. Charlton, D. Newman, J. Jekyll jun', B. Alfop, M. Meriton, J. Trenchard, & J. Byfield, non sunt culp', nec eor' aliquis culp' est de præmiss' in informatione in recordo præd' mentionat', prout interius placitando allegaver'; & ulterius jur' præd' super sacramentum suum præd' dicunt, quod præd' Thomas Pilkington, S. Shute, Ford Dominus Grey, T. Player Mil', S. Bethell Arm', F. Jenks, J. Deagle, R. Freeman, R. Goodenough, R. Kay, J. Wickham, S. Swynnock, & S. Jekyll sen', sunt culp'

culp', & quilibet eor' est culp' de præmis' in informatione infra script' mentionat', prout per information' præd' interius versus eos supponitur, ideo, &c.

Rex versus Walcott^b, for High-Treason.

35 Car' II. O. B.

Guilielmus Tertius Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defensor &c. dilect' & fideli nostro Johanni Holt Militi, Capitali Justiciario nostro ad placita coram nobis tenend' assign', salutem. Quia in recordo & processu, ac etiam in redditione judicii cujusdam indictamenti versus Thomam Walcott, nuper de London generosum modo defunct', pro quibusdam altis prodicionibus personam Domini Caroli secundi nuper Regis Angliæ tangent' modo indictat' fuit, & superinde per quand' jur' superinde intr' præfat' nuper Regem & præfat' Thomam Walcott, capt' coram Justic' dict' nuper Regis ad gaolam deliberand' assign', convict' exit', & judicium superinde reddit' fuit pro præfat' nuper Rege versus præfat' Thomam Walcott, ut dicitur, quæ quidem recordum & processum prædict' causa erroris intervenient' in curia nostra coram nobis venire fecimus, & judicium inde in eadem curia nostra coram nobis reversatur. Et quia in reversatione judicii prædict' coram nobis super brev' de error' prædict', error intervenit manifestus ad grave dampnum cujusdam Isabellæ Dillon viduæ, Comitissæ Roscomon, nuper uxoris Wentworth Dillon Armig', nuper Comitissæ Roscomon in regno nostro Hibernico, sicut ex querela sua accepimus, nos errorem, si quis fuerit, modo debito corrigi, & eidem Isabellæ plenam & celerem justiciam fieri volentes in hac parte:

Vobis mandamus, quod si judicium super breve de errore prædict' reversat' sit, tum recordum & processum prædicta, cum omnibus ea tangent', nobis in parliamentum nostrum ad proximam sessionem, vicesimo octavo die instantis mensis Julii tenend', distincte, & aperte mittatis, & hoc breve, ut inspect' record' & processu prædictis, ulterius inde de assensu Dominorum Spiritualium & Temporalium in eodem parlamento existent', pro errore illo corrigendo fieri fac', quod de jure & secundum legem & consuetudinem regni nostri Angliæ fuerit faciend'. Teste Thoma Archiepiscopo Cantuar', & cæteris Custodibus & Justiciariis regni, apud Westm', sexto die Julii, anno regni nostri octavo.

Martin.

Respons' Johannis Holt Mil', Capital' Justiciarii infra nominat'.

Record' & process' unde infra fit mentio, cum omnibus ea tangen', Domino Regi infra nominat' in præsens parliamentum propriis manibus protuli, in quodam record' huic brevi annex', prout interius mihi præcipitur.

J. Holt.

Placita coram Domino Rege apud Westm' de termino Paschæ, anno regni Domini Willielmi tertii nunc Regis Angliæ, &c. septimo. Rot. 3.

London ff. Dominus Rex mandavit Justic' suis, per literas suas patentis sub magno sigillo, ad

inquirend' per sacram' proborum & legalium hominum civitat' London, ac aliis viis, modis, & mediis, quibus melius sciverint aut poterint de quibuscunque prodicion', misprison' prodicion', insurrection', rebellion', & al' malefactis, offens', & injur' quibuscunque; necnon Justic' suis ad gaolam suam de Newgate pro civitat' London de prison' in eadem existen' deliberand' assign', & eorum cuilibet breve suum in hæc verba:

Guilielmus tertius Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defensor, &c. Justiciar' suis per literas suas patentis sub magno sigillo Angliæ confect' ad inquirend' per sacram' proborum & legalium hominum civitat' London, ac aliis viis, modis, & mediis, quibus melius sciverint aut poterint de quibuscunque prodicion', misprison', prodicion', insurrection', rebellion', & al' malefactis, offens', & injur' quibuscunque, necnon Justic' suis ad gaolam suam de Newgate pro civitat' London, de prisonariis in eadem existen' deliberand' assign', & eorum cuilibet, salutem. Quia in recordo & processu, ac etiam in redditione judicii cujusdam indictamenti versus Thomam Walcott nuper de London gen' defunctum, pro quibusdam altis prodicion' person' Domini Caroli secundi nuper Regis Angliæ tangent', unde indictat' est, & superinde per quandam jur' patriæ inter præfat' Dominum nuper Regem, & præfat' Thomam Walcott, capt' coram Justiciari' dicti Domini Caroli secundi nuper Regis Angliæ, &c. ad gaolam prædict' deliberand' assign', convict', & judic' superinde reddit' sit, ut dicitur, error intervenit manifestus ad grave dampnum Johannis Walcott gen', filii & hæred' præd' Thomæ, sicut ex querela sua accepimus: Nos errorem, siquis fuit, modo debito corrigi, & eidem Johanni plenam & celerem justiciam fieri volentes in hac parte, vobis mandamus, quod si judicium reddit' sit, tunc record' & process' prædict', cum omnibus ea tangent', nobis, sub sigillis vestris, vel un' vestrum, distincte & aperte mittat', & hoc breve, ita quod ea habeamus a die Paschæ in tres septiman', ubicunque tunc fuerimus in Anglia, ut inspect' record' & process' prædict', ulterius inde pro errore illo corrigend' fieri faciamus, quod de jure, & secundum legem & consuetudinem regni nostri Angliæ fuerit faciend'. Teste meipso apud Westm' decimo septimo die Martii, anno regni nostri septimo.

Executio istius brevis patet in schedula & recordo huic brevi annex'.

Respons' Thomæ Lane Mil', Major' civitat' London, ac un' Justic' infra script' record' & process', unde in brevi supradict' fuit mentio, sequitur in hæc verba.

London ff. Memorand', quod per quandam inquisition' capt' pro serenissimo Domino Rege, apud Justice Hall in the Old Baily, London, in

parochia sancti Sepulchri in warda de-Faringdon extra London prædict', die Jovis, scilicet, duodecimo die Julii, anno regni Domini nostri Caroli secundi, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, fidei defensor, &c. tricesimo quinto, coram Willielmo Pritchard Mil', Majore civitat' London, Francisco Pemberton Mil', Capitali Justic' Domini Regis de banco, &c. ac aliis sociis suis Justiciariis dicti Domini Regis, per literas patent' ipsius Domini Regis eisdem Justiciar' prænominat', & aliis, ac quibuscunque quatuor vel plur' eorum, sub magno sigillo dicti Domini Regis Angliæ confect', ad inquirend' per sacrament' proborum & legalium hominum de civ' London, ac aliis viis, modis, & mediis, quibus melius scierint aut poterint, tam infra libertat', quam extra, per quas rei veritas melius sciri poterit, & inquir' de quibuscunque proditio', misprision' proditio', &c. infra civitat' prædict', tam infra libertat', quam extra, per quoscunque & qualitercunque habit', fact', perpetrat', sive commiss', per quos vel per quæ, cui vel quibus, quando, qualit', & quomodo, & de aliis articulis & circumstant' præmissis, & eorum aliquod vel aliqua qualitercunque concernen' plenius veritat', & ad eadem & al' præmissa audiend' & terminand' secundum legem & consuetudinem regni dicti Domini Regis Angliæ assignat', per sacrament' Rich' Alie arm', & aliorum proborum & legalium hominum civitat' London præd', qui ad tunc & ibidem jurat' & onerat' existent ad inquirend' pro dict' Domino Rege pro corpore civitat' prædict', extitit præsentat', quod Tho' Walcott nuper de London gen', ut falsus proditor contra illustrissimum & excellentissimum principem Dominum nostrum Carolum secund', Dei grat' Angl', Scot', Franc', & Hibern' Regem, & naturalem Dom' suum, timorem Dei in corde suo non habens, nec debit' ligeant' suam ponderan', sed instigatione diabolica mot' & seduct', dilectionem veram & debitam, & naturalem obedient', quas verus & fidelis subdit' dicti Domini Regis erga ipsum Dominum Regem gereret, & de jure gerere tenetur, penitus subtrahens, & totis viribus suis intenden' pacem & communem tranquillitat' hujus regni Angliæ perturbare, & guerram & rebellion' contra dictum Dominum Regem suscitare & movere, & gubernat' dicti Domini Regis in hoc regno Angliæ subvertere, & dict' Dominum Regem a titulo, honore, & regali nomine, coron' imperial' regni sui Angliæ deponere & deprivare, & dictum Dominum Regem ad mortem & finalem destruction' adducere & ponere, secundo die Martii, anno regni Domini Caroli secundi nunc Regis Angliæ, &c. tricesimo quinto, & diversis al' diebus & vicibus, tam antea, quam postea, apud parochiam sancti Michaelis Bassishaw, in warda de Bassishaw London, malitiose & proditorie, cum diversis aliis proditoribus jur' præd' ignot', conspiravit, compassavit, imaginat' fuit, & intendebat dictum Dominum Regem, supremum Dominum suum, non solum de Regali statu, titulo, potestate, & regimine regni sui Angliæ deprivare & dejicere, verum etiam eundem Dominum Regem interficere, & ad mortem adducere & ponere, & anti-quam gubernat' hujus regni Angliæ mutare, alterare, & penitus subvertere, ac stragem miserabilem inter subdit' dicti Domini Regis per totum regnum suum Angliæ causare & procurare, ac insurrection' & rebellion' contra dict' Dominum Regem movere & suscitare infra hoc regnum

Angliæ, & ad easdem nefandissimas proditio', & proditorias compassation', imagination', & proposita sua præd' perimplend' & perficiend', idem Thomas Walcott, ut falsus proditor, tunc & ibid', & diversis aliis diebus & vicibus, tam antea, quam postea, malitiose, proditorie, & advifate se assemblabat, conveniebat, & consultabat cum præd' al' proditoribus jur' prædict' ignot', & cum eisdem tractabat de & pro eisdem suis proditioibus, & proditoriis compassation', imagination', & propositis suis prosequend', exequend', & perimplend', quodque idem Thomas Walcott, ut falsus proditor, malitiose, proditorie, & advifate tunc & ibidem, & diversis al' diebus & vicibus, tam antea quam postea, super se assumebat, & prædict' aliis proditoribus promittebat se fore auxiliant' & assistent' in execution' proditio', & proditor' compassation', imagination', & proposit' sua prædict' perimplend' & perficiend', & easdem nefandissimas proditio', & proditor' compassation', imagination', & proposita sua prædict' perimplend' & perficiend' idem Thomas Walcott, ut falsus proditor, malitiose, proditorie, & advifate tunc & ibidem arma, videlicet, (Anglice, *Blunderbuffes*) Bumbard' (Anglice *Carbines*) Sclop' (Anglice *Pistols*) & procurabat & præparabat contra ligeantia suæ debit', contra pacem dicti Domini nunc, coron', & dignitat' suas, &c. necnon contra formam statut' in hujusmodi casu edit' & provis', &c. per quod præcept' fuit, videlicet, civitat' prædict', quod non omitt', &c. quin caperent præfat' Thomam Walcott, si, &c. ad respond', &c. & modo, scilicet, ad deliberation' gaolæ dicti Domini Regis de Newgate, tent' pro civitat' London apud Justice Hall prædict' in dicta parochia sancti Sepulchri, in warda de Faringdon extra London prædict', dicto die Jovis, undecimo die Julii, anno tricesimo quinto supradict', coram præfat' Willielm' Pritchard Mil', Majore civitat' London, ac aliis sociis suis Justiciariis dicti Domini Regis ad gaolam suam de Newgate de prison' in ea existen' deliberand' assign', præfat' Justic' dicti Domini Regis prius nominat' per manus suas proprias deliberaver' indictament' prædict' hic in cur' de recordo in formam juris terminand', &c. super quo ad istam eandem deliberation' gaolæ dicti Domini Regis de Newgate, tent' pro civitat' London præd' apud Justice Hall prædict', dicto die Jovis duodecimo die Julii, anno tricesimo quinto supradict', coram præfat' Justic' ult' nominat', ven' præd' Thomas Walcott, sub custod' Dudlei North Mil', & Petri Rich arm', Vicecom' civitat' prædict' (in quorum custod' ex causa prædicta præantea commiss' fuit) ad barram hic duct' in propria persona sua, qui committitur præfat' Vic' civitat' London, &c. & statim de præmissis prædict', in indictament' prædict' specificat', ei superius imposit' allocut', qualit' se vellet inde acquietari, idem Thomas Walcott dicit, quod ipse non est inde culpabil', & inde de bono & malo pon' se super patriam. Ideo immediate ven' inde jur', &c. coram præfat' Justic' ult' nominat' hic, &c. & jur' jurat' illius per præfat' Vic' ad hoc impanellat', scil', &c. exact' vener', qui ad veritat' de præmiss' dicend' elect', triat', & jurat', dicunt super sacrament' suum, quod prædictus Tho' Walcott est culpabil' de al' proditio' prædict' in indictament' prædict' specificat', ei superius imposit' modo & forma, prout per indictament' prædict' superius versus eum supponitur, & quod idem Thomas Walcott

Wallcott nulla habuit bona seu catalla, terras five tenementa ad eorum notic'; & super hoc statim quæsit' est de præfat' Tho' Walcott, si quod pro se habeat vel dicere sciat, quare cur' dict' Domini Regis hic ad iudicium & execution' de eo super verediçt' prædict' procedere non debeat, qui nihil ulterius dicit præterquam ut prius dixerat, super quo visis, & per cur' hic plene intellectis omnibus & singulis præmissis, considerat' est per cur' hic, quod præd' Tho' Walcott ducatur ad gaolam dicti Domini Regis de Newgate, unde venit, & ibidem super bigam ponatur, & abinde usque ad fureas de Tyburn trahatur, & ibidem per collum suspendatur, & vivens ad terram prosternatur, & quod secreta membra ejus amputentur, & interiora sua extra ventrem suum capiantur, & in ignem ponantur, & ibidem comburantur, & quod caput ejus amputetur, quodque corpus ejus in quatuor partes dividatur, ill' ponantur ubi Dominus Rex ea assignare voluit, &c. per quod præcept' fuit Vic', quod caperent eum, si, &c. ad satisfaciend', &c. & modo, scil', die Jovis prox' post mensem Paschæ isto eodem termino, coram Domino Rege nunc apud Westm', ven' quidam Johannes Walcott, filius & hæres prædict' Thomæ Walcott defunct', de alta prodicione prædict' convict' & attinct', per Benediçt' Browne Attornat' suum, & habit' audit' record' prædict', super quo præd' Thomas convict' & attinct' existit, dicit, quod in record' & process' prædict', ac etiam in redditione iudicii prædict' manifeste est errat' in hoc, vid', quod apparet per record' prædict', quod iudicium reddit' est pro dicto Domino nuper Rege, ubi per leges hujus regni Angliæ iudicium prædict' pro dicto Thoma Walcott reddi debuisset, & in eo manifeste est errat'. Erratum est etiam in hoc, viz. quod crimina in & per indictamentum prædict' versus prædict' Thomam imposit', per leges hujus regni Angliæ incerte, dubie, & nimis generalit' allegat' existunt, quodque idem indictamentum supposuit, & eidem Thomæ onerat & imponit crimina diversimoda, & toto genere inter se discrepantia, quodque iudicium superinde reddit', sit & existit contrarium legibus Angliæ, & minime pronuntiand' vel imponend' pro vel super hujusmodi crimina, qual' in indictamento prædict' supponuntur, & in eo manifeste est errat', unde pet' iudicium cur' hic in præmissis, & quod iudic' & attinctur' prædict' ab error' prædict', & al' in recordo & process' prædict' compert' existent', reversetur, annulletur, & penitus pro nullo habeatur, & quod ipse prædict' Johannes Walcott filius & hæres prædict' Thomæ, ad omnia quæ ipse præd' Johannes, occasione iudicii & attinctur' prædict' amisit, restituatur, & quod cur' hic procedat ad examinationem tam record' & process' prædict', quam materiar' superius pro errore assign', &c. & quia cur' dicti Domini Regis hic de iudicio suo de & super præmissis reddend' nondum advisatur, dies inde dat' est præfat' Johanni Walcott in statuto quo nunc, &c. in cro' sanctæ Trinitat', coram Domino Rege, ubicunque, &c. de iudicio suo inde audiend', &c. ad quod quidem crast' sanctæ Trinitat', coram

Domino Rege apud Westm' ven' prædictus Johannes Walcott per Attornat' suum prædict', &c. ut prius, petit iudicium, & quod iudicium & attinctur' prædict', versus prædict' Thomam Walcott reddit', ab error' prædict', & al' in recordo & process' prædict' compert' & existent', reversetur, annulletur, & penitus pro nullo habeatur, & quod ipse prædict' Johannes Walcott, filius & hæres prædict' Thomæ, ad omnia quæ ipse idem Johannes, occasione iudicii & attinctur' prædict' amisit, restituatur, & quod cur' hic procedat ad examination' tam record' & process' prædict', quam materiarum superius pro errore assign', &c. *And after many Continuances 'tis entred thus*: Super quo vis', & per cur' hic intellectis omnibus & singulis præmissis, diligenterque examinat' record' & process' prædict', & err' per prædict' Johannem Walcott superius assign', & al' in record' & process' prædict' compert' existent', maturaque deliberatione inde prius habita, considerat' est, quod iudicium prædict' ab error' prædict', & al' in record' & process' prædict' compert' existent', revocetur, annulletur, & penitus pro nullo habeatur, & quod prædict' Johannes Walcott, filius & hæres prædicti Thomæ Walcott, ad omnia quæ ipse occasione iudicii & attinctur' prædict' amisit, restituatur, & quod prædict' Johannes Walcott eat inde sine die, &c. Et super hoc Johannes Trevor Miles, Attorn' Domini Regis nunc general', qui pro eodem Domino Rege in hac parte sequitur, coram Rege ac proceribus hujus regni Angliæ hoc prædicto parlamento apud Westm' in com' Middlesex assemblat', in propria persona sua ven', & dicit, quod in record' & process', ac etiam in redditione iudicii super prædict' priori brevi dicti Domini Regis de errore corrigend', per prædict' Johannem Walcott prosecut' pro revocatione & adnullatione iudicii prædict' versus prædict' Thomam Walcott, super indictamentum prædict', pro alta prodicione prædict' reddit', manifeste est erratum in hoc, viz. quod ubi per recordum prædict' supponitur, quod prædict' Johannes Walcott posuit loco suo quendam Benediçt' Browne Attornat' suum ad prosequend' prædict' primum breve de errore in & super indictament' prædict' pro alta prodicione prædict', quod tamen Benediçt' Browne nullum habuit warrant' Attorn' pro eodem Johanne Walcott de recordo affilat', ideo in eo manifeste est errat'. Errat' est etiam in hoc, viz. quod per record' prædict' apparet quod iudicium prædict' pro revocatione & adnullatione iudicii prædict' versus prædict' Thomam Walcott, in forma præd' reddit', redditum fuit pro præd' Johanne Walcott versus dict' Dominum Regem, ubi per legem terræ hujus regni Angliæ iudicium ill' reddi debuisset pro dicto Domino Rege versus eundem Johannem; ideo in eo scil' manifeste est errat', & hoc parat' est verificare, unde pet' iudicium, & quod iudic' ill' ab error' prædict', & al' in record' & process' prædict' existent', revocetur, annulletur, & penitus pro nullo habeatur, & quod dictus Dominus Rex, ad quæ omnia ipse occasione revocation' & adnullation' iudicii prædict' amisit, restituatur, &c.

*Rex versus Sidney^c, for High-Treason.**Mich^o 35 Car^o II. B. R.**The Plea (drawn by Mr. Serjeant Rotheram) which he offered to the Court.*

PRædict^{us} Algernon Sidney dicit, quod per statut^{um} in parlamento inchoat^{um} & tent^{um} apud Westm^{onasterium} octavo die Maii, anno regni Domini Regis nunc decimo tertio, & ibi continuat^{um} usque tricesimum diem Julii tunc prox^{imum} sequen^{tem}, & ab eodem tricesimo die Julii adjornatum uique vice-
 simum diem Novembris tunc prox^{imum} sequen^{tem}, intitulum, *An Act for the Safety and Preservation of his Majesty's Person and Government against Treasonable and Seditious Practices and Attempts*, inter alia, ordinat^{um} & inactitat^{um} fuit, per autoritatem parlamenti prædicti, quod null^{us} persona sive personæ, virtute actus prædicti, incurreret aliquas penalitates in actu prædicto mentionat^{as}, nisi ipse vel ipsi prosecut^{us} esset vel essent infra sex menses prox^{imum} post offens^{um} commiss^{um}, & indict^{us} esset superinde infra tres menses post talem prosecutionem, aliquo in statuto prædict^o content^{um} in contrarium non obstante. Et prædict^{us} Algernon ulterius dicit, quod ipse prosecut^{us} fuit & commissus prisonæ Turris de London, pro offens^{um} in indictamento prædict^o mentionat^{um}, vicesimo sexto die Junii ultimo præterito, & non antea, & ibidem continuat^{um} prisonar^{um} huc usque, & quod ipse prædict^{us} Algernon non fuit indictat^{us} pro aliquo vel aliquibus offens^{um} in indictamento prædict^o mentionat^{um}, infra tres menses prox^{imum} post prosecutionem prædict^{am}. Et hoc prædict^{us} Algernon parat^{us} est verificare; unde petit iudicium, si ipse prædict^{us} Algernon, quoad aliquod crimen sive offens^{um} in indictamento prædict^o mentionat^{um}, quod crimen vel offens^{um} non fuit alta proditio ante confectionem statuti præd^{icti}, respondere debeat, & quoad omnes proditiones, crimina, & offens^{um} in indictamento prædict^o mentionata, quæ non fuere vel fuit alta proditio ante confectionem statuti prædictⁱ, idem Algernon dicit, quod per statutum in parlamento tento apud Westm^{onasterium} in com^{itatu} Middlesex in festo sancti Hilarii, anno regni Domini Edwardi nuper Regis Angliæ tertii, anno regni sui vicesimo quinto editum, intitulum, *A De-*

claration, which Offences shall be judged High-Treason, inter alia, inactitatum fuit autoritate ejusdem parlamenti, quod si ullus casus suppositus esse proditio, qui non specificatur in eodem statuto, acciderit coram aliquibus Justitiariis, Justitiarum moram facient (Anglice *shall tarry*) sine aliquo progressu ad iudicium (Anglice *going to Judgment*) de prædicta proditione, usque causa monstretur & declaretur coram Rege & parlamento suo. Quodque per statutum in parlamento tent^{um} apud Westm^{onasterium} in com^{itatu} Midd^{lesex}, quinto die Octobris, anno regni Domine Mariæ nuper Regine Angliæ primo, intitulum, *A Repeal of several Treasons, Felonies, and Præmunires*, inactit^{um} fuit, inter alia, autoritate ejusdem parlamenti, quod abinde nullum factum vel offens^{um} existen^{tem} per actum parlamenti, vel statut^{um} fact^{um} proditio per verba script^{uræ} notationem (Anglice *Cyphering*) fact^{um}, aut aliter quocunque capt^{um} habit^{um} census (Anglice *deemed*) vel adjudicat^{um} esse alta proditio, nisi tantum tal^{ia} quæ declarantur & exprimentur esse proditio in vel per actum parlamenti, vel statut^{um} factum n^{on} anno vicesimo quinto regni prænobilis Regis Edwardi tertii tangen^{tem} vel concernen^{tem} proditiones vel declarationes proditionis, & null^{um} al^{ium}, nec quod aliquæ pœnæ mortis, penalitates, vel forisfactur^{um} in aliquo modo sequuntur (Anglice *ensue*) vel sint alicui peccatori (Anglice *Offender*) vel peccatoribus (Anglice *Offenders*) pro facien^{tem} vel committen^{tem} aliquam proditionem alter^{am} quam tal^{ia} quæ in statuto prædicto fact^{um}, in dicto anno vicesimo quinto regni dicti Edwardi Regis ordinat^{um} & provis^{um}, aliquo actu vel actus parlamenti, statut^{um}, vel statuta ad aliquod tempus antea habit^{um} vel fact^{um} post dictum vicesimum quintum annum dicti nuper Regis Edwardi tertii, vel aliquom al^{ium} declarationem vel materiam in contrarium aliquo modo non obstante. Et prædict^{us} Algernon dicit, quod ipse non est culpabilis de aliqua vel aliquibus proditione vel proditionibus in indictamento prædicto mentionat^{um} quæ specificatur vel specificantur in statuto ultimo mentionato modo & forma prout in indictamento prædicto mentionat^{um}. Et de hoc ponit se super patriam.

*Rex versus Hampden^d, for a Misdemeanour.**Hil^o 36 Car^o II. B. R.*

Midd^{lesex} ff. Quid Johannes Hampden nuper de paroch^{ia}, *Eccl^{esiæ} Gen^{erale}*, existen^{tem} homo perniciosus, seditiosus, ac person^{am} pravæ mentis, necnon impiæ, inquiet^{us}, & turbulent^{us} disposition^{is}, ac machinans, practicans, & falso, illicite, & injuste, malitiose, turbulent^{us} & seditiose intenden^{tem} pacem dictⁱ Domⁱⁿⁱ Regis nunc, & communem tranquillitatem hujus regni Angl^{iæ} inquietare, molestare, & perturbare, & quantum in ipso fuit, seditiohem infra hoc regn^{um} Angl^{iæ} suscitare, movere, & pericula procurare, & gubernation^{em} dictⁱ Domⁱⁿⁱ Regis in hoc regn^{um} Angl^{iæ} in odium inferre. Quodque præd^{ictus} J. H. ad nequissimas, nefandissimas, & seditiosas intention^{em} suas præd^{ictam} perimplend^{am} & perficiend^{am}, & ad effectum redi-

gend^{am} ult^{imam} die Junii, anno regni, *Eccl^{esiæ} 35*. & diversis al^{ia} diebus & vicibus, tam antea quam postea, vi & armis, *Eccl^{esiæ} apud paroch^{iam}, Eccl^{esiæ} illicite*, injuste, malitiose, & seditiose se asseblavit, conveniebat, consultabat, conspirabat, & confederabat cum diversis male disposit^{is} subdit^{is} dictⁱ Domⁱⁿⁱ Regis jur^{is} præd^{icti} ignot^{us}, & cum eisdem tractabat de eisdem suis nefandis & seditiosis compassation^{em}, imagination^{em}, & proposit^{is} præd^{ictam} exequend^{am}, perimplend^{am}, & ad effectum redigend^{am}. Et ulterius præd^{ictus} J. H. ad nequissimas, nefandissimas, & seditiosas machination^{em}, practication^{em}, & intention^{em} suas perimplend^{am}, & ad effectum redigend^{am}, ad tunc & ibidem, scil^{icet}, ult^{imam} die Junii, anno regni, *Eccl^{esiæ} 35*. suprad^{ictam}, & diversis al^{ia} diebus & vicibus, tam antea, quam postea, apud

^c Vol. III. p. 974. N^o 122.^d Vol. III. p. 824. N^o 123.

paroch' præd' in com' præd', vi & armis, &c. falso, illicite, injuste, malitiose, & seditiose consultabat, consulebat, conspirabat, & confederabat de insurrection' infra hoc regn' Angl' habend', & de procuration' & provision' armor' & hominum armatorum præparandor' in diversis locis infra hoc regn' Angl' ad easdem nefandissimas, nequissimas, & seditiosas intention', compassation', imagination', & proposita sua præd' perimplend' & perficiend'. Quodq; præd' J. H. ad nequissimas, nefandissimas, & seditiosas intention' suas præd' perimplend' & perficiend', & ad effectum redigend', postea (scil', dicto ult' die Junii, anno, &c. 35. suprad') apud paroch' præd' in com' præd', vi & armis, &c. falso, illicite, injuste, nequissime, malitiose, & seditiose consul-

tabat, agreabat, & consentiebat, quod quædam persona, jur' præd' ignot', mitteretur in Scotiam ad invitand' & incitand' diversos male disposit' subdit' dicti Dom' Regis de regn' suo Scotiæ ad veniend' in hoc regn' Angl', ad advisand' & consultand' cum præfat' J. H. & præfat' al' male disposit' subdit' dicti Dom' Regis in hoc regn' Angl', de auxilio & assistanc' expectand' & supplend' e dicto regno Scotiæ, ad easdem nequissimas, nefandissimas, & seditiosas intentiones & compassation' suas præd' perimplend', faciend', & promovend', in contempt' legum hujus regn' Angl' manifest', in malum & perniciosum exemplum omnium al' in tali casu delinquen', ac contra pacem dict' Dom' Regis nunc, coron', & dignitat' suas, &c.

Rex versus Braddon and Speke^e, for a Misdemeanour.

Mich' 35 Car' II. Rot. 54. B. R.

ff. **Q**uod cum Arthur Comes Essex duodecimo die Jan', anno, &c. 35. commiss' fuit prison' Dom' Regis Turris London, pro quibusdam alt' prodition' per ipsum perpetrari supposit', & idem A. Comes Essex existen' prisonar' in Tur' London' præd', pro alta proditione præd', 13. die Jan', anno regni dict' Dom' Regis 35. suprad', Deum præ oculis suis non habens, sed instigatione diabolica mot' & seduct', apud Tur' London præd' in com' Midd', seipsum felonice, & ut felo de se, interfecit & murdravit, prout per inquisition' capt' apud Turr' London præd', in com' Midd' præd', 14 die Julii, anno suprad', coram Edwardo Farnham Arm', tunc Coron' dict' Dom' Regis libertat' Turr' London, super visum corporis præd' A. Com' E. coram Domino Rege de recordo remanen' plenius liquet & apparet. Quidam tamen Laurentius Braddon de Medio Templo London, Gen', & Hugo Speke de Lincoln's-Inn in com' Midd' Gen', præmissor' non ignar', sed machinan' & malitiose, & seditiose intenden' gubernation' dict' Dom' Regis hujus regn' Angl' in odium, vilipend', & contempt' ducere, 15. die Augusti, anno regni dict' Dom' Regis nunc 35. suprad', & diversis al' diebus & vicibus, tam antea, quam postea, apud

paroch', &c. vi & armis, &c. falso, illicite, malitiose, & seditiose conspirabant, & conabantur causare subdit' dict' Dom' Regis hujus regn' Angl' credere, quod inquisitio præd' indebite capt' fuit, & quod præd' A. Com' E. per quasdam person' ignot', in quar' custod' fuit, interfecit & murdrat' fuit, & ad malitiosas & seditiosas machination' & intention' suas præd' perficiend', & ad effectum redigend', iidem L. B. & H. S. apud paroch', &c. dicto 15. die Augusti, anno 35. suprad', falso, illicite, injuste, & seditiose conspiraver' procurare quosdam falsos testes ad proband', quod præd' A. Com' E. non fuit felo de se, sed quod idem A. Com' E. per præd' person' ignot' interfecit & murdrat' fuit, & ad persuadend' al' subdit' dict' Dom' Regis credere hoc fore verum, iidem L. B. & H. S. falso, malitiose, & seditiose adtunc & ibidem in scriptis declaraver', & declarari causaver' præfat' L. B. fore person', quæ prosequeretur murdrum præd' A. Com' E. in maximum scandalum & contempt' gubernation' Dom' Regis hujus regni Angl', in malum exemplum omnium al' in tali casu delinquen', ac contra pacem dict' Dom' Regis nunc, coron', & dignitat' suas, &c. Unde idem Attorn' dict' Dom' Regis nunc general', &c.

Rex versus Barnardiston^f, for a Misdemeanour.

Hil' 35 & 36 Car' II. Rot' 43. B. R.

Midd' ff. **Q**uod cum quædam diabolica & proditoria conspiratio & insurrectio diversar' seditiosar' & male-disposit' personar' ad Dominum nostrum Carolum secundum nunc Regem Angl' murdrand' & interficiend', & leges & gubernationem hujus regn' Angl', ut per leges modo constitut' & stabilit', subvertend' detect' fuisset; cumque etiam quidam Willielmus Russel Arm', & diversæ al' person' de conspiratione & proditione ill' per debitum legis process' fuissent triat', convict', & attinct', & pro eisdem execut'. Ac quidam Algernon Sidney Arm', de conspiratione & proditione ill' existebat similiter triat' & convict': Cumque super triation' præd' W. R. & A. S. Willielmus Dominus Howard de Escrick, testis ex parte dict' Dom' Regis ad prodition' &

conspiration' præd' proband' product' fuisset, quidam Samuel Barnardiston nuper de London Bar', existens homo seditiosus & pernitiosus, & turbulentæ & inquietæ animæ & conversation', falso, illicite, malitiose, nequit', & seditiose machinan' & practican', & intendens dict' Dom' Regem nunc, & gubernationem & regimen sua, necnon publicam administrat' justic' in hoc regno Angl' in odium, scandalum, & vilipendium cum subdit' suis inducere & inferre, ac discordiam & seditionem int' dictum Dominum Regem, & ligeos subdit' suos, & int' eosdem subdit' movere, incitare, & ponere, necnon pacem ejusdem Dom' Regis, & tranquillitat' hujus regn' Angl' inquietare, molestare, & perturbare, & conspiration' & prodition' præd' concealare, & evident' pro dicto Rege in ea parte vilificare, scandalizare, &

detertere, & ad nequiffimas, diabolicas, & nefandiffimas machination', practication', & intentiones fuas præd' perimplend', perficiend', & ad effectum ridigend', 20 die Septembr', anno regn' Dom' Caroli fecundi nunc Regis Angl', &c. 35. apud paroch' fancti Michaelis Cornhill, London, vi & armis, &c. falfo, illicite, injufte, malitiofe, corrupte, & feditione fecit, composuit, & fcripfit, & fieri, componi, fcribi, & publicari caufavit, quoddam falfum, fcandalofum, & feditionum libellum, geren' dat' 29 die Novembr', anno Dom' 1683, in quo quidem libello (int' al') content' fuer' hæ falſæ, fictæ, fcandalofæ, libelloſæ, malitioſæ, & feditionæ ſententiæ Anglican' ſequen', videlicet, *S I R, The Return of the Duke of Monmouth to Whitehall, and his being received into extraordinary Favour of his Majesty hath made a ſtrange Alteration of Affairs at Court; for thoſe that before ſpoke of him very indecently, now court, cringe, and creep to him. His Grace complained to the King of the ſcandalous Miſrepresentation that was made of him in the Monday's Gazette, upon which the Gazetteer was called to an Account for it, who alledg'd for himſelf, that a Perſon of great Quality ſent him in Writing the Words therein recited, commanding him to put them in the Gazette. Yeſterday being the laſt Day of the Term, all the Priſoners that were in the Tower upon the late ſham Presbyterian Plot (conſpiration' & proditiion' præd' innuendo) were diſcharged upon Bail; Mr. Braddon, who proſecuted the Murder of the Earl of Eſſex, the Information put in againſt him in the King's Bench by Mr. Attorney, for a pretended Subornation, &c. was not proſecuted, and his Bail was diſcharged; and the paſſing Sentence upon the Author of Julian the Apoſtate, and the Printer of the late Lord Ruſſel's Speech, was paſſed over with Silence. Great Applications are made to his Majeſty for his pardoning Mr. Sidney in the Tower (dictum Algernon Sidney, ut præfertur, convict' innuendo) which is believed will be attained, and that he will be baniſhed. The Lord Howard (dict' Willielmum Howard innuendo) appears diſpiſeable in the Eyes of all men; he is under a Guard at Whitehall, and (as believed) will be ſent to the Tower, for that the Duke of Monmouth (Jacobum Ducem Monmouth innuendo) will accuſe him concerning the Teſtimony he hath given, &c. (evident' ſuper triation' & conviction' præd' W. R. & A. S. per eundem Dominum Howard, ut præfertur, dat' innuendo) The Papiſts and high Tories are quite down in the Mouth, their Pride is abated, themſelves and their Plot confounded, but their Malice is not aſſwaged. 'Tis generally ſaid the Earl of Eſſex was murdered; the brave Lord Ruſſel (dict' Willielmum Ruſſel, pro conſpiration' præd', ut præfertur, convict', attinct', & execut' innuendo) is a freſh lamented. The Plot (conſpiration' & proditiion' præd' innuendo) is loſt here, except you in the Country can find it out amongſt the Adreſſers and Abhorrrers. This ſudden Turn is an Amazement to all men, and muſt produce ſome ſtrange Event, which a little Time will ſherw. Ac ad nequiffimas & nefandiffimas machination' & intention' fuas præd' perimplend', perficiend', & ad effectum redigend', idem S. B. Bar' poſtea (ſcil', dict' 20 die Decembris, anno regn' dict' Dom' Regis nunc 35. ſuprad') apud paroch' fancti Michaelis Cornhill London præd', falfo, illicite, injufte, malitiofe, corrupte, & feditione fecit, composuit, & fcripfit, & fieri, componi, fcribi, & publicari caufavit, quoddam al' falſum, fcandalofum, libelloſum, & feditionum*

libellum, geren' dat' primo die Decembr', anno Dom' 1683, in quo quidem libello (int' al') content' fuer' hæ falſæ, fictæ, fcandalofæ, malitioſæ, libelloſæ, & feditionæ ſententiæ Anglican' ſequen', videlicet, *Dear Sir, I am to answer you of 27th and 29th paſt; and truly I cannot but with great Sorrow lament the Loſs of our good Friend, honeſt Sir John Wright; but with Patience we muſt ſubmit to the Almighty, who can as well raiſe up Inſtruments to do his Work, as change Hearts, of which we have ſo great an Inſtance in the times of the Duke of Monmouth (præd' J. Duc' M. innuendo) that no Age or Hiſtory can parallel. I am now thoroughly ſatisfied, that what was printed in the Monday's Gazette is utterly falſe, and you will ſee it ſo declared ſhortly. The King is never pleaſed but when he is with him, hath commanded all the Privy Council to wait on him, and happy is he that hath moſt of his Favour: His Pardon was ſealed and delivered him laſt Wedneſday; 'tis ſaid, he will be reſtored to be Maſter of the Horſe, and be called into the Council Table, and to all his other Places; and 'tis reported he will be made Captain-General of all the Forces, and Lord High Admiral; and he treats all his old Friends, that daily viſit him, with great Civilities; they are all ſatisfied with his Integrity, and, if God ſpares his Life, doubt not but he will be an Inſtrument of much Good to the King and Kingdom: He ſaid publickly, that he knew my Lord Ruſſel (dict' Willielm' Ruſſel pro conſpiration' & proditiion' præd' convict', attinct', & execut' innuendo) was as loyal a Subject as any in England, and that his Majeſty believed the ſame; now I intend ſhortly to wait on him my ſelf. It would make you laugh to ſee how ſtrangely our high Tories and Clergy are mortified, their Countenances ſpeak it; were my Lord S—— to be moved for now, it would be readily granted. Sir George (Georgium Jeffreys Mil' & Bar', Capital' Juſtic' Dom' Regis ad placita in cur' ipſius Dom' Regis coram ipſo Rege tenend' aſſign', adtunc & adhuc exiſten' innuendo) is grown very humble. 'Tis ſaid, Mr. Sidney (dictum A. S. innuendo) is reprieved for forty Days, which bids well. Ac ad nequiffimas & nefandiffimas machination' & intention' fuas præd' perimplend', perficiend', & ad effectum redigend', idem S. B. poſtea (ſcilicet, dicto 20 die Decembr', anno regn' dict' Dom' Regis nunc 35. ſuprad', apud paroch' fancti Michaelis Cornhill London præd') falfo, illicite, injufte, malitiofe, corrupte, & feditione fecit, composuit, & fcripfit, & fieri, componi, & fcribi, & publicari caufavit, quoddam al' falſum, fcandalofum, libelloſum, & feditionum libellum, geren' dat' primo die Decembris, anno Dom' 1683. in quo quidem libello (inter al') content' fuer' hæ falſæ, fictæ, fcandalofæ, malitioſæ, libelloſæ, & feditionæ ſententiæ Anglican' ſequen', videl', *The late Change here in publick Affairs is ſo great and ſtrange, that we are like Men in a Dream, can hardly believe that we ſee, and fear we are not fit for ſo great a Mercy as the preſent Juncture ſo ſeems to promiſe. The ſham Proteſtant Plot (conſpiration' & proditiion' præd' innuendo) is quite loſt and confounded. The Earl of Mackleſfield is bringing Actions of Scandalum Magnatum againſt all the Grand Jurymen that indicted him at the laſt Aſſizes; and the ſeveral Gentlemen that were indicted in Cheshire and Northamptonſhire, will bring their ſeveral Actions at Law againſt them. Ac ad nequiffimas & nefandiffimas machination' & intention' fuas præd' ulterius**

terius perimplend', perficiend', & ad effectum redigend', idem S. B. Bar' postea (scilicet, 20 die Decembr', anno regn' Dom' Caroli secundi nunc Regis Angl', &c. 35.) apud paroch' sancti Michaelis Cornhill London præd', falso, illicite, injuste, corrupte, & seditiose fecit, composuit, & scripsit, & fieri, componi, scribi, & publicari causavit quoddam al' falsum, scandalosum, libellosum, & seditiosum libellum, geren' dat' 4 die Decembr', anno Dom' 1683, in quo quidem libello (int' al') content' fuer' hæc al' falsæ, fictæ, scandalosæ, malitiosæ, libellosæ, & seditiosæ sententiæ Anglican' sequen', videl', *Contrary to most Mens*

Expectation, a Warrant is signed at last for beheading Mr. Sidney (dict' Algernon Sidney innuendo) at Tower-Hill next Friday: Great Endeavours have been used to obtain his Pardon, but the contrary Party have carried it, which much dasheth our Hopes; but God still governs. Ea intentione, ad incitand', movend', & procurand' seditioem, malevolent', & discord' int' dict' Dom' Regem, & subdit' ipsius Dom' Regis hujus regn' Angl', necnon int' ipsos subdit', in malum & perniciosum exemplum omn' al' in tali casu delinquent', ac contra pacem Dom' Regis nunc, coron', & dignitat' suas, &c. Unde, &c.

Rex versus Rosewell^s, for High-Treason.

Mich' 36 Car' II. Rot. 133. B. R.

Surry ff. **A**Lias, scil' die Martis, scil' septimo die Octobris, anno regni Domini nostri Caroli secundi, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, fidei defens', &c. tricesimo sexto. Per quamdam inquisitionem capt' pro serenissimo Domino Rege apud Kingston super Thames', in comitatu Surr', coram Georgio Com' Berkley, Francisco Wythens Mil', un' Justic' dicti Domini Regis ad placita coram ipso Rege tenend' assign'; Thoma Jenner Mil', un' Servien' dicti Domini Regis ad legem, ac Recordator' civitat' London; Adamo Browne Bar', Francisco Vincent Bar', Edvardo Evelin Mil' & Bar', Jacobo Clarke Mil', Christophero Buckle Mil', Richardo Heath Servien' ad legem, Petro Rich, & Stephano Harvey Arm', Justic' dicti Domini Regis, per literas patentes ipsius Domini Regis eidem Justic' prænominat', ac quibuscunque tribus vel pluribus eorum, sub magno sigillo dicti Domini Regis Angliæ confect', ad inquirend' per sacramentum proborum & legalium hominum com' prædict', ac aliis viis, modis, & mediis, quibus melius sciverint aut poterint tam infra libertat', quam extra, per quos rei veritas melius sciri poterit, de quibuscunque prodicionibus, misprisionibus prodicionum, insurrectionibus, rebellionibus, contrafacturis, tonsur', lotur', falsis fabricationibus, & aliis falsitat' monetæ hujus regni Angliæ, ac aliorum regnorum, five dominiorum quorumcunque; ac de quibuscunque murdris, felonis, homicid', interfectionibus, burglar', raptibus mulierum, congregationibus ac conventiculis illicitis, verborum prolationibus, coadunationibus, misprisionibus, confederationibus, falsis allegantiis, transgressionibus, riot', rout', retentionibus, escapiis, contempt', falsitat', negligent', conceleament', manutinent', oppressionibus, cambipartiis, deceptionibus, ac aliis malefactis, offens', & injur' quibuscunque; necnon accessar' eorundem infra com' prædict', tam infra libertat', quam extra, per quoscunque & qualitercunque habit', fact', perpetrat', five commissa, & per quos, vel per quem, cui vel quibus, quando, qualiter, & quomodo; ac de aliis articulis & circumstantiis, præmissa & eorum aliquod vel aliqua qualitercunque concernen', plenius veritat', & ad easdem prodiciones, & alia præmissa audiend' & examinand' assign', secundum legem & consuetudinem regni dicti Dom' Regis Angliæ, per sacramentum duodecim jur' proborum & legalium hominum com' prædict',

qui ad tunc & ibidem jurat' & onerat' existen' ad inquirend' pro dicto Domino Rege, & corpore com' prædict', extitit præsentat'. *Surr. ff. Juratores, &c. The whole Indictment, as in the Trial.*

Quod quidem indictamentum Dominus Rex nunc coram eo postea, certis de causis, venire fecit terminand', &c. Per quod præcept' fuit Vic' com' prædict' non omitt', &c. quin caperet eum, si, &c. ad respondend', &c. Et modo, scil', die Jovis prox' post tres septimanas sancti Michaelis, isto eodem termino, coram Domino Rege apud Westm', venit prædict' Thomas Rosewell, subcustod' custod' prison' de le Gatehouse Westminster', in cujus custod' præantea ex causa prædict' commiss' fuit virtute brevis dicti Domini Regis de Habeas Corpus, ad subjiciend' & recipiend' ad barram hic duct' in propria person' sua, qui committitur Marr', &c. Et statim de præmissis ei superius imposit', alloquit' qualiter se velit inde acquietari, dicit, quod ipse in nullo est inde culpabilis, & inde de bono & malo ponit se super patriam. Ideo ven' inde jur' coram dicto Domino Rege apud Westm', die Martis in octab' sancti Martini, per quos, &c. Et qui, &c. ad recogn', &c. quia, &c. Idem dies dat' est præfat' Thomæ Rosewell, sub custod' præfat' custodis prison' de le Gatehouse Westm' iterum commiss', salvo custodiend' quousque, &c. Ad quem quidem diem Martis in octab' sancti Martini, coram Domino Rege apud Westm', venit prædict' Thomas Rosewell sub custod' præfat' custod' prison' de le Gatehouse Westm' prædict', virtute brevis Domini Regis de Habeas Corpus, ad subjiciend', &c. ad barram hic duct' in propria persona sua, qui committitur Marr', &c. Et jur' prædict' per Vic' com' prædict' ad hoc impanellat' exact' ven', qui ad veritatem de præmissis dicend' elect', triat' & jurat', dicunt super sacramentum suum, quod prædict' Thomas Rosewell est culpabilis de alta prodicione prædict', in indictament' prædict' specificat', modo & forma prout per indictament' prædict' superius versus eum supponitur. Et quod idem Tho' Rosewell tempore perpetrationis altæ prodicionis prædict', seu unquam postea, nulla habuit bona seu catalla, terras, five tenementa, ad notitiam jur' prædict'. Et quia curia dicti Domini Regis hic de judic' suo inde reddend' nondum advisatur, dies inde dat' est præfat' Thomæ Rosewell, in statu quo nunc, &c. usque diem Mercur' prox' post octab' Purificationis beatæ Mariæ Virginis coram Domino Rege, ubicunque, &c. de judic' suo inde reddend', &c.

ante quem diem dictus Dominus Carolus secundus Rex Angliæ, &c. diem suum clausit extremum, & Dominus Jacobus secundus super se suscepit gubernationem hujus regni Angliæ. Et modo, scilicet die Mercur' prox' post octab' Purificationis beatæ Mariæ virginis, isto eodem termino coram Domino Rege apud Westm' venit prædict' Thomas Rosewell in propria persona sua, sub custod' præfat' custodis prison' de le Gatehouse Westm' prædict', & alloquit' ei si quid pro se habeat, vel dicere sciat, quare curia hic ad judic' super indictament' prædict' procedere non debeat, dicit, quod dictus Dominus Carolus secundus, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ nuper Rex, fidei defensor, &c. per literas suas patent' sub magno sigillo suo Angliæ sigillat', geren' dat' apud Westm' vicesimo octavo die Januar', anno regni sui tricesimo sexto, de gratia sua speciali, ac ex certa scientia & mero motu suis, pardonavit, remisit, & relaxavit, ac per easdem literas patent' pro se, hæred', & successor' suis, pardonabat, remittebat, & relaxabat eidem Thomæ Rosewell, per nomen Thomæ Rosewell nuper de paroch' de Redriffe in com' Surr' Clerico, seu quocunque alio nomine vel cognomine, seu additione nominis vel cognominis, aut loci, idem T. Rosewell sciatur, censeatur, vocetur, sive nuncupetur, aut nuper sciebatur, censebatur, vocabatur, sive nuncupabatur, omnes prodictiones, quascunque, unde præfat' Thomas Rosewell in termino sancti Michaelis jam ult' elaps', in curia dicti nuper Regis, coram ipso Rege apud Westm' tent', convict' sive attinct' fuit; ac omnia & singula indictament', judicia, convictiones, condemnationes, executiones, imprisonment', punitiones, & omnes alias pœnas & pœnalitat' quæcunque super vel versus ipsum Thomam Rosewell, de, pro, sive concernen' præmissis, seu eorum aliquo habit', fact', reddit', sive adjudicat', aut in posterum habend', reddend', faciend', sive adjudicand', nec non omnia & singula utlagar' versus dictum Thomam Rosewell, ratione seu occasione præmissorum, seu eorum aliquor' vel alicujus promulgat', sive in posterum promulgand', ac omn' & omnimod' sect', querel', forisfactur', impetitiones & demand' quæcunque, quæ dictus nuper Rex versus ipsum ratione præmissorum, seu eorum alicujus, habuit, habet, seu in futuro habere poterit, aut hæred' seu successor' dicti nuper Regis ullo modo habere poterint in futuro, sectamque pacis ipsius nuper Regis, quæ ad ipsum nuper Regem versus præfat' Thomam Rosewell pertinet, seu pertinere potest occasione præmissorum, seu eorum aliquor' vel alicujus; & firmam pacem dicti nuper Regis ei inde debat & concedebat per easdem literas patent', volens quod idem Thomas Rosewell per Vicecomites, Justic', Ballivos, aut alios ministros ipsius nuper Regis, hæred', seu successor' suorum, occasione præmissor', seu eorum alicujus, molestetur, occasionetur, perturbetur, seu in aliquo gravetur; volens quod eadem literæ suæ patent', quoad omnia & singula præmissa superius mentionat', bon', firm', valid', sufficient', & effectual' in lege sint & erint, licet crimina & offens' prædict' minus certe specificat' existunt; quodque pardonatio illa in omnibus cur' dicti nuper Regis, & alibi, interpretetur & adjudicetur in beneficentissimo sensu, pro firmiori exoneratione præfat' Thomæ Rosewell, ac etiam placitetur & allocetur in omnibus cur' dicti nuper Regis, absque aliquo brevi de allocatione in ea parte prius ob-

tent' sive obtinend', non obstant' statut' in parlamento, anno regni dict' nuper Regis decimo tertio fact' & edit', & non obstante aliquo defect' aut aliquibus defectibus in eisdem literis patent' content', aut aliquo alio statut', actu, ordinatione, provisione, proclamatione, sive restrictione, aut aliqua alia re, causa, vel materia quacunque in contrar' inde in aliquo non obstant'. Ita tamen quod dictus Thomas Rosewell tal' bon' & suffic' securitat' de se bene gerend', a dat' literar' patent' prædict' erga dictum nuper Regem, hæred', & successor' suos, & cunctum populum suum inveniatur, qual' appunctuat' & limitat' erit per Capital' Justic' de cur' præd' pro tempore existen'. Et idem Thomas Rosewell profert hic in cur' literas patent' præmissa testificantes in hæc verba:

Carolus secundus, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defensor, &c. omnibus ad quos præsent' literæ nostræ pervenerint, salutem. Sciatis, quod nos de gratia nostra speciali, ac ex certa scientia, & mero motu nostris, pardonavimus, remisimus, & relaxavimus, ac per præsent' pro nobis, hæredibus, & successoribus nostris pardonamus, remittimus, & relaxamus Thomæ Rosewell, nuper de paroch' de Redriffe in com' Surr' Clerico, seu quocunque alio nomine vel cognomine, seu additione nominis, aut loci, idem Thomas Rosewell sciatur, censeatur, vocetur, sive nuncupetur, aut nuper sciebatur, censebatur, vocabatur, sive nuncupabatur, omnes prodictiones quascunque, unde præfat' Thomas Rosewell, in termino sancti Michaelis jam ult' elaps', in curia nostra coram nobis apud Westmonast' tent', convict' sive attinct' fuit; ac omnia & singula indictamenta, judicia, convictiones, condemnationes, executiones, imprisonment', punitiones, & omnes alias pœnas & pœnalitates quascunque super vel versus ipsum Thomam Rosewell, de, pro, sive concernen' præmissis, seu eorum aliquibus habit', fact', reddit', sive adjudicat', aut in posterum habend', reddend', faciend', sive adjudicand', nec non omnia & singula utlagar' versus dict' Thomam Rosewell, ratione seu occasione præmissorum, seu eorum aliquorum vel alicujus promulgat', sive in posterum promulgand', ac omnia & omnimod' sect', querel', forisfactur', impetitiones, & demand' quæcunque, quæ nos versus ipsum ratione præmissorum, seu eorum alicujus habuimus, habemus, seu in futuro habere poterimus, aut hæred' seu successor' nostri ullo modo habere poterint in futuro, sectamque pacis nostræ, quæ ad nos versus præfat' Thomam Rosewell pertinet, seu pertinere poterint ratione præmissorum, seu eorum aliquorum vel alicujus; & firmam pacem nostram ei inde damus & concedimus per præsent' nolentes quod idem Thomas Rosewell, per Vicecomites, Justiciar', Ballivos, aut alios ministros nostros, hæredum, seu successor' nostrorum, occasione præmissorum, seu eorum alicujus, molestetur, occasionetur, seu in aliquo gravetur. Volent' quod hæc literæ nostræ patent' quoad omnia & singula præmissa superius mentionat', bonæ, firmæ, valid', sufficient', & effectual' in lege sint & erint, licet crimina & offens' prædict' minus certe specificat' existunt, quodque hæc pardonatio nostra in omnibus curiis nostris, & alibi, interpretetur & adjudicetur in beneficentissimo sensu, pro firmiori exoneratione præfat' Thomæ Rosewell, ac etiam placitetur & allocetur in omnibus curiis nostris absque aliquo brevi de allocatione

allocatione in ea parte prius obtent', sive obtinend', non obstante statut' in parliament' anno regni nostri decimo tertio fact' & edit', & non obstant' aliquo defect', aut aliquibus defectibus in his literis patentibus content', aut aliquo alio statuto, actu, ordinatione, provisione, proclamatione, sive restrictione, aut aliqua alia re, causa, vel materia quacunque in contrar' inde in aliquo non obstante; ita tamen, quod dict' Thomas Rosewell tal' bon' & sufficien' securitat' de se bene gerend' ex nunc erga nos, hæred' & successores nostros, & cunctum populum nostrum inveniatur, qual' appunctuat' & limitat' erit per Capital' Justic' de curia prædict' pro tempore existen'. In cujus rei testimonium has literas nostras fieri fecimus patentes, teste meipso apud Westmonast' vicesimo octavo die Januarii, anno

regni nostri tricesimo sexto.

Per breve de privato sigillo,

Barker.

Super quo vis' & per cur' hic intellect' omnibus & singulis præmiss', cons' est per cur' hic, quod prædict' Thomas Rosewell (sub conditione mentionat' in literis patent' superius recitat') de altis proditiõibus prædict' in indictament' prædict' superius specificat' exoneretur, & eat inde sine die.

On the Back of the Pardon is written as follows:

Ista Charta placitatur, allocatur, & irrotulatur de record' coram Domino Rege apud Westm' termino sancti Hilar', anno regni Domini Jacobi secundi nunc Regis Angl', &c. primo.

Rex versus Hayes^h, for High-Treason.

Mich' 36 Car' II. B. R.

London ff. **Q**UOD Josephus Hayes nuper de London mercator, ut falsus proditor contra illustrissimum & excellentissimum Principem Dom' Carolum secundum, Dei gratia Angl', Scot', Franc', & Hiberniæ Regem, & naturalem Dominum suum, timorem Dei in corde suo non habens, nec debitum ligeanc' suæ ponderans, sed instigatione diabolica mot' & seduct', dilection' veram & debitam, & naturalem obedienc', quas verus & fidel' subdit' dict' Dom' Reg' erga ipsum Dom' Regem gereret, & de jure gerere tenetur penitus subtrahens, & totis viribus suis intendens pacem & communem tranquillitat' hujus regni Angl' inquietare, molestare, & perturbare, & guerram & rebellion' contra dict' Dom' Regem suscitare & movere, & gubernation' dict' Dom' Reg' in hoc regn' Angl' subvertere, & dict' Dom' Regem a titulo, honore, & regali nomine, coron' imperial' regni sui Angl' deponere, dejicere, & deprivare, & dict' Dom' Regem ad final' destruction' adducere & ponere, 32. die Augusti, anno reg' Dom' Caroli

secundi nunc Reg' Angl', &c. 35. apud paroch' sancti Mich' Bassishaw, in warda de Bassishaw London, satis sciens, quendam Thomam Armstrong nuper de London Milit', ut falsum proditor', proditorie conspiravisse & imaginat' fuisse mortem & final' destruction' dict' Dom' Reg', & pro eadem proditiõne proditorie fugam fecisse, ipse præd' Johannes Hayes postea, scilicet dicto 31. die Augusti anno reg' dict' Dom' Regis nunc 35. suprad', & diversis al' diebus & vicibus, tam antea quam postea, apud paroch' sancti Michael' Bassishaw, in warda de Bassishaw London præd', scienter, malitiose, seditiose, & proditorie præd' T. Armstrong confortavit, sustinuit, & manutenuit, & præd' J. H. adtunc & ibidem pro confortatione, sustentatione, & manutentione præd' T. A. summam attingen' ad centum & quinquaginta libras legal' monet' Angl', malitiose, seditiose, & proditorie solvit, & solvi causavit, contra ligeanc' suæ debitum, ac contra pacem dict' Dom' Regis nunc, coron', & dignitat' suas, &c. necnon contra formam statuti, &c.

Pritchard versus Papillonⁱ,

An Action for False Imprisonment.

Paschæ 36 Car' II. B. R.

London ff. **W**ilhelmus Pritchard Miles, nuper Major civit' prædict', querit' de Thoma Papillon in custod' Mar', &c. pro eo videlicet, quod cum duodecimo die Februarii, anno nostri Domini Caroli secundi nunc Regis Angliæ, &c. tricesimo quinto, ipse idem Wilhelmus Pritchard, ac antea, & abinde per separat' menses ex tunc prox' sequend' extitit Major civitat' London præd', in officium Majoratus illius debito modo elect', præfect', & jurat', ac secundum consuetudinem civitat' London' prædict', a tempore cujus contrar' memoria hominum non existit, in eadem usitat' & approbat' officium suum Majoratus illius Indies intendi debuit, per assiduam diligent' ipsius Wilhelmi in regimine civitat' illius, per ipsum secundum debitum officii sui præd' exequend', & performand' ad hono-

rem & dignitat' ad officium illud spectant' & pertinent', prædictus tamen Thomas existens unus de Comitatus civitat' præd', & sub regimine dicti Wilhelmi, virtute officii sui prædicti, præmissor' non ignarus, sed machinans, & false ac malitiose invidens felici statui ipsius Wilhelmi in officio suo prædict', necnon ipsum Wilhelmum in executione officii illius minus juste inquietare & disturbare, prædicto duodecimo die Februarii, anno tricesimo quinto supradicto, idem Thomas Papillon, pro vexatione præfat' Wilhelmo adhibend' (eodem Thoma adtunc non habente aliquam legitimam vel probabilem causam actionis versus ipsum Wilhelmum) false & malitiose prosequut' fuit extra cur' dicti Domini Reg' coram ipso Rege nunc habit', scilicet, apud Westmon' in com' Middlesex adtunc & adhuc tent' existen', quoddam breve ipsius Dom' Reg' de alias Capias

^h Vol. III. p. 1067. N^o 131.

ⁱ Vol. III. p. 1072. N^o 132.

versus ipsum Wilhelmum, per nomen Wilhelmi Pritchard, Militis, adtunc Coronator' civitat' London' præd' direct', per quod quidem breve idem Dominus Rex nunc eidem tunc Coronatori præcepit quod caper' ipsum Wilhelmum Pritchard, si invent' foret in civitat' London' præd', & eum salvo custodiret, ita quod haberet corpus ejus coram Domino Rege apud Westm' die cur' prox' post quindenam Paschæ ex tunc prox' sequend', ad responden' præfat' Thomæ Papillon, per nomen Thomæ Papillon, Armiger', de placito transgres', & quod idem tunc Coronator haberet ibi tunc breve illud. Et prædictus Thomas Papillon, ex ulteriori nequitia & malitia sua præcogitat' versus ipsum Wilhelmum, postea & ante retorn' brevis prædicti, scilicet, vicesimo quarto die Aprilis, anno tricesimo supradicto, apud London' præd', videlicet, in parochia sanctæ Mildredæ Virginis in Pulletria, in warda de Cheap', London, prædictum breve de alias capias cuidam

Johanni Brome, Gen', adtunc Coronator' civit' London' præd' existen', deliberavit exequend', ac adtunc & ibidem apud Wilhelmum adtunc Major' civitat' London' præd', ut præfert', existen', prætextu brevis illius præd' corp' suum capi & arrestari, ac in prisona sub custod' ejusdem tunc Coronator' per spatium sex horarum, ex tunc prox' sequen', detineri malitiose & minus juste procuravit, in vituperation', derogation', & vilipendium prædicti Wilhelmi & officii Majoratus ipsius Wilhelm' præd', necnon ad damnum, præjudicium, & gravamen ipsius Wilhelmi manifest', ubi revera, & de facto prædictus Thomas Papillon, prædicto tempore captionis, arrestionis, & detentionis ipsius Wilhelm' in prisona sic, ut præfert' fact', non habuit aliquam justam vel probabilem causam actionis versus ipsum Wilhelmum in præmissis præd', unde idem Wilhelmus dic' quod ipse deteriorat' est, & damnum habet ad valent' decem mille librarum, & inde produc' sectam, &c.

Rex versus Hampden^k, for High-Treason.

i Jac' II. O. B.

Midd' ff. **D**ominus Rex mandavit Justic' suis ad inquirend' per sacram' probor' ac legal' homin' de Com' Midd', ac aliis viis, modis & mediis, quibus melius sciverint aut poterint, de quibuscunq; prodicionibus, misprisisonibus prodicion', insurrectionibus, rebellionibus, contrafactur', tonsur', lotur', falsis fabricationibus & al' falsitat' monet' hujus regni Angliæ, & al' regnor', sive dominior' quorumcunque, ac de al' offens' & injur' quibuscunque, ac Justic' suis ad gaolam suam de Newgate de prisonar' in eadem existen', deliberand' assign', necnon custod' pacis suæ, ac Justic' suis ad divers' felon', transgr', & al' malefacta in eodem Com' perpetrat', audiend' & terminand' assign', & eorum cuilibet breve suum clausum, in hæc verba: Jacobus secundus, Dei gratia, &c. Justic' nostris ad inquirend' per sacrament' proborum & legalium homin' de Com' Midd', ac aliis viis, modis & mediis, quibus melius sciverint aut poterint, de quibuscunque prodicionibus, misprisisonibus prodicion', insurrection', rebellion', contrafactur', tonsur', lotur', falsis fabricationibus, & al' falsitat' monet' hujus regni Angliæ, & al' regnor' sive dominior' quorumcunque, ac de al' offens' & injur' quibuscunque, ac Justic' nostris ad gaolam nostram de Newgate, de prisonar' in eadem existen' deliberand' assign', necnon custod' pacis nostræ, ac Justic' nostris ad divers' felon', transgr', & al' malefacta in eodem Com' perpetrat', audiend', & terminand' assign', & eorum cuilibet, salutem. Volen' certis de causis record' conviction' Johannis Hampden, Gen', pro quibusdam altis prodicionibus unde coram nobis indictat' est, & superinde convict' extitit, ut dicitur, coram nobis per vos mitti, vobis & cuilibet vestrum mandamus, quod record' præd', cum omnibus illud tangen', adeo plene & integre prout coram vobis jam residet, quocunque nomine idem Johannes nuncupetur in eodem, coram nobis sub sigill' vestris, aut unius vestrum, a die Paschæ in quindecim dies ubicunque tunc fuerimus in Angl' mittat', seu unus vestrum mittas, unâ cum hoc brevi, ut ult' inde fieri fac', quod de jure ac secun-

dum legem & consuetud' regni nostri Angliæ fore viderimus faciend', T. E. Herbert, Mil', &c.

Per Cur' Astry.

Quod quidem breve & record' in eodem brevi mentionat', retornat', & certificat' fuit, prout sequitur: ff. Virtute istius brevis mihi & al' direct', record' conviction' infra nominat' Johan' Hampden, Gen', unde in isto brevi fit mentio, cum omnibus ea tangen', coram Dom' Rege huic brevi annex', mitto prout interius præcipitur: Respons' Roberti Jeffereys, Mil', Major' civit' London', ac un' Justic' infrascripti'. Midd' ff. Memorand' quod, ad Session' Oyer & Terminer Dom' Regis, tent' pro Com' Midd' apud Hicks's Hall in St. John's-street in Com' præd', die Lunæ, scil', 7. die Septemb', anno regni Dom' nostri Jacobi secundi, Dei gratia, &c. primo, coram W. Smith, Bar', J. Berry, Mil', & al' sociis suis, Justic' dicti Dom' Regis, per literas paten' ipsius Dom' Regis eidem Justic' prænominat', ac quibuscunque quatuor vel pluribus eor', sub magno sigillo dicti Dom' Regis Angliæ confect', ad inquirend' per sacrament' probor' & legalium homin' Com' Midd' præd', ac omnibus al' viis, modis & mediis, quibus melius sciverint aut poterint, tam infra libertat' quam extra, per quos rei veritas melius scir' poterit, & inquire de quibusdam prodicion', misprisison' prodicion', insurrectionibus, rebellionibus, contrafactur', tonsur', lotur', falsis fabricationibus, & al' falsitat' monet' hujus regni Angliæ, & al' regnor' sive dominior' quorumcunque, ac de quibuscunque murdris, felon', homicid', interfection', burglar', raptibus mulierum, congregationibus & conventicul' illicit', verbor' prolationibus & coadunationibus, misprisisonibus, confederationibus falsis, alleganc', transgr', riot', rout', retentionibus, escapis, contempt', oppressionibus, ac de al' articulis & offens' in eisdem literis paten' dicti Dom' Regis specificat', necnon accessar' eorundem, infra Com' præd', tam infra libertat' quam extra, per quoscunque & qualitercunque habit', fact', perpetrat', sive commiss', ac de al' articulis & circumstantiis præmiss' & eor' aliquo vel alit' qualitercunque concernen' plenius veritat', & ad easdem prodic-

^k Vol. IV. p. 207. N^o 138.

tiones & al' præmiss' audiend' & terminand', secund' legem & consuetud' hujus regni Angliæ, assign', per sacrament' W. Wood, Ar', & 14 al' probor' & legalium homin' Com' præd', ad tunc & ibidem jurat' & onerat' ad inquirend' pro dicto Domino Rege & corpore Com' præd', præsentat' existit, modo & forma sequen', scil', Midd' ff. Jur' pro Domino Rege super sacrament' suum præsentant, quod Johannes Hampden, nuper de paroch' sancti Ægidii in campis in Com' Midd', Gen', ut falsus proditor contra illustrissimum & excellentissimum principem Dom' Carolum secundum, nuper Regem Angliæ, &c. naturalem Dominum suum, timorem Dei in corde suo non habens, nec debet' ligeanc' suæ ponderans, sed instigatione diabolica mot' & seduct', cordialem dilection', & veram, debitam & naturalem obedienc' quas verus & fidel' subdit' dicti nuper Dom' Regis erga ipsum nuper Dom' Regem gereret, & de jure gerere tenebatur, penitus subtrahens, & machinans, practicans, & totis virib' suis intendens pacem & communem tranquillitat' hujus regni Angliæ inquietare, molestare, & perturbare, & guerram & rebellion' contra dictum nuper Dom' Regem infra hoc regnum Angliæ suscitare, movere, & procurare, & gubernation' dicti nuper Dom' Regis hujus regni sui Angliæ subvertere, mutare, & alterare, & dictum nuper Dom' Regem a titulo, honore, & regali nomine, & corona imperiali regni sui Angliæ deponere & deprivare, & dictum nuper Dom' Regem ad mortem & final' destruction' adducere & ponere, 20 die Julii, anno regni dicti Dom' Caroli secundi, nuper Regis Angliæ, 35 & divers' al' diebus & vicibus, tam antea quam postea, apud paroch' sancti Ægidii in campis in Com' Midd', falso, maliciose, diabolice, & proditorie, cum divers' al' falsis rebellibus & proditoribus jur' præd' ignot', conspiravit, compassavit, imaginat' fuit, & intendebat dictum nuper Dominum Regem, tunc supremum & naturalem Dom' suum, non solum de regali statu, titulo, potestat', & regimine regni sui Angliæ deprivare & dejicere, verum etiam eundem nuper Dom' Regem interficere & ad mortem adducere & ponere, & antiquam gubernation' hujus regni Angliæ mutare, alterare, & penitus subvertere, & stragem miserabil' inter subdit' dicti nuper Dom' Regis per totum regnum suum Angliæ causare & procurare, & iniurrection' & rebellion' contra dictum nuper Dom' Regem infra hoc regn' Angliæ procurare & auxiliari; & ad easdem nequissimas, nefandissimas, & diabolicas prodition' & proditor' compassation', imagination', & proposita sua prædict' perimplend', perficiend', & ad effectum redigend', idem Johannes Hampden, ut falsus proditor tunc & ibidem, scil', dicto 20 die Julii, anno regni dicti nuper Dom' Regis 35 supradict', & divers' al' diebus & vicibus, tam antea quam postea, apud parochiam sancti Ægidii in campis præd' in dicto com' Midd', falso, illicite, nequissime, diabolice, & proditorie, cum Jacobo nuper Duce Monmouth, & divers' al' falsis proditor' jur' præd' ignot', se assemblebat, congregabat, consultabat, & consentiebat ad suscitand' & procurand' divers' magn' denar' summ' & ingent' numerum homin' armat', ad guerram & rebellion' contra dictum nuper Dominum Regem infra hoc regn' proditorie levand' & faciend', contra debet' ligeanc' suæ, & contra pacem dicti Dom' Regis nunc, coron' & dignitat' suas, necnon contra formam statuti in hujusmodi casu edit' & provis', &c. Per quod præcept' est Vic' com' Midd', quod

non omitteret, &c. quin caperet eum ad respondend', &c. Ac quod ad deliberation' gaol' dicti Dom' Regis de Newgate tent' pro com' Midd' præd' apud Justice-Hall in le Old Baily in suburbiis civitat' London', die Mercur', scil', 9 die Decembr', anno regni dicti Dom' Regis Jacobi secundi nunc Regis Angliæ, &c. primo suprad', coram Roberto Jeffereys, Mil', Maj' r' civit' London', Edwardo Herbert, Mil', Capital' Justic' dicti Dom' Regis ad placita coram ipso Rege tenend' assign', & al' sociis suis Justic' dicti Dom' Regis, ad gaolam suam de Newgate de prisonar' in eadem existen' deliberand' assign', ista gaolæ deliberatio adjornat' fuit per præfat' Justic' dicti Dom' Regis ult' nominat' hic usque diem crastin', diem Jovis, scil', 10 diem ejusdem mensis Decembr', anno primo suprad', ad horam septimam ante meridiem ejusdem diei, apud Justice Hall præd' tenend', coram præfat' Justic' dicti Dom' Regis ult' nominat', ad faciend' ulterius prout cur' ibidem consideraret, &c. Et super eundem diem Jovis 10 diem ejusdem mensis Decembr', anno primo suprad', ista gaol' deliberatio tent' fuit per adjorn' præd' pro com' præd', apud Justice Hall præd', coram præfat' Justic' dicti Dom' Regis ult' nominat', ac ad tunc & ibidem præd' gaol' deliberatio dicti Dom' Regis ulterius adjornat' fuit per præfat' Justic' dicti Dom' Regis ult' nominat' ibidem usque diem crastin', diem Veneris, scil', 11 diem ejusdem mensis Decembr', anno primo suprad', ad horam septimam ante meridiem ejusdem diei, apud Justice Hall præd' tenend', ad faciend' ulterius prout cur' ibidem consideraret, &c. Ac ad eundem diem Veneris 11 diem ejusdem mensis Decembr', anno primo suprad', deliberatio istius gaolæ tent' fuit per adjorn' prædict' pro com' præd', apud Justice Hall præd' coram præfat' Justic' dicti Rom' Regis ult' nominat', ac ad tunc & ibidem præd' deliberatio gaol' dicti Dom' Regis ulterius adjornat' fuit per præfat' Justic' dicti Dom' Regis ult' nominat' hic usque diem Sabbati, scil', 19 diem ejusdem mensis Decembr', anno primo suprad', ad horam septimam ante meridiem ejusdem diei, apud Justice Hall præd' tenend' coram præfat' Justic' dicti Dom' Regis nunc ult' nominat', ad faciend' ulterius prout cur' ibidem consideraret, &c. Ac ad eundem diem Sabbati 19 diem ejusdem mensis Decembr', anno primo suprad', deliberatio istius gaol' tent' fuit per adjorn' præd' pro com' præd', apud Justice Hall præd', coram præfat' Justic' dicti Dom' Regis ult' nominat', ac ad tunc & ibidem præd' deliberatio gaolæ dicti Dom' Regis ulterius adjornat' fuit per præfat' Justic' dicti Dom' Regis ult' nominat', hic usque diem Mercur', scil', 30 diem ejusdem mensis Decembr', anno primo suprad', ad horam septimam ante meridiem ejusdem diei, apud Justice Hall præd', tenend' coram præfat' Justic' dicti Dom' Regis ult' nominat', ad faciend' ult' prout cur' ibidem consideraret, &c. Ac ad eundem diem Mercur', 30 diem ejusdem mensis Decembr', anno primo suprad', deliberatio istius gaolæ tent' fuit per adjorn' præd' pro com' præd' apud Justice Hall præd', coram præfat' Justic' dicti Dom' Regis ult' nominat', & ad eundem diem Mercur' 30 diem ejusdem mensis Decembr' anno suprad', ad dictam deliberation' gaolæ dicti Dom' Regis ad tunc tent' per adjornament' præd' pro com' præd', apud Justice Hall præd', coram præfat' Justic' dicti Dom' Regis ult' nominat', præfat' Justic' dicti Dom' Regis per dictas literas paten' ipsius Dom' Regis, sub magno sigill' Angl',

ut præfertur confect', per manus suas propr' delibaver' indictament' præd' hic in cur' de record', in forma juris terminand', &c. Ac superinde ad istam eandem deliberat' gaol' dicti Dom' Regis de Newgate tent' per adjorn' præd', pro com' præd', apud Justice Hall præd', præd' die Mercur' 30 die ejusdem mensis Decembr', anno primo suprad', coram præfat' Justic' dicti Dom' Regis, ad præd' gaolam ipsius Dom' Regis de Newgate præd', de prisonar' in eadem existen' deliberand' assign', ven' præd' Johannes Hampden sub custod' Benjamin' Thorowgood, & T. Kinsey, Mil', Vic' com' Mid' præd', in cujus custod' ex causa præd' præantea commiss' fuit, ad barr' hic duct' in propr' persona sua, qui committitur præfat' Vic', &c. Et statim de præmiss' in indictament' præd' specificat' ei superius imposuit', allocut' qualiter se velit inde acquietari, idem Johannes Hampden dic' quod ipse non potest dedicere, quin ipse est culpabil' de alra prodicione præd' in indictament' præd' spec' ei superius imposuit' modo & forma prout per indictament' præd' superius versus eum supponitur, & altam prodicion' præd' in indictament' præd' expresse cognovit: Et statim quæsit' est de præfat' Johanne Hampden, si quid pro se habeat, vel dicere sciat, quare cur' hic ad judic' & execution' de eo super conviction' suam præd' & cognition' suam propr' altæ prodicionis præd' in indictament' præd' superius spec' procedere non debeat, qui nihil ulterius dic' præterquam ut prius dixerat, super quo vis', & per cur' hic intellectis omnibus & singulis præmiss' cons' est per cur' hic, quod præd' Johannes Hampden ducatur ad gaol' dicti Dom' Regis de Newgate unde ven', & ibidem super traham ponatur, & abinde ad locum execution' trahatur, & ibidem per collum suum suspendatur, & vivens ad terr' prosternatur, & quod secreta membra sua amputentur, & interiora extra ventrem suum capiantur, & in ignem ponantur, & ibidem comburentur, & quod caput ejus amputetur, quodque corpus ejus in quatuor partes dividatur, & quod caput & quarteria sua ponantur ubi Dominus Rex ea assign' voluerit: Et modo, scil', die Mercur' prox' post quinden' Paschæ isto eodem termino, coram Dom' Rege apud Westm' ven' præd' Johannes Hampden, juxta formam recognition' per ipsum & pleg' suos in hac parte prius cognit' in propr' persona sua, qui committitur Mar', &c. & adtunc & ibidem per cur' dicti Dom' Regis hic quæsit' est de eodem Johanne Hampden, si quid pro se habeat, vel dicere sciat, quare cur' hic ad execution' super judic' præd' in forma præd' reddit' procedere non debeat, qui statim dic' quod dictus Dominus Rex nunc, ex gra' sua speciali, ac ex certa scienc' & mero motu suis, per suas literas paten' sub magno sigillo suo Angliæ, geren' dat' apud Westm' 19 die Febr', anno regni dicti Dom' Regis nunc secundo, pardonavit, remisit, relaxavit ac per præsentem pro se, hæredibus, & successoribus suis, pardonavit, remisit, & relaxavit Johanni Hampden nuper de paroch' sancti Ægidii in campis in com' Midd', Gen', seu quocunque al' nomine vel cognitione, seu adition' nominis vel cognitionis aut loci, idem J. sciatur, censeatur, vocetur, sive nuncupetur, aut nuper sciebatur, censebatur, vocabatur, sive nuncupabatur, omn' & omnimod' prodiciones, misprision' prodicion', transgr', malefacta, crimina, & offens' quæcunque, per se solum, sive cum aliqua al' person' vel aliquibus al' person' contra dictum Dom' Regem, vel præcharissimum fratrem suum, Carolum secund' nuper

Regem Angliæ, &c. defunct', ante 35 diem Januar' ult', quodocunque, qualitercunque, seu ubicunque fact', commiss', sive perpetrat', licet idem J. H. de præmiss', vel aliquo præmiss' indictat', arrestat', appellat', rectat', impetit', attinct', convict', condempnat', utlagat', sive adjudicat' existit, vel non existit, aut inde indictari, arrestari, appellari, rectari, impetiri, attingi, convinci, utlagari, condempnari, sive adjudicari, contigerit in futuro, ac omnia & singula indictament', judicia, condempnationes, attinctur', executiones, fines, imprisonment', punition', pœnas mortis, pœnas corporal', & omn' al' pœn' & pœnalitat' quæcunque super vel versus præd' Johannem H. de, pro, sive concernen' præmiss' seu eor' aliquo habit', fact', reddit', sive adjudicat', aut in posterum habend', fiend', reddend', sive adjudicand', necnon omnia & singula utlagat' versus dict' J. H. ratione sive occasione præmiss', seu eor' aliquor' vel alicujus eor' promulgat', sive in posterum promulgand', ac omnia & omnimod' sect', querel', fines, forisfactur', impetitiones, seifuras, process', & demand' quæcunque, quæ dictus Dominus Rex versus ipsum ratione præmiss', seu eor' alicujus habuit, habet, seu in futuro habere poterit, aut hæred' & successor' ejus ullo modo habere poterint in futuro, sectamque pacis suæ, quæ ad dict' Dom' Regem versus præfat' J. H. pertinent, seu pertinere poterit, ratione præmiss', seu eor' aliquor' vel alicujus eor', & firmam pacem suam ei inde dedit & concess' per præsentem: *Et idem J. H. profert hic in cur' literas paten' præd' præmiss' testificant', in hæc verba:* Jacobus secundus, Dei gra', &c. omnibus ad quos præsentem literæ nostræ pervenerint, salutem. Sciatis quod nos de gra' nostra special', ac ex certa scienc' & mero motu nostris pardonavimus, remisimus, & relaxavimus, ac per præsentem pro nobis, hæred', & successor' nostris pardonamus, remittimus, & relaxamus J. H. de paroch', &c. Gen', seu quocunque; al' nomine vel cognitione, seu additione nominis vel cognitionis, aut loci idem J. sciatur, censeatur, vocetur, sive nuncupetur, aut nuper sciebatur, censebatur, vocabatur, vel nuncupabatur, omn' & omnimod' prodicion', misprision' prodicion', transgr', malefacta, crimina, & offens' quæcunque per se solum, sive cum aliqua al' persona, vel aliquibus al' personis contra nos vel præcharissimum fratrem nostrum Carolum secund' nuper Regem Angliæ, &c. defunct', ante 25 diem Januar' jam ult' elaps', quodocunque, qualitercunque, seu ubicunque fact', commiss', sive perpetrat', licet idem J. H. de præmiss' vel aliquo præmiss' indictat', arrestat', appellat', rectat', impetit', attinct', convict', condempnat', utlagat', sive adjudicat' existit, vel non existit, aut inde indictari, arrestari, appellari, rectari, impetiri, attingi, convinci, utlagari, condempnari, sive adjudicari, contigerit in futuro, ac omnia & singula indictament', judic', condempnationes, attinctur', executiones, fines, imprisonment', punition', pœnas mortis, pœnas corporal', & omnia al' pœnas & pœnalitat' quæcunque super vel versus præd' J. H. de, pro, sive concernen' præmiss' seu eor' aliquo habit', fact', reddit', sive adjudicat', aut in posterum habend', fiend', reddend', sive adjudicand', necnon omnia & singula utlagat' versus dict' J. H. ratione sive occasione præmiss' seu eor' aliquor' vel alicujus eor' promulgat' sive in posterum promulgand' ac omn' & omnimod' sect', querel', fines, forisfactur', impetitiones, censuras, process' & demand' quæcunq; quæ nos

versus ipsum ratione præmissis, seu eor' alicujus habuimus, habemus, seu in futuro habere poterimus, aut hæred' vel successor' nostri ullo modo habere poterint in futuro, sectamq; pacis nostræ, quæ ad nos versus præfat' J. H. pertinet seu pertinere poterit ratione præmissis seu eor' aliquor', vel alicujus eor' firmam pacem nostram ei inde damus & concedimus per præsentem, nolentes quod idem J. H. per vicecom', justiciar', ballivos, aut al' ministros nostros, hæred' seu successor' nostror', occasione præmissis seu eor' alicujus molesteretur, occasionetur, perturbetur, seu in aliquo gravetur, volentes quodq; hæc literæ nostræ paten' (quoad omnia & singula præmissis superius mentionat') bon', firm', valid', & effectual' in lege sint & erint, licet crim' & offens' præd' minus certe specificat' existit: Quodque hæc pardonatio nostra in omnibus curiis nostris & alibi interpretetur & adjudicetur in beneficentissimo sensu pro firmior' relaxatione, pardonatione, & exoneratione præd' J. H. ac etiam placitetur & allocetur in omnibus cur' nostris, absque aliquo brevi de allocatione in ea parte prius obtent' seu obtinend', non obstante aliquo defectu aut aliquibus defectibus in his literis patentibus content', aut aliquo statut', act', ordinatione, seu provisione, proclamatione, sive restriction', aut aliqua al' re, causa, vel materia quacunq; in contrari' inde in aliquo non obstante. In cujus rei testimon' has literas nostras fieri fecimus patentes. T. meipso apud Westm', 19 die Feb', anno regni nostri secundo. *Quar' quidem literar' paten' prætextu idem J. H. per' quod ipse de præmissis per cur' hic exoneretur.* Super quo vis' & per cur' hic intellectis omnibus & singulis præmissis cons' est, quod præd' J. H. eat inde sine die, &c. Et postea, scil', die Lunæ prox' post crastin' ascension' Dom', isto eodem term', coram Dom' Rege apud Westm' ven' præd' J. in propr' persona sua, & profert hic in cur' quoddam breve Dom' Regis nunc clausum, Justic' suis hic direct', qui sequitur in hæc verba: Jacobus secundus, &c. Justic' nostris ad placita coram nob' tenend' assign', salutem. Quia in record' & process', ac etiam in redditione judic' cujusdam indictament' coram Justic' nostris ad gaolam nostram de Newgate de prisonar' in eadem existen' deliberand' assign', versus J. H. de paroch', &c. in com' Midd', Gen', pro altis proditionibus contra person' Dom' Caroli secundi nup' Regis Angliæ, fratris nostri præcharissimi, unde coram eis nup' attinct' fuit, ut dicitur, error interven' manifest', ad grave dampn' ipsius Johannis, sicut ex querela sua accepimus: Nos error', si quis fuerit, modo debito corrigi, & eidem Johanni plenam & celerem Justic' fieri volentes in hac parte, vobis mandamus, quod si judic' inde reddit' sit, tunc visis & examinat' record' & process' præd', quæ coram nob' certis de causis Venire fecimus, & coram vobis jam resident, ut dicitur, ulterius inde pro errore ill' corrigend' fieri faciatis, quod de jure & secund' legem & consuetud' regni Angl' fuerit faciend'. Test' meipso apud Westm' 14 die Maii, anno regni nostri secund'. Et sup' hoc idem J. H. dic', quod in record' & process' præd', necnon in redditione judicii attinctur' præd' manifest' est errat' in hoc, videlicet, quod ubi per indictament' præd' mentionatur quod deliberatio gaolæ in recordo judicii, & attinctur' præd' mentionat', tent' fuit pro com' Midd' apud Justice Hall in le Old Baily in suburbiis civit' London', non apparet per record' præd' quod Justice Hall, nec le Old Baily, sunt in com' Midd', ideo in eo manifest' est errat'. Erra-

tum est etiam in hoc, videlicet, quod indictamentum præd' mentionatur fore capt' 7 die Decemb' in record' præd' mentionat', coram Justic' de audiend' & terminand' in recordo præd' mentionat', & per eos fore deliberand' Justic' ad gaol' deliberation' in eodem recordo specificat', 30 die Decembr' tunc postea in forma juris terminand', sed non apparet per record' convictionis præd', quod sessio de audiend' & terminand' habuit aliquod adjournament' vel continuation' usque dictum 30 diem Decembr', ideo in eo manifest' est errat'. Erratum est etiam in hoc, quod verba vi & armis, &c. omittuntur in indictament' præd', ideo in eo manifest' est errat'. Errat' est etiam in hoc, quod constat per record' præd', quod process' & judic' præd' sunt intrat' & recordat' sup' record' Justiciar' de audiend' & terminand', & non super record' Justic' gaol' deliberand', ideo in eo manifest' est errat'. Errat' est etiam in hoc, videl', quod non apparet per record' præd', per qualem autoritat' Justic' ad gaol' deliberation' in record' præd' mentionat', process' & judic' præd' reddider' versus ipsum præd' J. H. sup' indictament' præd', ideo in eo manifest' est errat'. Errat' est etiam in hoc, quod sup' reddition' judic' in record' præd' mentionat' non apparet quis fuit, qui ex parte Dom' Regis pro eodem Dom' Rege pet' judic' sup' conviction' de materiis in indictament' præd' mentionat', ideo in eo manifest' est errat'. Erratum est etiam in hoc, quod in record' præd' dicitur, quod ad deliberation' gaol' Dom' Regis de Newgate, tent' pro com' Midd' apud Justice Hall in le Old Baily in suburbiis civit' London', die Mercur', scil', 9 die Decembr' coram Justic' gaol' deliberation' in eodem record' mentionat', quod ista gaol' deliberatio adjorn' fuit per præfat' Justic', ubi dici debuit adjornat' est, & non exprimi via recitationis in tempore præterit', & in alio loco record' mentionat' præd' dicitur, quod ista gaol' deliberatio tent' fuit, ubi debuit exprimi tent' est, & non quod tent' fuit, quia in sensu præterito est mera recitatio tenendi & adjornandi cur' ill', & non positivus actus cur' ill' gaolæ deliberation' de determination' indictament' præd', ideo in eo manifest' est errat'. Erratum est etiam in hoc, videl', quod judic' præd' reddit' est pro Domino Rege, ubi reddi debet pro defend', & in eo manifest' est errat'. Et hoc parat' est verificare, unde pet' judic', & quod judic' & attinctur' præd' ob error' præd', & al' in record' & process' præd' apparen' compert' existen' revocetur, adnulletur, & penitus pro nullo habeatur, & quod ipse idem J. H. ad communem & liberam legem hujus regni Angliæ, & ad omnia quæ ipse occasione judicii & attinctur' præd' amisit restituatur, & quod ipse, tam de eadem convictione & attinctur', quam de indictament' præd' per cur' hic dimittatur & exoneretur, & quod cur' hic procedat ad examination' record' & process' præd', &c. & quia necessar' & expediens est, antequam cur' hic in hac parte procedat, quod tenentes terrar' & tenementor', quæ fuer' præd' Johannis 20 die Julii, anno regni dict' Dom' Caroli secundi, nup' Regis Angliæ, &c. 35. quo die alta proditio præd' fieri supponitur, vel unquam postea præmuniantur effendi, coram dict' Dom' Rege nunc auditur' record' & process' præd', si, &c. ideo præcept' est Vic' com' Midd' præd', quod per probos & legales homines de balliva sua, Scir' fac' separatim tenent' terrar', & tenementor', quæ fuer' præd' Johannis prædict' 20 die Julii, anno regni dicti Dom' Caroli secundi nuper Regis Angliæ, &c.

35 suprad', vel unquam postea, quod sint coram Dom' Rege in crastino sanctæ Trinitat', ubicunque, &c. auditur' record' & process' præd', si, &c. idem dies dat' est præfat' J. Hampden, &c. & super hoc de gratia cur' special' præd' J. H. traditur in ball' H. A. de, &c. Arm', & W. J.

de, &c. usque ad præfatum terminum, & sic, &c.

It does not appear by the Precedent, whether the Judgment was reversed or affirmed, nor is the Report of this Case to be found in any of the Reports of that Time.

Rex versus Dom' Delamere¹, for High-Treason.

¹ Jac' II. Rot' 5.

Cestr' ff. **P**ER quandam inquisition' capt' apud Cestr', in com' Cestr', die Veneris 11. die Decembr', anno regni Domini Jacobi secundi, Dei gra' Angl', Scotiæ, Franc', & Hiberniæ Regis, fidei defensor, &c. primo, coram Edwardo Lutwyche Mil', un' servien' dicti Dom' Regis ad legem, ac Justic' Cestr' Johanne Warre Arm', altero Justic' Cestr', Philippo Egerton Mil' & Petro Shakerley Arm', per literas paten' ejusdem Domini Regis eis, & aliis, & quibuscunque trib' vel plur' eor' inde confect', ad inquirend' per sacramentum probor' & legalium hominum de com' Cestr', ac al' viis, mediis, & modis, quibus melius scivissent aut potuissent, tam infra libertat', quam extra, per quos rei veritas melius sciri potuisset, & inquire de quibuscunque prodicionib', misprisionib' prodicion', insurrection, rebellion', contrafactur', tonsur', lotur', falsis fabricationib', & al' falsitat' monet' hujus regni Angl', & al' regnor' sive dominior' quorumcunque, ac de quibuscunque murdris, felon' homicid', interfection', burglar', raptib' mulier', congregation' & conventicul' illicit', verbor' prolationib', coadunationib', misprisionib', confederationib', falsis alleganc', transgr', riotis, routis, retentionib', escapiis, contempt', falsitat', negligenc', concealment', manutenen', oppressionib', cambiparciis, deceptionib', & al' malefactis, offens', & injur' quibuscunque, necnon accessar' eorundem infra com' Cestr' præd', tam infra libertat' quam extra, per quoscunque & qualitercunque habit', fact', commiss', sive perpetrat', per quos vel per quem, cui vel quibus, quando, qualit', & quomodo, ac de aliis articulis & circumstanc' præmiss', aut eor' quodlibet, seu eor' aliquid vel aliqua qualitercunque concernen' plenius veritat', & ad easdem prodicion' & al' præmiss' audiend' & terminand' secundum legem & consuetud' regni dicti Domini Regis nunc Angl' assign', per sacrament' 12 jur' probor' & legalium homin' com' Cestr' præd', tunc & ibidem jurat' & onerat' ad inquirend' pro dicto Domino Rege, & corpore com' Cestr' præd', existit præsentat', quod Henricus Baro de Delamere in com' Cestr', ut falsus proditor contra illustrissimum & excellentissimum Principem Dominum Jacobum secundum, Dei gra' Angl', Scotiæ, Franc', & Hiberniæ Regem, fidei defensor', naturalem Dominum suum, timorem Dei in corde suo non habens, nec debit' ligeanc' suæ ponderans, sed instigatione diabolica mot' & seduct', cordialem dilection', & veram, debit', & naturalem obedienc', quas verus & fidel' subdit' dicti Domini Regis erga ipsum Dominum Regem gereret, & de jure gerere tenebatur, penitus subtrahens, & machinans, practicans, & totis viribus suis intendens pacem & communem tranquillitat' hujus regni Angl' inquietare, molestare, & perturbare, & guerram & rebellion' contra

dictum Dominum Regem infra hoc regn' Angl' suscitare, movere, & procurare, & gubernation' dicti Domini Regis hujus regni Angl' subvertere, mutare, & alterare, & dictum Dominum Regem a titulo, honore, & regali nomine, coron' imperial' regni sui Angl' deponere & deprivare, & dictum Dominum Regem ad mortem & final' destruction' adducere & ponere, 14 die April', anno regni dicti Domini Jacobi secundi nunc Regis Angl', &c. primo, ac divers' al' dieb' & vicib', tam antea quam postea, apud Mere in com' Cestr' præd', falso, malitiose, diabolice, & proditorie, cum divers' al' falsis proditorib' & rebellib' jur' præd' ignot', conspiravisset, compassavisset, & imaginat' fuisset, & intendebat dictum Dominum Regem supremum, verum & naturalem Dominum suum, non solum de Regali statu, titulo, potestat', & regimine regni sui Angl' deprivare & dejicere, verum etiani eundem Dominum Regem interficere, & ad mortem adducere & ponere, & antiquam gubernation' hujus regni Angl' mutare, alterare, & penitus subvertere, & stragem miserabilem int' subdit' dicti Domini Regis per totum regn' Angl' causare & procurare, & insurrection' & rebellion' contra dictum Dominum Regem infra hoc regn' Angl' procurare & auxiliari, & ad easdem nefandissimas, nequissimas, & diabolicas prodicion' & proditor' compassation', imagination', & proposita sua præd' perimplend', perficiend', & ad effectum redigend', idem H. Baro de D. ut falsus proditor ad tunc & ibidem, scil' dicto 14. die April', anno 1. suprad', & divers' al' dieb' & vicib', tam antea, quam postea, apud Mere præd' in com' præd', falso, illicite, nequissime, & proditor' cum Carolo Gerard Arm' & al' falsis proditor' jur' præd' ignot', se assemblabat, congregabat, consultabat, & agreabat ad suscitand' & procurand' divers' magn' denar' sum', & ingent' numerum homin' armator' ad guerram & rebellion' contra dictum Dominum Regem infra hoc regn' Angl' levand' & faciend', ac civit' Cestr' in com' ejusdem civit' necnon castrum dicti Dom' Regis Cestr', apud Cestr' in com' Cestr' præd', & omnes munition' bellicas (Anglice vocat' *the Magazines*) in eodem castro ad tunc existen' intrare, capere, seisire, & prendere (Anglice *to surprize*) & in possession' & potestat' suas obtinere. Ac jur' præd' ulterius super sacramentum suum præd' tunc dixer', quod præd' H. Baro de Delamere postea, scil' 27 die Maii, anno 1. suprad', falso, illicite, nequissime, & proditorie iter fecisset a civit' London usque ad Mere præd' in com' Cestr' præd' ad prodit' proposita sua præd' perimplend' & perficiend', ac quod idem H. Baro de Delamere postea, scilicet 4 die Junii, anno 1. suprad', apud M. præd', in com' Cestr' præd', in ulterior' prosecution' præd' illicit', nequissimor', & proditor' propositor' suor', divers' ligeos & subdit' dicti Domini Regis, jur' præd' ignot', cum

eodem H. Baron' de D. & præd' al' falsis proditorib', jur' præd' ignot', falso, illicite, nequissime, & proditorie, in guerra & rebellion' præd', & in proditoriis proposit' suis præd' jungere & adhærere, excitavisset, animavisset, & persua-

sisset contra ligeanciæ suæ debit', contra pacem dicti Domini Regis nunc, coron' & dignitat' suas, necnon contra formam statuti in hujusmodi casu edit' & provis'.

Rex versus Dominum Mohun, for the Murder of W. Mountford.

4 W. & M.

THis Record is in the Trial^m.

Rex versus Charnock, for High-Treason.

8 Gul' III. O. B.

THis Record is in the Trialⁿ.

Rex versus Cranburne, Lowick, & al', for High-Treason.

7 Gul' III.

Midd' ff. **J**uratores pro Domino Rege super sacramentum suum præsentant, Quod Christophorus Knightley, nuper de paroch' sancti Pauli Covent Garden in com' præd' Generosus, Robertus Lowick nuper de paroch' sancti Pauli Covent Garden in com' prædicto Gen', Ambrosius Rookwood nuper de parochia sancti Pauli Covent Garden in com' prædicto Generosus, & Carolus Cranburne nuper de parochia sancti Pauli Covent Garden in com' prædicto Yeman, timorem Dei in cordibus suis non habentes, nec debit' ligeanciæ suæ ponderan', sed instigatione diabolica moti & seducti, ut falsi proditores contra serenissimum, illustrissimum, clementissimum, & excellentissimum Principem, Dom' Gulielmum tertium, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regem, fidei defensorem, &c. supremum, verum, legitimum, legalem & indubitatum Dom' suum, cordialem dilectionem, ac veram & debitam obedientiam, fidelitatem & ligeanciã, quas quilibet subditus dicti Dom' Regis nunc erga ipsum Dominum Regem gereret, & de jure gerere tenetur, subtrahentes & penitus extinguere intendentes ac machinantes, & totis suis viribus excogitantes, designantes, & conspirantes gubernationem hujus regni Angliæ, sub ipso Domino Rege nunc de jure debit', felicit', & optime stabilit', omnino subvertere, mutare, & alterare, necnon eundem Dom' Regem ad mortem & finalem destructionem ponere & adducere, ac subditos suos fideles, & liberos homines hujus regni Angliæ in servitutem intolerabilem & miseriam Ludovico Regi Gallico subjugare & mancipare, decimo die Februarii, anno regni dict' Dom' Regis nunc septimo, & diversis aliis diebus & vicibus, tam antea, quam postea, apud parochiam sancti Pauli Covent Garden præd', in com' prædicto, falso, malitiose, diabolice, & proditorie compassaver', imaginati & machinati fuer', excogitaver', designaver', & intendebant dict' Dom' Regem nunc occidere, interficere, & murdrare, ac stragem miserabilem inter fideles subditos ipsius Dom' Regis per totum hoc regn' Angliæ facere & causare, & ad eandem nefandif-

simas, nequissimas, & diabolicas prodiones, & proditorias compassationes, machinationes, & proposita sua prædicta perimplend', perficiend', & ad effectum redigend', ipsi iidem Christophorus Knightley, Robertus Lowick, Ambrosius Rookwood, & Carolus Cranburne, & quamplurimi alii falsi proditores (juratoribus præd' ignot') postea, scil' eodem decimo die Februarii, anno supradict', apud parochiam prædictam, in com' præd', ac diversis aliis diebus & vicibus, tam antea, quam postea, ibidem & alibi in eodem com' falso & malitiose, advisate, clandestino, proditorie, ac vi & armis conveniebant, proposuer', tractaver', consultaver', consenser', & agreaver' ad ipsum Dom' Regem nunc ex insidiis & dolo percutiend' (Anglice *to assassinate*) interficiend' & murdrand', & ad execrabilem, horrendam, & detestabilem assassinationem (Anglice *Assassination*) & interfectionem ill' citius exequend' & perpetrand', postea, scil' eisdem die & anno, ac diversis aliis diebus & vicibus, apud parochiam prædictam, in com' præd', proditorie tractaver', proposuer', & consultaver' de viis, modis, & mediis, ac tempore & loco ubi, quando, qualiter, & quomodo dictum Dom' Regem sic ex insidiis facilius interficerent, & consenser', agreaver', & assenser', quod quadraginta homines equestres, aut eo circiter (quorum iidem Christoph' Knightley, Robertus Lowick, Ambrosius Rookwood, & Carolus Cranburne forent quatuor, & quilibet eorum proditorie super se suscepit esse unum) cum bombardis, sclopis, & sclopetis, pulvere bombardico, & globulis plumbeis oneratis, & cum gladiis, ensibus, & aliis armis armat', insidiati forent & essent in subseffa (Anglice *in Ambush*) ad eundem Dom' Regem in rheda sua (Anglice *his Coach*) existen', quando foris iret, invadend'; quodque quidam & competens numerus de hominibus illis sic armat', in satellites (Anglice *the Guards*) ipsius Dom' Regis eum tunc attenden', & secum existen', aggressi forent, & eos expugnarent & devincerent, dum alii eorundem homin' sic armat' ipsum Dom' Regem percuterent, interficerent, occiderent, & murdrarent, & iidem Christophorus Knightley, Rober-

tus Lowick, Ambros' Rookwood, & Carol' Cranburne, ad proditio', & omnes proditor' intention', designation', & machination' suas præd' exequend', perpetrand', perimplend', & ad effectum redigend', postea (scil' prædicto decimo die Februarii, anno 7. supradicto, apud paroch' præd' in com' prædict') diversos equos, & quamplurima arma, bombardas, scopos, enses, & gladios, & al' armamenta, munition', & res bellicofas, & instrumenta militaria, falso, malitiose, secrete, & proditorie obtinuer', emebant, colleger', & procuraver', ac emi, obtineri, colligi, & procurari causaver', ea intent', ad illum in & circa detestabil', horrend', & execrabil' assassinationem, interfectionem, & murdrum dicti Dom' Regis nunc, ut præfertur, utend', occupand' & impendend', & ad eadem præmissa tutius & certius exequend', faciend', & perpetrand', præd' Christoph' Knightley, cum quodam Edward' King (nup' de alta prodicione in machinando & conspirando mortem dicti Dom' Regis nunc deb' convict' & attinct') per consensum & assensum diversorum de proditoribus & conspiratoribus prædictis, dict' 10. die Februarii, anno 7. supradict', proditorie ivit & accessit ad locum propositum, ubi hujusmodi intensa assassination, interfectio, & murdrum dicti Dom' Regis ex insidiis fact',

perpetrat', & commiss' forent, ad vidend', speculand', & observand', convenientiam, & aptitudinem ejusd' loci pro hujusmodi insidiis, assassination', & interfectione ibidem fiend', perpetrand', & committend', ac (loco illo sic viso & observato) postea (scil' eisdem die & anno) observationes suas inde separalibus de dictis proditor' & conspirator' retulit & impertivit, videlicet, apud paroch' prædict' in com' prædict'; prædictusq' Carolus Cranburne, eisdem die & anno, ibidem in ordine ad eand' execrabil', horrend', & detestabil' assassination' & interfection' dicti Dom' Regis per proditores & conspiratores præd' promptius & magis audaciter exequend', perpetrand', & committend', advisate, scienter, & proditorie tulit & portavit inter diversos de proditoribus & conspiratoribus illis prorsum & retrorsum ab aliquibus ad al' eor' catalogum (Angl' a *List*) de nominibus diversor' homin' de illis, qui designat' & appunctuat' fuer' ad eund' Dom' Regem, sic ut præfertur, ex insidiis interficiend' & murdrand', contra debit' ligeantia' ipso' Christoph' Knightley, Roberti Lowick, Ambr' Rookwood, & Caroli Cranburne, & contra pacem dicti Dom' Regis nunc, coron', & dignitat' suas, nec non contra formam statuti in hujusmodi casu edit' & provis', &c.

Rex versus Vaughan P, for High-Treason.

7 Jul' III.

JUrat' pro Dom' Rege super sacram' suum præsentant, quod ante & continue usque ad octav' diem Julii, anno regni Dom' nostri Willielmi tertii, Dei gratia Angl', Scot', Franc', & Hibern' Regis, fidei defensor', &c. 7. fuit bellum apertum inter Dom' Willielmum nunc Regem Angl', &c. & Ludovicum Regem Gallicum, quodque bellum illud eod' 8. die Julii, anno 7. supradict', & semper postea hucusq' continuat' fuit, & adhuc existit, quodq; per totum tempus præd' dictus Ludovicus Rex Gallicus, & ejus subdit', fuer', & adhuc existunt inimici dicti Dom' Regis nunc, ac quod tempore belli illius, & ante prædict' octavum diem Julii, anno septimo suprad', dict' Ludovicus Rex Gallicus (int' al') quand' navicul' armat', vocat' *Le Loyal Clencarty* (cujus Tho' Vaughan subdit' dicti Dom' Regis nunc Angl', &c. ad tunc fuit capitaneus) cum quamplur' subdit' Gallicis, inimicis dicti Dom' Regis nunc, ad numerum 15. personar' replet', præparavit ad naves ac bona, catall', & denar' dict' Dom' Regis nunc Angl', &c. & subditor' suor' super alto mari, ac infra jurisdiction' admiralitatis Angl' modo guerrino capiend' & spoliand', & bellum præd' contra dict' Dom' Regem nunc super alto mari, ac infra jurisdiction' admiral' Angl' præd' gerend': Quodque tempore belli præd' inter ipsum Dom' Regem nunc, & præd' Ludovicum Regem Gallicum, Thomas Vaughan nuper de Galloway in regno Hibern' nauta, existens subdit' ejusdem Dom' Regis nunc Angl', &c. ut falsus proditor contra eundem Dom' Regem nunc, supremum Dom' suum, timorem Dei in corde suo non habens, nec debit' ligeanc' suæ ponderans, sed instigatione diabolica mot' & seduct', cordialem dilectionem, ac veram & debitam obedientiam, quas quilibet verus & fidelis subdit' dict' Dom' Regis nunc erga ipsum Dom' Regem de jure gerere tenetur, penitus subtrahens, ac machinans & intendens, quantum in se fuit, bellum prædict' contra dictum Dom' Regem nunc prosequi & auxiliari, idem Thomas Vaughan dicto 8. die Julii, anno regni dict' Dom' Regis nunc 7. supradicto, vi & armis, &c. super alto mari in quo-

dam loco circa 14. leucas a Deal distante, ac infra jurisdiction' admiral' Angl', seipsum præfat' Thomam Vaughan ut militem (Angl' a *Soldier*) ad bellum præd' contra dict' Dom' Regem nunc gerend' & prosequend', in servitium ipsius præfat' Ludovici Regis Gallici, in navicul' armat' præd', vocat' *Le Loyal Clencarty*, falso, malitiose, nequissime, & proditorie posuit; & quod ipse idem Tho' Vaughan in navicul' armat' præd', vocat' *Le Loyal Clencarty*, ad tunc & ibidem sic existen', vi & armis, &c. ad tunc & ibidem super alto mari præd', ac infra jurisdiction' admiralitatis Angl' præd', dictis inimicis dicti Dom' Regis nunc, in dicta navicula armata, vocat' *Le Loyal Clencarty*, ad tunc & ibidem scilicet existen', falso, malitiose, nequissime, & proditorie fuit adhærens, auxilians, & confortans; & quod præd' Tho' Vaughan in execution' & performance adhæSIONIS, auxiliationis, & confortationis suæ præd' postea, scil' dicto 8. die Julii, anno supradict', ibidem super alto mari præd', ac infra jurisdiction' admiralit' Angliæ, simul cum dictis inimicis dict' Dom' Regis nunc, in navicul' armat' præd', vocat' *Le Loyal Clencarty*, ad tunc & ibidem existen', ad quamplur' locos maritimos in eadem navicul' armat', vocat' *Le Loyal Clencarty*, in exploratione (Anglice *Cruising*) ea intentione, ad prædand' naves, bon', catall', & denar' ejusdem Dom' Regis, & subditor' suor', super alto mari præd', ac infra jurisdiction' præd', vi & armis, &c. malitiose, nequissime, & proditorie navigavit, contra ligeanc' suæ debitum, contra pacem dicti Dom' Regis nunc, coron' & dignitat' suas, &c. necnon contra formam statut' in hujusmodi casu edit' & provis', &c.

Et jur' præd' pro dicto Dom' Rege super sacram' suum præd' ulterius præsent', quod præd' T. Vaughan, ut falsus proditor contra dict' Dom' Regem nunc Angl', &c. suprem' Dom' suum ulterius machinans, practicans, & tota vi sua intendens pacem & communem tranquillitat' hujus regni Angl' perturbare, & guerram & rebellion' contra dict' Dom' Regem super alto mari præd', ac infra jurisdiction' admiralit' Angl' suscitare, movere, & procurare, & dict'

Dom' Regem a titulo, honore, & regali nomine, coron' imperial' regni sui Angl', & dominior' fuor' super alto mari præd' deponere & deprivare, & stragem miserabilem subditor' ejusdem Dom' Regis nunc hujus regni sui Angl' super alto mari, ac infra jurisdiction' admiral' Angl' præd' navigan', causare & procurare, præd' 8. die Julii, anno regni dicti Dom' Regis nunc 7. suprad', super alto mari, circa 14. leucas a Deal distante, ac infra dominium coron' Angl', & infra jurisdiction' admiralitat' Angl' falso, malitiose, diabolice, & proditorie, vi & armis, &c. cum quamplur' al' falsis rebellib' & proditorib', jur' præd' ignot', guerram contra dict' Dom' Regem nunc paravit, ordinavit, levavit, & gessit; & quod idem Thomas Vaughan, in executione & performance guerræ & proditoris suæ præd' ad tunc & ibidem, scil' præd' octavo die Julii, anno 7. suprad', super alto mari, circa 14. leucas a Deal distante, ac infra jurisdiction' admiralitat' Angl', in dicta navicul' armat', vocat' *Le Loyal Clencarty*, vi & armis, &c. cum quamplur' aliis falsis rebellib' & proditoribus, jur' præd' ignot' ad numerum 15. personar', modo guerrino armat' & arraiat', viz. tormentis, & al'

armis, tam invasivis, quam defensivis, vi & armis, &c. falso, malitiose, & proditorie, ad tunc & ibidem congregat' & assemblat' existen', seipsum simil' armat' & arraiat', malitiose, proditor', & aperte assemblavit & conjunxit; & quod præd' T. Vaughan ad tunc & ibid' in dicta navicul' armat', vocat' *Le Loyal Clencarty*, cum dictis al' falsis rebellibus & proditorib' (sicut præfertur) assemblat' existen', postea, scil' dicto 8. die Julii, anno 7. supradict', super alto mari præd', ac infra domin' coron' Angliæ, & infra jurisdiction' admiralitat' Angl' præd', simul cum dictis al' rebell' & proditorib', in navicul' armat' præd', vocat' *Le Loyal Clencarty*, ad tunc & ibidem, ad quamplur' locos maritimos in eadem navicul' armat', vocat' *Le Loyal Clencarty*, in exploration' (Angl' *cruising*) ea intentione ad prædand', spoliand' & asportand' naves, bon', catall', & denar' dicti Dom' Regis, & subdit' fuor' super alto mari præd', ac infra jurisdiction' prædict', vi & armis, &c. malitiose, nequissime, & proditorie navigavit, contra ligeanc' suæ debit', contra pacem dicti Dom' Regis nunc, coron' & dignitat' suas, &c. necnon contra formam statut', in hujusmodi casu edit' & provis', &c.

Rex versus Com' Warwick & Dom' Mohun, for the Murder of R. Coote.

11 Gul. III.

THIS Record is in the Trial 9.

Regina versus Fuller †, for a Cheat.

1 Anne.

London ff. **Q**UOD Willielmus Fuller nuper de, &c. primo die Januarii, anno regni Dom' Willielmi tertii nuper Regis Angl', &c. 13. apud London in paroch' beatæ Mariæ de Arcubus, in warda de Cheap, existens impostor & communis mendax, & persona malorum nominis, famæ, & reputationis, falso, malitiose, nequit', & seditiose machinans, practicans, & intendens dict' Dom' Willielmum tertium nuper Regem Angl', & subdit' suos falso & illicite deludere; decipere, & defraudare, & discordia inter eundem nuper Regem, & quamplur' proceres, magnates hujus regni Angliæ, & magnos officarios & ministros fiduciat' per dictum nuper Regem in negotiis suis concernen' regimen & gubernation' dicti regni sui Angliæ, & al' ligeos & fidel' subdit' dicti regni Angliæ movere, excitare, & suscitare, ac etiam proceres, magnates hujus regni Angliæ, & magnos officarios & ministros dicti nuper Regis per ipsum, ut præfertur, fiduciat', & al' ligeos & fidel' subdit' suos, in maximum odium, contempt', & vilipendium cum eodem nuper Dom' Rege inducere & inferre, ad divers' denar' summas ab eodem Dom' nuper Rege callide, subdole, fraudulent' & deceptivè acquirere & obtinere, ipse idem Willielmus Fuller, præd' primo die Januarii, anno regni dicti Dom' nuper Regis 13. apud London præd', in parochia & warda præd', ad nequissimas machination', practication', & intention' suas præd' perimplend', perficiend', & ad effectum redigend', de diversis officariis & al' subditis dicti nuper Regis Willielmi tertii, & de responsione (Anglice *Correspondence*) inter eos & Jacobum secundum nuper Regem Angl', dum idem nuper Rex Jacobus secundus apud quendam locum vocat' *St. Germain's*, in regno Franciæ residebat, falso pretens' fuisse habit', ac de diversis denar' summis per dictum Jacobum secund' nuper Regem Angliæ, in regno Franciæ, in hoc

regnum Angl' distribuend' inter diversos subdit' dicti nuper Regis Willielmi tertii falso prætens' fore miss' quoddam falsum, fictum, scandalosum, & defamatorium libellum, intitulat' *Original Letters of the late King's* (dictum Jacobum secundum nuper Regem innuendo) *and others, to his greatest Friends in England, with the Depositions of Thomas Jones and Thomas Witherington, Esquires, proving the Corruption lately practised to ruin this Nation*, ad tunc & ibidem falso, illicite, nequit', injuste, malitiose, scandalose, & deceptivè composuit, scripsit, & impressit, & imprimi causavit, in quo quidem falso, ficto, scandaloso, & defamator' libello continetur (inter alia) ut sequitur, videl', Thomas Jones *Esquire deposeseth, That he being at St. Germain's* (præd' locum vocat' *St. Germain's* in regno Franc' innuendo) *the Court of the late King James* (præd' Jacobum secund' nup' Regem Angl' &c. innuendo) *in France, &c.* Et idem Attorn' dict' Dominæ Reginæ nunc general', pro ead' Dom' Regin' ulterius dat' cur' hic intelligi & informari, quod prædict' Willielmus Fuller, præd' primo die Januarii, anno 13. supradict', apud London præd', in parochia & warda præd', ad nequissimas machinationes, practication', & intentiones suas prædict' ulterius perficiend', perimplend', & ad effectum redigend', de diversis officariis & al' subdit' dicti nuper Regis Willielmi tertii, & de ficta responsione (Anglice *Correspondence*) inter eos & Jacobum secundum nuper Regem Angliæ, dum idem nuper Rex Jacobus secundus in regno Franciæ residebat, falso pretens' fuisse habit', ac de diversis denariis summis per dict' Jacobum secundum, nuper Regem Angliæ, a regno Franciæ in hoc regnum Angliæ distribuend' inter diversos subdit' dicti nuper Regis Willielmi tertii pretens' fore miss', quoddam al' falsum, fictum, scandalos', & defamator' libellum, intitulat' (int' al') *Twenty six Depositions of Persons of*

† Vol. V. p. 137. N^o. 164.

‡ Vol. V. p. 441. N^o. 173.

Quality and Worth, adtunc & ibid' falso, illicite, nequit', injuste, malitiose, scandalose, & deceptiva composuit, scripsit, impressit, & imprimi causavit, in quo quidem falso, ficto, scandaloso, & defamatorio libello continetur, int' al', ut sequitur, videl', *Mr. Jones has also made Oath, that he paid 5000 l. more by the late King's Order* (ordin' dicti Dom' Jacobi secundi, nuper Regis Angliæ, iterum inuend') &c. Et quod prædictus Willielmus Fuller postea, scil' dicto 1. die Januarii, anno regni dicti Dom' Willielmi tertii, nuper Regis Angliæ, &c. 13 supradict', dictos falsos, fictos, scandalosos, & defamatorios libellos, absque aliqua legali autoritate, vi & armis, &c. apud London præd', in parochia & warda prædict', illicite & injuste publicavit, utteravit, &

pro veritate affirmavit, ubi revera & in facto præd' Thomas Jones nunquam super sacrament' suum deposuit prout in prædict' falso, ficto, scandaloso, & defamator' libello superius mentionat' continetur, ac ubi revera & in facto, omnia & singula præd' scandalos' defamator' libell' content' & superius specificat' fuer' & sunt falsa, ficta, & veritati omnino contrar', in magnum scandal', præjudic' & abusion' dicti Dom' Willielmi tertii, nuper Regis Angliæ, &c. & magnor' officiarior' & ministror' dicti nuper Regis Willielmi tertii per ipsum, ut præfertur, fiduciat', & alior' ligoor' & subditor' ejusd' nuper Regis, in malum exemplum omnium alior' in hujusmodi casu delinquen', ac contra pacem dicti nuper Dom' Regis Willielmi tertii, coron' & dignitat' suas, &c.

Rex versus Hathaways', for a Cheat.

Surr' ff. **M**emorand', quod Edwardus Northey, Ar', Attorn' Dom' Regis nunc general', qui pro eodem Dom' Rege in hac parte sequitur, in propria persona venit hic in curia dicti Dom' Regis, coram ipso Rege apud Westm', die Jovis prox' post tres septimanas sancti Michaelis isto eod' term', & pro eod' Dom' Rege dat cur' hic intelligi & informari, quod quidem Richardus Hathaway, nuper de Southwark in com' Surr', Laborer, existens persona malor' nominis & famæ, & impostor, & machinans & malitiose intendens quandam Saram Morduck, ux' cujusdam Edwardi Morduck de Southwark in com' præd', Waterman, fœminam per totum vitæ suæ tempus existen' honestam & piam, & non Sagam (Anglice *a Witch*) nec Magiam (Anglice *Witchcraft*) Incantamentum (Anglice *Inchantment*) Incantamentum (Anglice *Charm*) Fascinationem (Anglice *Sorcery*) unquam exercen', in periculo vitæ suæ amissionis inducere, 11. die Febr', anno regni dicti Dom' Regis nunc 12. apud Southwark præd' in com' præd' in præsentia & auditu diversarum personarum, falso, malitiose, diabolice, & scient', & ut falsus impostor, prætendebat & assererat seipsum per eand' Saram fuisse fascinat' (Anglice *bewitched*) occasione prætens' fascination' illius non posse edere, ac

per magnum tempus, scil' per spatium decem septimanar' jejunasse, ac diversis morbis adtunc & ibid' affici, & quod ipse per ipsius Richardi extractionem sanguinis ejusd' Saræ per scalpationem a prætens' fascinatione præd' liberat' foret, quodq; præd' Richard' adtunc & ibid', vi & armis, eandem Saram scalpsit, & sanguinem ipsius Saræ tunc & ibid' per scalption' ill' extraxit, & superinde præd' Richard' adtunc & ibid' falso, malitiose, & scient' asseruit seipsum a morbis illi', per extraction' sanguinis præd' liberari, ubi revera & in facto præd' Richard' nunquam fascinat' fuit, & non jejunasset per spatium præd', nec per aliquod magnum tempus, & ubi revera & in facto præd' Richard' adtunc & ibid' bene sciebat seipsum minime fascinat' fuisse per eand' Saram, in maximum dicti Dom' Regis nunc, legumq; suarum contemptum, & vilipend', in valde malum & perniciosum exemplum alior' in hujusmodi casu delinquentium, & contra pacem ejusd' Dom' Regis, coron' & dignitat' suas, &c. Unde idem Attorn' dicti Dom' Regis nunc general' pro eod' Dom' Rege, pet' advisamentum cur' hic in præmissis, & debitum legis processum versus præfat' Richard' Hathaway in hac parte fieri ad respondend' dicto Dom' Regi de & in præmissis, &c.

Regina versus Hathaway', for an Assault.

2 Annæ.

Surr' ff. **M**emorand', &c. quod quidam Richard' Hathaway, nuper de Southwark in com' Surr', Laborer, Thomas Wellyn, & al', cum diversis al' personis eidem Attorn' general' ignotis, 25 die Septemb', anno regni dicti Dom' Regis nunc 12. apud Southwark prædict', in com' præd', vi & armis, &c. illicite, riotose, & routose sese assemblaver', & magnam affraiam & riotam adtunc & ibid' fecer', & sic assemblat' existen', vi & armis, &c. adtunc & ibidem, in & super quandam Saram Morduck, uxor' cujusdam Edwardi Morduck, nuper de eadem, Waterman, adtunc & semper antea ibid' existen', fœmin' honestam, & non Sagam, nec unquam Magiam (Anglice *Witchcraft*) Incantamentum (Anglice *Inchantment*) Incantamentum (Anglice *Charm*) Fascination' (Anglice *Sorcery*) exercen', in pace Dei, & dicti Dom' Regis adtunc & ibidem existen', insult' fecer', & sub iniquo pretextu, contra legem, tentand' an præd' Sara adtunc fuit Saga, eod' Richardo adtunc & ibidem falso, nequit', scien', & malitiose prætenden' & asseren' seipsum per eand' Saram fascinat' fuisse, ubi revera ipse præd' Richardus nullo modo unquam fascinat' fuit, & adtunc & ibid' bene

sciebat seipsum minime fascinat' fuisse vel esse, ipsam Saram, adtunc & ibid' verberav', scalpsit, vulnerav', & malectrav', ita quod de vita ejus maxime desperabatur, & alia enormia eidem Saræ adtunc & ibid' intuler', ad grave dampnum ipsius Saræ, in contempt' dicti Dom' Regis nunc, & contra pacem coron' & dignitat' suas, &c. Et idem Attorn' dicti Dom' Regis nunc general' ulterius dat cur' hic intelligi & informari, Quod præd' Richard', & al', &c. cum divers' al' person' eid' Attorn' general' ignotis, 11 die Febr', anno regni dicti Dom' Regis nunc 12 suprad', apud Southwark præd', in com' præd', vi & armis, &c. riotose, routose, & illicite sese assemblaver', & magnam affraiam & riotam adtunc & ibid' fecer', & sic assemblat' existen', vi & armis, &c. adtunc & ibid' in & super præd' Saram, in pace Dei & dicti Dom' Regis adtunc & ibid' existen' insult' fecer', & ipsam Saram adtunc & ibid' verberav', scalpsit, vulnerav', & malectrav', ita quod de vita ejus maxime desperabatur, & al' enormia eidem Saræ adtunc & ibid' intuler', ad grave dampnum ipsius Saræ, in contempt' dicti Dom' Regis nunc, & contra pacem coron' & dignitat' suas. Et idem Attorn' dicti Dom' Regis nunc general' ulterius dat cur' hic intelligi & informari, quod præd'

Richardus, & al', &c. cum diversis al' person' eidem Attorn' general' ignotis, postea, scil' præd' 11 die Febr', anno 12 ult' suprad', apud Southwark præd' in com' præd', vi & armis, &c. adtunc & ibid' in & super præd' Saram insult' fecer', & ipsam Saram adtunc & ibid' verberaver', scalpser', vulneraver', & malectraver', ita quod de vita ejus desperabatur, & alia enormia eidem Saræ adtunc & ibid' intuler', ad

grave dampnum ipsius Saræ, in contempt' dicti Dom' Regis nunc, & contra pacem dicti Dom' Regis nunc, coron' & dignitat' suas, &c. Unde idem Attorn' dicti Dom' Regis nunc general', pro eodem Dom' Rege, pet' advisamentum cur' hic in præmissis, & debitum legis processum versus præfat' Richardum, & al', &c. in hac parte fieri ad respondend' dicto Dom' Regi de & in præmissis, &c.

Regina versus Bouchier, " for High-Treason.

2 *Annæ.*

Suffex' ff. JUR' pro Dom' Regina super sacram' suum præsentant, quod Jacobus Bouchier, nuper de London', Gen', qui fuit subdit' Dom' Gulielmi tertii, nuper Regis Angl', Scot', Franc', & Hibern', & modo existit subdit' excellentissimæ Principis Dom' Annæ, nunc Reginæ Angl', Scot', Franc', & Hibern', post 11 diem Decem', anno Dom' 1688, scil' 1 die Aug', anno Dom' 1689, fuit in regno Hiberniæ, & postea & antea 3 diem Decemb', anno Dom' 1697, scil' 1 die Decemb', anno Dom' 1694 præd' Jacob' Bouchier voluntarie ibat in regnum Franciæ sine licentia a Dom' Willielmo tertio, nup' Rege Angliæ, vel a Dom' Maria, nup' Regina Angliæ, & quod præd' Jacob' Bouchier præd', 3 die Decemb', anno Dom' 1697, non fuit infra dominia Dom' Willielmi tertii, nuper Regis Angliæ, &c.

quodq; idem Jacob' Bouchier, timorem Dei in corde suo non habens, & debit' ligeantiæ suæ erga dictam Dom' Annam nunc Regin' Angliæ, &c. supremam, veram, legitimam, legalem, & indubitat' Dom' suam minime ponderans, & ut falsus proditor contra eand' Dom' Annam nunc Regin' Angliæ, &c. post 14 Diem Januar', anno Dom' 1697, scil' 10 die Decemb', anno regni Dom' Annæ nunc Reginæ Angliæ, &c. 2, proditorie rediit & veniebat in hoc regnum Angliæ, scil', apud East Bourne in com' Suffex', sine licentia a dicto Dom' Gulielmo tertio, nuper Rege Angliæ, &c. sub privato sigillo ejusdem nuper Regis, vel a dicta Dom' Anna, Regina nunc, sub privato sigillo ejusdem Dom' Reginæ nunc obtent', contra ligeantiæ suæ debit', & contra formam statuti in hujusmodi casu nuper edit' & provis', ac contra pacem, &c.

*Regina versus Lindsay, * for High-Treason.*

Midd' ff. JUR' pro Dom' Regina super sacram' suum præsentant, quod David Lindsay, nuper de London, Gen', qui fuit subdit' Dom' Willielmi tertii, nuper Regis Angl', Scot', Franc', & Hibern', & modo existit subdit' excellent' Principis Dom' Annæ, nunc Reginæ Angl', Scot', Franc', & Hibern', post 11 diem Decem', anno Dom' 1688, scil' 26 die Martii, anno Dom' 1689, fuit in regno Angliæ, scil' apud paroch' sancti Martini in campis in com' Middlesex' & postea & ante 3 diem Decemb', anno Dom' 1697, scil' 1 die Octobr' anno Dom' 1696, præd' David Lindsay voluntarie ibat in regnum Franciæ, sine licentia a Dom' Willielmo tertio, nup' Rege Angliæ, vel a Dom' Maria, nuper Regina Angliæ, & quod prædict' David Lindsay, præd' 3 die Decemb', anno Dom' 1697, non fuit infra dominia Dom' Willielmi tertii, nup' Regis Angliæ, &c.

quodque idem David Lindsay, timorem Dei in corde suo non habens, & debit' ligeantiæ suæ erga dictam Dom' Annam nunc Regin' Angliæ, &c. supremam, veram, legitimam, legalem, & indubitat' Dom' suam, minime ponderans, & ut falsus proditor contra eandem Dom' Annam, nunc Regin' Angliæ, &c. post 14 diem Januar', anno Dom' 1697, scil' 10 die Decemb', anno regni Dom' Annæ nunc Reginæ Angliæ, &c. 2, proditorie rediit & veniebat in hoc regnum Angliæ, scil' apud præd' paroch' sancti Martini in campis in com' Midd', sine licentia a dicto Dom' Willielmo tertio, nup' Rege Angl', &c. sub privat' sigil' ejusd' nup' Reg', vel a dicta Dom' Anna, Reg' nunc, sub privat' sigil' ejusd' Dom' Reg' nunc obtent', contra ligeant' suæ debit', & contra form' statuti in hujusmodi casu edit' & provis', ac contra pacem dicti Dom' Reginæ nunc, coron' & dignitat' suas, &c.

Dominus Rex versus Coke & Woodburne',

Suffolk ff. JUR' pro Dom' Rege super sacrament' suum præsentant, quod Johan' Woodburne, nuper de Burgo de Bury Sancti Edmundi in com' Suff', Lab', & Arundel Coke, alias Cooke, nuper de Burgo præd', Arm', post 24 diem Junii, anno Dom' 1721, scil' 1 die Januar', anno regni Dom' Georgii nunc Regis Magnæ Britan', &c. 8, machinantes quendam Edw' Crispe, Gen', adtunc & adhuc existen' subdit' dicti Dom' Regis nunc, mahemare & deformare, apud Burg' præd' in com' præd', vi & armis, &c. in & super præd' Edw' Crispe, in pace Dei, & dicti Dom' Regis adtunc & ibid' existen', ex proposito (Anglice *on purpose*) ac ex malitiis suis præcogitat', & per insidias (Anglice *by lying in wait*) illicite & felonice insult' fecer'. Et quod præd' Johan' Woodburne cum quadam Secure (Anglice *a Bill*) valor' un' denar', quam ipse idem Johan' in manu sua dextra adtunc & ibid' habuit & tenuit, nasum præfat' Edw' Crispe ex proposito ac ex malitia sua præcogitat', & per insidias, adtunc & ibid' illicite &

felonice fudit (Anglice *did slit*) cum intention' ad eund' Edward' Crispe ita faciendo modo præd' mahemand' & deformand'. Quodque præd' Arundel, tempore felon' præd', per præfat' Johan' Woodburne, modo & forma præd', illicite & felonice commiss' & perpetrat', scil' eod' 1 die Januar', anno 8 suprad', apud Burg' præd' in com' præd' ex proposito ac ex militia sua præcogitat', & per insidias, illicite & felonice fuit præsens, auxilians, & abertans præfat' Johan' Woodburne ad felon' præd', in forma præd', felonice committend' & perpetrand'. Et sic Jur' præd' dicunt super sacrament' suum præd', quod præd' Johan' Woodburne, & Arundel, dicto 1 die Januar', anno 8 supradict', apud Burg' præd' in com' præd', vi & armis, &c. ex proposito ac ex malitiis suis præcogitat', & per insidias, felon' præd' in form' præd', illicite & felonice commiser' & perpetraver', & uterque eor' commisit & perpetravit, contra pacem dicti Dom' Regis nunc, coron' & dignitat' suas, necnon contra form' stat' in hujusm' casu edit' & provis'.

n Vol. V. p. 506. N^o 178.

* Vol. V. p. 508. N^o 179.

y Vol. VI. p. 212. N^o 192.



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IV. 246</p> <p><i>One Witness sufficient to convict a Person of any other Treason, but that of compassing the Prince's Death</i> III. 819</p> <p><i>Not permitted, to charge a Witness with any Crime in particular, without producing the Record of his Conviction</i> 845</p> <p><i>The Court deny to bring up the Prisoner's Witnesses, who were in Execution for Debt, either by Habeas-Corpus, or Rule</i> IV. 2</p> <p><i>The Court refuse to examine a Witness, who came to swear he had forsworn himself; though the Counsel urged that such Evidence was usually admitted to detect a Subornation</i> 47</p> <p><i>Whether a Witness for the King may be indicted for Perjury on the Statute?</i> 52, 102</p> <p><i>The Deposition of a Person absent ought not to be admitted as Evidence, at a Trial in Criminal Cases</i> 91</p> <p><i>A Person outlaw'd and pardon'd, permitted to give Evidence</i> 164</p> <p><i>A Prisoner permitted to charge the King's Evidence with particular Crimes, without producing any Record against him</i> 234</p> <p><i>A Trial never put off on the Prisoner's Suggestions that his Witnesses are out of the way, without Oath made by a third Person, to satisfy the Court of the Truth of it</i> IV. 421. V. 449</p> <p><i>The Witnesses shall not be examined as to any other Crimes the Prisoner is guilty of, but those he stands charged with</i> IV. 500</p> <p><i>Witnesses shall not give Evidence of any particular Crimes to discredit a Witness; but only to his general Character</i> 693</p> <p><i>Where a Witness is a Prisoner, he must be brought up to the Trial by Habeas Corpus</i> 599</p> <p><i>The Witness need not answer a Question, where it may subject him to a Penalty</i> 606</p> <p><i>The Witness may not read his Evidence</i> 607, 612</p> <p><i>The Witness being the King's Servant, no Cause of Challenge, when the Crown prosecutes</i> 632</p> <p><i>One Convicted of Felony may be a Witness if pardon'd, either by the King, or by Statute: but one Attainted, and pardon'd, either by the King, or a Statute-Pardon, is not restor'd, either to Blood or Credit; unless there be special Words in the Pardon, or his Attainder be revers'd</i> 682</p> <p><i>Though the Witnesses are sometimes examin'd apart, at the Instance of the Prisoner; this is a Favour, and the Court may refuse it</i> IV. 756. V. 20</p> <p><i>One Witness sufficient to convict a Criminal, in some Species of Treason</i> V. 89</p> <p><i>The Judge shall come off the Bench, and give Evidence, when his Testimony may tend to convict or acquit the Prisoner</i> 98</p>	<p><i>Whether the Divine Law, and the Law of Nations, requires two Witnesses in Capital Cases?</i> V. 38, 118, 124, 126</p> <p><i>One admitted to his Clergy, but not burnt in the Hand, or pardon'd, is not restored to his Credit, so as to be a legal Witness</i> V. 165, 170</p> <p><i>Persons indicted for Piracy, held legal Witnesses</i> V. 289, 292</p> <p><i>The Person forcibly marry'd, admitted a Witness of the Force against her Husband de facto</i> V. 456</p> <p><i>A Wife de jure shall not be a Witness for, or against, her Husband</i> V. 476</p> <p>WOODBURNE, John, his Trial with Arundel Coke, Esq; on the 22° & 23° Car. II. commonly called The Coventry-Act, for Felony, at Suffolk-Affizes, 13 Mar. 1721. 8 George I. VI. 212</p> <p><i>The Indictment charging him as Principal, and Coke as Accessary, in disfiguring Mr. Edward Crispe</i> ib.</p> <p><i>Mr. Serjeant Selby and Mr. Serjeant Branthwayte, their Speeches before Evidence</i> 213</p> <p><i>Mr. Crispe's Evidence of his being assaulted</i> 214</p> <p><i>The Surgeon's Evidence of the Nature of the Wounds</i> 215</p> <p><i>Evidence of Woodburne's Confession that he did the Fact</i> ib.</p> <p><i>Evidence of Moon and Carter, that Mr. Coke endeavour'd to persuade them to murder a Man</i> 216</p> <p><i>Mr. Raby's Application of the King's Evidence</i> 217</p> <p><i>Woodburne owns the Fact; but says he was drawn in by Coke</i> 218</p> <p><i>The Jury are told that Woodburne's Story is not Evidence against Coke</i> ib.</p> <p><i>Mr. Coke urges in his Defence, that his Intent was not to maim, but to kill</i> 219</p> <p><i>He desires Counsel may be assign'd him</i> ib.</p> <p><i>Which is refus'd, it being a Question of Fact, and not of Law</i> ib.</p> <p>Lord Chief Justice King's Directions to the Jury 220</p> <p><i>The Prisoners convicted</i> 223</p> <p><i>Being call'd to Judgment, Mr. Coke insists on the same things as in his Defence</i> ib.</p> <p><i>The King's Counsel reply</i> 224</p> <p><i>The Prisoner's Exception disallow'd</i> 228</p> <p><i>Lord Chief Justice pronounces Sentence of Death upon them</i> ib.</p> <p><i>They are executed</i> ib.</p> <p>WOODWARD, Richard II. 585. See Messenger, & al.</p> <p style="text-align: center;">WORDS.</p> <p><i>Words held to amount to an Overt-Act of Treason</i> I. 74. IV. 593, 658</p> <p><i>Any Words or Actions discovering a treasonable Intention against the Prince's Life, held to be Overt-Acts of Treason</i> I. 101. III. 207, 1056</p> <p><i>Whether writing the treasonable Words another dictates, may be deem'd an Overt-Act of the Writer's treasonable Imagination?</i> II. 350</p> <p><i>Treasonable Words spoken in French</i> 656</p> <p><i>Where one is indicted for Words, whether the very Words that are charg'd to be Criminal, ought not to be inserted in the Indictment?</i> III. 1006</p>
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